May 2024 Vol. 40, No. 5

WISCONSIN REAL ESTATE MAGAZINE

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Comprehensive Coverage on NAR's Proposed Settlement Agreement

Antitrust Video for CE Credit

Consumer-transparent Forms

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WRA

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MARCH HOUSING

STRONG DEMAND INCREASES HOME SALES AND PRICES IN FIRST QUARTER

BY DAVE CLARK

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

March 2024 Wisconsin housing at a glance:

- New listings grew 4% compared to 12 months earlier.
- Monthly home sales were 3.2% higher than March 2023.
- The median price rose more than 10% compared to March 2023.
- The 30-year fixed mortgage rate was 6.82% in March.
- The market continues to be classified as a seller's market.

See the full report: **www.wra.org/HSRMar2024**

Dave Clark, Ph.D., is a professor emeritus 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

4,666
CLOSED SALES MAR 2024
+3.2%
FROM MAR 2023

$299,900
MEDIAN PRICE MAR 2024
+10.1%
FROM MAR 2023

ACTIVE LISTINGS BY PRICE

PRICE RANGE	NUMBER OF LISTINGS
$0–$124,999	1,097
$125,000–$199,999	2,204
$200,000–$349,999	4,771
$350,000–$499,999	3,807
$500,000 & higher	3,989

15,880
TOTAL STATEWIDE LISTINGS MAR 2024
+10.6%
FROM MAR 2023

MEDIAN PRICES BY REGION

CENTRAL	$225,000
NORTH	$250,500
NORTHEAST	$270,000
SOUTH CENTRAL	$354,900
SOUTHEAST	$300,000
WEST	$294,950

AVERAGE DAYS ON MARKET

79 DAYS MAR 2024
COMPARED WITH
78 DAYS MAR 2023

MONTHS OF INVENTORY

2.9 MAR 2024
2.3 MAR 2023

MONTHLY HOUSING ACTIVITY

Statewide	March 2024	March 2023	% Change	Year to Date 2024	Year to Date 2023	% Change
New Listings	6,484	6,235	+4.0%	N/A	N/A	N/A
Total Listings	15,880	14,354	+10.6%	N/A	N/A	N/A
Closed Sales*	4,666	4,521	+3.2%	11,578	10,963	+5.6%
Median Sales Price	$299,900	$272,500	+10.1%	$280,000	$262,500	+6.7%
Months of Inventory	2.9	2.3	+26.1%	N/A	N/A	N/A
Avg. Days on Market	79	78	+1.3%	N/A	N/A	N/A
Affordability Index	126	141	-10.6%	N/A	N/A	N/A

	Median Price			Closed Sales		
Region	March 2024	March 2023	% Change	March 2024	March 2023	% Change
Central	$225,000	$205,000	+9.8%	331	294	+12.6%
North	$250,500	$221,000	+13.3%	404	347	+16.4%
Northeast	$270,000	$250,000	+8.0%	870	808	+7.7%
South Central	$354,900	$325,000	+9.2%	947	962	-1.6%
Southeast	$300,000	$275,000	+9.1%	1,730	1,697	+1.9%
West	$294,950	$280,000	+5.3%	384	413	-7.0%

*Report criteria: Reflecting data through March 2024. *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

JUNE MAGAZINE GOES ALL DIGITAL

Next month's *Wisconsin Real Estate Magazine* will skip your mailbox and go straight to your inbox! Watch for an email from the WRA with a link to the digital magazine. In June, you'll still enjoy all the great magazine coverage about real estate law, advocacy updates and training opportunities — but all packaged into the digital issue only. Print copies for the June magazine will not be available.

Plus, you can customize your magazine delivery for issues other than June within your myWRA account. Simply visit **www.wra.org/myWRA**, log in and click on "manage magazine delivery preferences." Starting in July when both print and digital magazines are back, you'll receive the magazine based on your preferences!

WRA ANNOUNCES LARGEST STATEWIDE AND REGIONAL COMPANIES TO SERVE ON 2025 BOARD OF DIRECTORS

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

The following companies will be represented on the 2025 WRA board:

Largest statewide companies

- First Weber Group
- eXp Realty
- Shorewest REALTORS®

Largest regional companies

- Region one: Edina Realty
- Region two: Coldwell Banker Action Realty
- Region three: Coldwell Banker Real Estate Group
- Region four: Stark Company REALTORS®
- Region five: Coldwell Banker Realty

WRA HOLIDAY HOURS

The WRA office as well as the WRA Legal Hotline will be closed on the following dates:

- Monday, May 27
- Thursday, July 4

Normal business hours resume the following business day at 8:30 a.m. Central. Have a happy and safe Memorial Day and Independence Day!

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POSTMASTER: Send address changes to:
Wisconsin REALTORS® Association
4801 Forest Run Road, Ste. 201
Madison, WI 53704-7337

Wisconsin Real Estate Magazine™ is published by the Wisconsin REALTORS® Association. Trademark issued pursuant to Wisconsin state statute.

Wisconsin Real Estate Magazine™, USPS 597-850, ISSN 1548-0526, is published monthly by the Wisconsin REALTORS® Association, 4801 Forest Run Road, Ste. 201, Madison, WI, 53704. Periodical postage paid in Madison, WI, and additional mailing offices. An annual subscription rate of $17.50 is included in membership dues and a copy is mailed to every paid REALTOR® and affiliate member of the association. Nonmember subscription rate is $60.

THE WISCONSIN WAY

A MODEL FOR PRO-CONSUMER POLICIES IN REAL ESTATE TRANSACTIONS

Since the National Association of REALTORS® announced that it entered into a proposed settlement agreement to bring an end to litigation surrounding federal antitrust conspiracy claims brought on behalf of home sellers, the national news media has misrepresented the true impacts on the real estate industry. Some media reports have indicated that home prices will be reduced, commission rates will dramatically decline, and that buyer's agents will no longer be necessary in real estate transactions. All such claims are baseless and have created confusion for consumers.

One of the common misstatements in the news media is that "the standard commission rate" or "the typical commission rate" will be reduced significantly. In reality, there is no standard commission rate set nationwide, statewide or even within our local markets. Real estate commissions have always been and will remain negotiable between real estate firms and their clients. Each real estate firm has the autonomy to establish its own commission rates and the types of services offered, reflecting the diverse needs of its clientele.

Also, the news media fails to recognize that every state is different with respect to its forms, disclosures and protections for consumers. Unlike many other states, Wisconsin laws already mandate the use of state-approved forms (WB forms), which incorporate many of the pro-consumer policies highlighted in the settlement agreement. For over three decades, Wisconsin has championed written buyer agency agreements, setting a precedent for transparency and clarity in real estate transactions.

Finally, the value of REALTORS® in the real estate transaction remains steadfast. Buyers and sellers continue to have the option to enlist the services of a REALTOR® if they believe the services offered will be beneficial to them in the real estate transaction. Importantly, the proposed settlement agreement does nothing to diminish the value that REALTORS® continue to add to real estate transactions by providing professional advice, navigating paperwork, interpreting market data and ensuring a seamless transaction process.

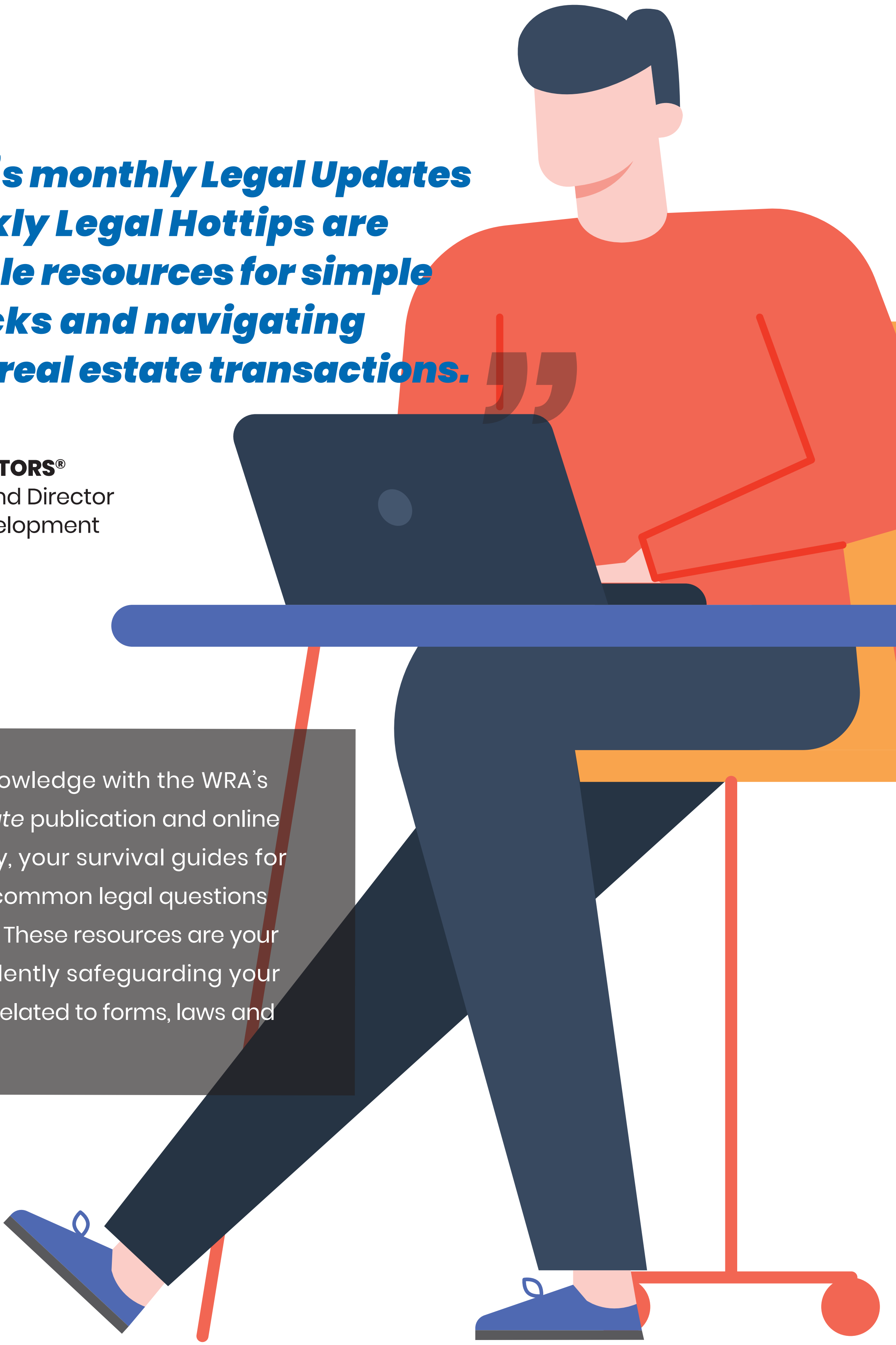
As leaders in the real estate industry, it's incumbent upon us to inspire confidence and trust among our clients, customers and the general public. We must use this moment to reaffirm our commitment to upholding the highest standards of professionalism and ethics, ensuring that Wisconsin remains at the forefront of pro-consumer policies and practices. By doing so, we not only dispel the misconceptions perpetuated by the media but also reaffirm the indispensable role REALTORS® play in guiding buyers and sellers through the complexities of real estate transactions.

Tom Larson
WRA President & CEO

WRA
Wisconsin REALTORS® Association

"The WRA's monthly Legal Updates and weekly Legal Hottips are invaluable resources for simple fact checks and navigating complex real estate transactions."

Casey Clickner,
Shorewest REALTORS®
Vice President and Director
of Growth & Development



Boost your legal knowledge with the WRA's monthly *Legal Update* publication and online Legal Hottips library, your survival guides for finding answers to common legal questions and trending topics. These resources are your playbook for confidently safeguarding your business from risks related to forms, laws and court rulings.

Learn more at www.wra.org/Legal

FEATURE

NAR ANTITRUST LAWSUIT: HOW DID WE GET HERE?

TAKEAWAYS FOR WISCONSIN REALTORS® FROM NAR'S PROPOSED SETTLEMENT

BY JENNIFER LINDSLEY
WRA DIRECTOR OF LEGAL SERVICES AND LICENSING

In 2019, a group of home sellers in Missouri initiated a class-action lawsuit against the National Association of REALTORS® (NAR) and several other defendants. The plaintiffs alleged that real estate commissions were too high, buyer's firms were paid too much, and NAR's REALTOR® Code of Ethics, MLS Handbook, and the practices of the corporate defendants contributed to inflated commission rates. The trial for this case took place in October 2023, and the verdict was announced on October 31, 2023, with the plaintiffs prevailing.

The plaintiffs challenged NAR's "participation rule," which mandated MLS participants to offer compensation to cooperating firms. This requirement meant that when listing a property on the MLS, the listing firm had to make an offer of compensation to cooperating firms, which could be buyer's firms or subagent firms. Previously, NAR had interpreted the offer of compensation to require offering at least one cent. Following the verdict, NAR reinterpreted this rule to allow for an offer of zero cents.

The legal analysis in this antitrust case revolved around two potential approaches: the "per se" rule and the "rule of reason." The court instructed the jury to apply the per se rule, which presumes certain conduct to unreasonably restrain trade in violation of the Sherman Act. Per se violations are inherently anticompetitive and automatically unlawful, with no opportunity for the defendant to justify or defend their actions. The only determination left for the court is the extent of damages and attorney fees, with per se violations carrying a conclusive presumption of anticompetitive effects. The per se categories of antitrust violations include price-fixing conspiracies, specific group boycotts and tying arrangements.

In contrast, the rule of reason is a balancing test that evaluates the pro-competitive and anticompetitive aspects of a practice affecting market competition. Courts under the rule of reason assess whether a restraint on trade promotes or suppresses competition, considering factors such as the nature of the restraint, its impact on market conditions and its intended purpose. If the overall effect is anticompetitive, the restraint is deemed unreasonable and illegal.

As this case was decided under the per se rule, the jury swiftly returned a verdict favoring the plaintiffs and holding the defendants liable for $1.78 billion in damages, which is tripled to $5.4 billion in this type of lawsuit. Before trial, two brokerage defendants settled for a total of $138 million while another settled in February 2024 for $70 million. NAR agreed to a proposed settlement of $418 million in damages along with a number of practice changes. The proposed settlement was announced on March 15, 2024. Shortly after NAR agreed to the proposed settlement, another defendant agreed to settle for $57.5 million. However, as of April 2024, one defendant remains. It is important to note that all these settlements are still pending judicial approval, which has not been granted as of April 2024. The judge retains discretion in approving or rejecting the proposed settlements.

Moreover, it is essential to recognize that not all firms are part of the NAR proposed settlement, and the settlement does not affect class actions initiated by homebuyers. Further updates on the implications of the proposed settlement and real estate practice in Wisconsin will be communicated as soon as the WRA legal team obtains new information.

NAR AND THE DOJ: A SHORT HISTORY

The United States Department of Justice (DOJ) and NAR have a past going back to at least 1950 when the DOJ got a favorable U.S. Supreme Court decision against the National Association of Real Estate Boards, which was the precursor to NAR. At that time, the precursor to NAR imposed mandatory fee schedules for its members and mandated specific commission rates, with deviations from these schedules deemed as violations of its Code of Ethics. The Supreme Court's ruling characterized this practice as price-fixing, highlighting the intersections of antitrust law and brokerage services.

The DOJ has maintained an interest in NAR's activities over the years, but more recent history demonstrates the situation with the DOJ and NAR as of April 2024. The DOJ initiated renewed investigations into NAR, leading to a settlement agreement in November 2020. As part of this settlement, NAR agreed to modify four policies: allowing disclosure of MLS offers of compensation to consumers, prohibiting misleading claims of free services unless no compensation is received, prohibiting MLS participants from filtering listings based on compensation offers, and prohibiting access restrictions to lockboxes unless instructed by the seller.

However, in July 2021, the DOJ withdrew from the settlement, prompting NAR to sue the DOJ in September 2021, arguing that a deal is a deal and the DOJ cannot unilaterally withdraw. In January 2023, NAR secured a favorable decision at the circuit court level. Subsequently, in November 2023, the DOJ appealed NAR's victory at the circuit court, leading to oral arguments at the D.C. Court of Appeals in December 2023. In April 2024, the court found in favor of the DOJ, which means that the DOJ is able to withdraw from the settlement and reopen the investigation.

NOSALEK V. MLS PIN: YET ANOTHER CLASS ACTION

This case was initiated on behalf of home sellers against MLS Property Information Network (PIN), which serves Massachusetts, Rhode Island and New Hampshire. The involved parties reached a settlement agreement that established a $3 million settlement fund along with implementing rule changes. These changes included shifting the responsibility of making an offer of compensation in the MLS from the listing firm to the seller and permitting the offered amount to be zero. The settlement also introduced additional language emphasizing the negotiability of the buyer's firm commissions, although they were always negotiable.

The settlement was pending court approval until the DOJ filed a Statement of Interest on February 15, 2024. The DOJ Statement of Interest advocates for an injunction, making sellers and buyers independently responsible for their respective commissions. In essence, the DOJ wants no offer of compensation from whatever source regardless of whether it is posted on the MLS or elsewhere. While the court can potentially approve the settlement despite the DOJ's objections, this outcome appears unlikely given NAR's proposed settlement agreement that prohibits offers of compensation on the MLS.

It is conceivable that the parties in this case may seek to renegotiate the settlement terms to clarify that regardless of the source of the offer of compensation, it would not be displayed in the MLS. As of April 2024, the final resolution of this case remains uncertain. MLS PIN is not wholly owned by a REALTOR® association and therefore is not covered by the NAR proposed settlement agreement, but MLS Pin could opt in to the settlement agreement by following the process outlined in the proposed settlement terms.

NAR'S PROPOSED SETTLEMENT AND YOUR REAL ESTATE PRACTICE

TAKEAWAYS FOR WISCONSIN REALTORS® FROM NAR'S PROPOSED SETTLEMENT

BY CORI LAMONT
WRA VICE PRESIDENT OF LEGAL AND PUBLIC AFFAIRS

On March 15, 2024, the National REALTORS® Association (NAR) announced it reached a proposed settlement agreement for $418 million that would end the litigation against some defendants relating to federal antitrust conspiracy claims regarding all the home seller lawsuits such as *Sitzer/Burnett* and *Moehrl*. See Jennifer Lindsley's article on page 8 about the background of the litigation.

There will be a lot of information from both the WRA and NAR about the proposed settlement in the next several months. The following is to provide you with some of the major takeaways from the proposed settlement.

RELEASE OF LIABILITY

The following organizations are covered under NAR's proposed settlement:

- NAR
- Wisconsin REALTORS® Association (WRA)
- Local REALTOR® associations in Wisconsin
- All association-owned MLSs
- All brokerages with a NAR member as principal that had a residential transaction volume in 2022 of $2 billion or below are released from liability for the types of claims brought in these cases on behalf of home sellers related to broker commissions. This includes the independent contractor agents, but not employees of these firms.

The following are not covered under NAR's proposed settlement:

- Agents affiliated with HomeServices of America and its related companies — the last corporate defendant — is still litigating the *Sitzer/Burnett* case.
- Employees of the remaining corporate defendants named in the cases covered by NAR's proposed settlement.
- All brokerages with a NAR member as principal that had a residential transaction volume in 2022 of $2 billion or more are not released under the proposed settlement. The agreement does provide a way for this group and MLSs not wholly owned by REALTOR® associations to obtain releases if they so choose.

PRACTICE ISSUES IMPACTED BY THIS PROPOSED SETTLEMENT

The agreement must still be approved by the federal court. However, there are certain practice changes that NAR has committed to implementing even if the court does not approve the agreement. The most notable changes would include:

Compensation offers off the MLS

NAR agreed to a new rule prohibiting offers of compensation on the MLS. Offers of compensation could continue to be an option consumers can pursue off the MLS through negotiation and consultation with real estate professionals. Sellers may offer buyer concessions on an MLS; for example, concessions for buyer closing costs. Per NAR, this will take effect in mid to late August 2024.

For Wisconsin REALTORS®, this will be a significant change. With offers of compensation no longer included in the MLS, there will be different methods of achieving the offer of compensation. For instance, an agreement can be entered into between the two firms as to the compensation, or firms can rely on standing policy letters or standing compensation agreements between firms.

At this time, it appears that sellers may compensate buyer's agents. This will likely occur through the buyer including a request for the seller to compensate the buyer's agent in the offers to purchase.

Written buyer agency agreements

The policy change will require MLS participants working with buyers to enter into written representation agreements with their buyers before touring a home. Per NAR, this will take effect in mid to late August 2024.

See Debbi Conrad's article on page 12 to learn more about Wisconsin's history of buyer agency.

NAR DID NOT ADMIT ANY GUILT AS PART OF THE PROPOSED SETTLEMENT

The proposed settlement clearly provides that NAR continues to deny any wrongdoing in connection with the litigation. NAR contends that the very reason the MLS cooperative compensation rule was introduced in the 1990s was "in response to calls from consumer protection advocates for buyer representation."

THE AGREEMENT DOES NOT OVERRIDE STATE LAW

The challenge with this proposed settlement agreement is that it is an agreement that applies to all REALTORS® and MLS participants in all 50 states, even though each state has different rules that impact how real estate is practiced.

How is Wisconsin different?

Wisconsin already has in effect many of the pro-consumer policies identified in the proposed settlement agreement. For more than 30 years, Wisconsin law has required written buyer agency agreements prior to providing client services as a buyer's agent. Moreover, our state-approved (WB) listing contracts and buyer agency agreements explain how commissions are earned and paid to real estate firms that cooperate in the transaction.

The WB forms emphasize that there are no standard commission rates and that commissions and types of service vary and are negotiable based on the firm hired. Therefore, agents should continue to explain and discuss compensation with consumers while reminding the consumer there are no standard rates and commissions and each firm establishes its own commission structure based on the services provided. Commissions are not set by law and are fully negotiable.

The value of REALTORS® in the real estate transaction has not changed

- Buyers and sellers have always had the option to hire REALTORS® to assist them in the real estate transaction.
- Compensation for REALTOR® services has always been determined through negotiations between the REALTOR® and buyers or sellers.
- Nothing about the settlement agreement created more inventory, made the market less competitive, made the transaction less complex or emotional, or made homeownership less important for the consumer.
- REALTORS® continue to add value by assisting consumers through a number of ways as a professional, including navigating through complex paperwork, interpreting online information, managing deadlines and understanding the marketplace.

For more resources, including key points from the NAR proposed settlement for Wisconsin REALTORS® as well as other WRA and NAR resources about the NAR lawsuit and related proposed settlement agreement, visit the WRA's antitrust resource webpage at **www.wra.org/antitrust**.

BUYER AGENCY IN WISCONSIN

BY DEBBI CONRAD
WRA SENIOR ATTORNEY AND DIRECTOR OF LEGAL AFFAIRS

The buyer agency agreement is the document that authorizes a buyer's firm and its agents to provide brokerage services to the buyer as a client. It is, in essence, the counterpart of the listing contract that the seller executes to authorize the listing firm and its agents to provide brokerage services to the seller as a client. The buyer agency agreement specifies the extent of the buyer's firm's authority to act on behalf of the buyer and the performance required to earn commission. No real estate licensee may provide client services to a buyer unless they are working under a buyer agency agreement.

When did we have our first buyer agency agreement in Wisconsin?

The first buyer agency agreement in Wisconsin was a WB-36 Exclusive Buyer Agency Contract form dated January 1, 1986. Yes, the history of buyer agency agreements in Wisconsin goes back further than most of us ever imagined! Looking at the 1995 version that replaced that 1986 contract, it is only two pages long but touches on many of the same key components found in the six-page WB-36 Buyer Agency Agreement (2024) we have today. While other states have not incorporated certain buyer representation practices into their law, Wisconsin has encouraged and required written buyer agency agreements for buyer clients for almost 40 years.

Are Wisconsin licensees required to use the approved buyer agency agreements, such as the 2024 version of the WB-36 Buyer Agency Agreement?

Yes. Wisconsin law requires that Wisconsin licensees use the WB forms approved by the Real Estate Examining Board (REEB). Wis. Stat. § 452.05(1)(b) authorizes the REEB to "approve forms for use in real estate practice."

No Wisconsin real estate licensee may provide client services to a buyer unless they are working under a buyer agency agreement; client services for a tenant likewise require a tenant representation agreement.

The definitions in the statutes tell us that a "client" means a party to a transaction who has an agency agreement with a firm for brokerage services, and that an "agency agreement" means a written agreement between a firm and a client in which the client authorizes the firm to provide brokerage services to the client.

Are any of the pro-consumer policies addressed in the National Association of REALTORS®' (NAR) proposed settlement agreement found in the WB-36 we have today?

Wisconsin WB forms have strong commission transparency provisions similar to many of those mentioned in NAR's proposed settlement agreement. The current buyer agency and tenant representation agreements have long blank lines to write in the commission. There is also a place to write in other compensation on additional blank lines. The Payment by Owner or Owner's Agent section in the WB-36 authorizes the firm to seek payment of commission from the owner or owner's agent. It allows the buyer's firm, for example, to receive all or part of the firm's commission from the seller or the listing firm as long as both the buyer and seller consent.

What does the buyer agency agreement tell buyers about how commissions are determined?

The current WB-36 indicates the determination of commission is a mutual decision: "Buyer and the Firm agree the Firm's commission shall be ______________________________."

The Payment by Owner or Owner's Agent section in the buyer agency and tenant representation agreements explains that when a firm seeks payment of commission from the owner's agent, that means seeking payment from the listing firm through the multiple listing service or compensation agreements.

The buyer agency and tenant representation agreements also state that, "There is no standard market commission rate. Commissions and types of service may vary by firm and are negotiable based on the firm you hire."

What does the buyer agency agreement tell us about how the buyer agency commission is earned?

The applicable commission is earned in the WB-36 if the buyer, or a person acting on behalf of a buyer, acquires a property or enters into an enforceable contract to acquire a property. Commission is earned regardless of whether the purchase price falls outside of any price range stated in the WB-36. The buyer's agent need not have been involved in the location of the property or in the negotiation leading up to the acquisition of the property. The buyer's firm can earn commission if a property is obtained by the buyer during the WB-36 contract term regardless of who helps the buyer obtain that property.

What should a buyer know about how the buyer agency commission or fee will be paid?

A buyer's agent may receive commission from three sources or a combination thereof:

1. The buyer, per the buyer agency agreement.
2. The listing firm, per the MLS or another compensation agreement.
3. The seller, as negotiated in the offer to purchase.

A buyer's firm may ethically suggest or recommend that the buyer ask the seller to pay some or all of the buyer's firm's fee pursuant to Article 16 of the REALTOR® Code of Ethics and NAR Case Interpretation #16-17. The buyer may condition the offer upon the seller paying some or all of the buyer's firm's commission on behalf of the buyer as a seller's expense at closing.

Wis. Stat. § 452.133(3)(a) provides that the buyer's firm must have the prior written consent of the buyer and seller to accept compensation from the seller because the seller is not the buyer's firm's client. The WB-36 Buyer Agency Agreement authorizes the buyer's firm to accept compensation from the owner or seller, while consent from the seller would need to be obtained in the offer.

It is a violation of the REALTOR® Code of Ethics if the offer is used to modify the listing firm's offer of compensation, but it is not a violation of the Code of Ethics for a buyer to ask the seller to pay the buyer so the buyer may pay the buyer's firm, or to ask the seller to pay the buyer's firm at closing on behalf of the buyer.

Why should a buyer choose buyer agency? What should a licensee tell a consumer?

The buyer's agent represents the interests of the buyer but also must know how to work constructively with the listing agent so that the parties are satisfied with the transaction: the seller sells and the buyer buys. Acting in an adversarial way is not the most effective way to represent a buyer. If a buyer does not have a buyer agency agreement with the agent, the agent can't give advice or opinions contrary to the interests of the seller.

A buyer has buyer agency with a firm when the buyer signs a buyer agency agreement with the firm and becomes the firm's client. Most commonly, that is achieved with a WB-36 Buyer Agency Agreement, which is a state-approved form for buyer agency. Without buyer agency, an agent must provide fair treatment and draft offers as the buyer directs but cannot give a buyer advice or opinions when engaging in negotiations or writing an offer to purchase.

Here are just some of the things a buyer's agent can — and should — do for a buyer:

- Give a negative opinion or critique of a seller's property beyond disclosing material adverse facts.
- Recommend or suggest an offering price or give the buyer an opinion about whether a particular house is priced too high or too low.
- Structure an offer and draft offer provisions with the buyer's best interests in mind.
- Recommend and assist the buyer with negotiation strategies for the best price and terms.
- Disclose all information and research a property's history and liens so the buyer can make an informed decision.
- Give advice within the scope of the agent's expertise as a licensed real estate professional.

WRA CONSUMER BROCHURES

The WRA offers several consumer brochures to help real estate consumers understand their Wisconsin real estate transactions:

- The "Why Should a Buyer Choose Buyer Agency?" consumer handout helps real estate consumers understand the role of a buyer's agent in a Wisconsin real estate transaction.
- The "Buyer Agency" consumer brochure provides a general overview of Wisconsin buyer agency.
- The "Explanation of the WB-36 Buyer Agency Agreement" consumer brochure offers a section-by-section analysis of the WB-36 form used in real estate practice. This brochure is available for consumers in both English and Spanish.

Download these brochures and more:
www.wra.org/consumerbrochures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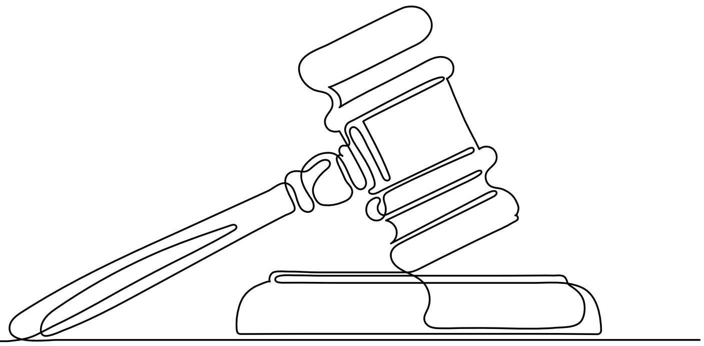

THE BEST OF THE LEGAL HOTLINE

NEW "DO'S AND DON'TS" IN LIGHT OF NAR'S PROPOSED SETTLEMENT AGREEMENT

BY WENDY HOANG
WRA STAFF ATTORNEY

On March 15, 2024, the National Association of REALTORS® (NAR) entered into a proposed settlement agreement in the antitrust lawsuit. The following questions and answers address what licensees should do in light of the proposed settlement agreement.

COMMISSION

With the current NAR proposed settlement agreement, ow should licensees handle commission questions?
Commission is negotiated between the firm and the client on a case-by-case basis. To avoid an appearance that there is a set fee or rate in the industry, it is best to focus only on the firm's own policies. A firm should focus on its individual services, the benefits for a potential client to work with the firm, and the firm's company policies and fees.

How should commission be addressed in the listing contract and buyer agency agreement?
Licensees should have a discussion with the consumer about the commission amount when negotiating the listing contract or buyer agency agreement. Licensees should ensure that the consumer understands the commission amount and who pays the commission. The consumer should also understand how the firm earns the commission. Licensees should be comfortable explaining the value of the brokerage services provided by the firm and the amount the firm charges for those services.

Although firms may have policies regarding a minimum amount of commission the firm charges for brokerage services, NAR has cautioned against pre-printing the commission amount in the listing contract and buyer agency agreements. NAR has recommended the commission section of the contract be filled in after having the discussion with the consumer. However, firms may make their own business decisions regarding educating the consumer about commission.

Can a firm market what it charges for commission?
A firm may include the firm's fees in advertising. To avoid an appearance that there is a set fee or rate in the industry, it is best to focus only on the firm's own policies and not what other firms may charge for commission. Firms should avoid indicating or implying that there is a set commission rate on any advertising, including social media. Each commission is negotiable on a case-by-case basis. It is advantageous to limit advertising to what the firm will do, what the firm will charge, and the firm's own business model and services.

Can a firm draft language or create an addendum that addresses commissions?
The firm should consult private legal counsel before making any changes to forms, such as addenda.

COMPENSATION TO OTHERS IN THE LISTING CONTRACT

How should listing firms explain the Compensation to Others section of the listing contract to consumers?
The amount of cooperative commission is determined on a case-by-case basis and is documented in the Compensation to Others section of the listing contract entered into between the seller and listing firm. The firm and seller may negotiate a range of compensation offered to cooperating firms.

NAR has cautioned against pre-printing the Compensation to Others amount in the listing contract to avoid the perception of a fixed amount of cooperative compensation. NAR has recommended licensees discuss and explain the Compensation

to Others section of the listing contract and then complete the Compensation to Others amount. Firms may make their own decisions regarding educating the consumer about offers of compensation. However, caution must be taken as a conversation with a seller could have antitrust implications to say competitors are setting fixed amounts of cooperative commission.

Can firms post the offer of compensation in the broker remarks on the MLS or on a different internet platform?
Firms should not post the offer of compensation on the MLS at all. Firms should also refrain from discussing ways to work around the proposed new rule prohibiting offers of compensation on the MLS.

STEERING

Can a buyer's firm disclose to a buyer client the amount of cooperative commission that is being offered by the listing firm? How should the buyer's firm discuss this with the buyer client without a potential steering violation?
The concern with steering as it relates to commissions is agents steering buyers away from listings where there is a lower offer of compensation. If a firm has a buyer client, this may be less of a concern due to the nature of the WB-36 Buyer Agency Agreement, which states that any amount received from the seller or the listing firm reduces what the buyer client owes to the buyer's firm. A buyer's agent should, however, be wary of filtering properties for a buyer's consideration based on whether the offer of compensation will cover the entire buyer agency fee. Rather, the agent should have a discussion with the buyer regarding the buyer's responsibility to pay the buyer agency fee even if the property the buyer chooses does not have an offer of compensation large enough to eliminate the buyer agency fee.

An agent working with a buyer client may disclose to the buyer client what is being offered on a listing in which the buyer has an interest. Knowing the buyer's final expense for their firm's commission after receipt of any offer of compensation by the listing firm may play into the buyer's overall financial analysis of the transaction.

Should the buyer client direct the firm to not provide or show properties where the buyer agency fee would not be paid in full by the offer of compensation from the listing firm, then the firm may comply with the client's directive. In other words, it is possible the buyer client might indicate that payment of the buyer agency fee is one of the buyer's property search criteria.

ADDITIONAL RESOURCES

- WRA antitrust resource webpage: **www.wra.org/Antitrust**
- NAR's "Fostering Consumer-Friendly Real Estate Marketplaces" webpage: **nar.realtor/competition-in-real-estate**
- NAR's "The Facts for REALTORS®" webpage: **nar.realtor/the-facts**

LEGAL RESOURCES

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

ANTITRUST RESOURCES

The National Association of REALTORS® (NAR) announced in March that it reached a proposed settlement agreement to resolve the litigation relating to federal antitrust conspiracy claims.

To help you understand the proposed settlement agreement, the WRA antitrust resource webpage includes the latest information from the WRA about the litigation. A few items you'll find on the webpage include:

- WRA statement about NAR's proposed settlement agreement
- WRA antitrust FAQs
- WRA Legal Update Live discussion available for one complimentary CE credit for WRA members; see page 23
- WRA publications about commissions and antitrust
- NAR resources

The complete slate of antitrust resources are available for WRA members only. To access, click the blue button on the webpage and enter your WRA credentials.

See more: **www.wra.org/Antitrust**

LEGAL HOTTIPS

WRA membership gives you access to the extensive WRA Legal Hottips online library, featuring past WRA Legal Hotline discussions.

With custom filters by category and even subcategories, you can find the specific hottips you're looking for on issues like disclosure, agency agreements, post-closing disputes and more. Plus, hottip updates each week give you fresh insights.

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

WRA LEGAL HOTLINE

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

SUBMIT YOUR QUESTION

By phone: 608-242-2296 or 800-799-4468

Online: Visit the hotline webpage

HOTLINE HOURS

Monday-Friday, 8:30 a.m. – 4:30 p.m. Central

www.wra.org/LegalHotline


DARE to DREAM
SAVE THE DATE
WRA 2024 ANNUAL CONVENTION
SEPTEMBER 29 - OCTOBER 1, 2024 | KALAHARI RESORT & CONVENTION CENTER

PRESIDENTIAL VOTING STATISTICS IN SWING STATE WISCONSIN

BY JOE MURRAY
WRA DIRECTOR OF POLITICAL AND GOVERNMENTAL AFFAIRS

A handful of swing states usually decide U.S. presidential elections. And according to the University of Virginia Center for Politics, the 2024 presidential election could be decided by four states currently rated as “toss-ups” where either side could win: Arizona, Georgia, Nevada and Wisconsin.

Wisconsin continues to be a highly competitive battleground state in presidential elections, where tens of millions of dollars pour into the Badger State in the form of political advertising and individual contributions to the candidates.

While swing states in past elections can be determined by looking at how close the vote was in each state, determining which states are likely to be swing states in future elections requires estimation and projection based on previous election results, polling, voter turnout and other circumstances such as the strengths and weaknesses of the candidates involved. In Wisconsin, we are living in a highly competitive era of presidential politics. Here’s a brief overview of the numbers that illustrate the point in the Badger State.

VOTING FOR THE WINNER

In presidential electoral politics, states like Wisconsin are considered bellwethers of future electoral outcomes because of how many times they have voted for the winning candidate or party. Using statistical data from the U.S. National Archives and Records Administration, here’s an analysis of Wisconsin’s voting record in presidential elections from 1900 to 2020 from Ballotpedia. Wisconsin’s accuracy is based on how many times the state voted for the winning presidential candidate.

- In Wisconsin presidential elections from 1900-2020, there have been 15 Democratic wins and 15 Republican wins.
- Since 1900, Wisconsin has voted Democratic 48.4% of the time and Republican 48.4% of the time.
- Between 1900 and 2020, Wisconsin voted for the winning presidential candidate 77.4% of the time.
- Between 2000 and 2020, Wisconsin voted for the winning presidential candidate 66.7% of the time.
- Since 2000, Wisconsin has voted Democratic 83.3% of the time and Republican 16.7% of the time.
- Wisconsin voted for Joe Biden in the 2020 presidential election.

HIGH VOTER TURNOUT

Another feature of highly competitive battleground states in presidential elections is above-average voter turnout. For decades, Wisconsin voter turnout has been among the highest in the country. Here are the numbers for voter turnout in presidential elections since 2000.

State of Wisconsin Partisan Voter Turnout 2000-2020

Year	Voting Age Population	General Election Voters	General Election Turnout
2020	4,536,417	3,308,805	72.94%
2016	4,461,068	3,004,051	67.34%
2012	4,378,741	3,071,434	70.14%
2008	4,330,695	2,996,869	69.20%
2004	4,118,621	3,016,288	73.24%
2000	3,908,533	2,619,184	67.01%

Source: Wisconsin Elections Commission

VOTER TURNOUT RANKING OF STATES

As a swing state, total voter turnout as a percent of the voting age population in Wisconsin consistently ranks in the top five states:

Voter Turnout Ranking of States

Year	Ranking	% Turnout
2000	4th	67.01%
2004	3rd	73.24%
2008	4th	69.20%
2012	2nd	70.14%
2016	4th	67.34%
2020	4th	72.94%

Source: United States Election Project

In Wisconsin, four of the last six presidential elections have been decided by less than one percentage point:

Presidential Election Outcomes

2020	Joe Biden – 49.5%	Donald Trump – 48.8%
2016	Donald Trump – 48.8%	Hillary Clinton – 47.2%
2004	John Kerry – 49.7%	George W. Bush – 49.3%
2000	Al Gore – 47.8%	George W. Bush – 47.6%

Source: Ballotpedia

On the other hand, Barack Obama won Wisconsin by 6.7 percentage points in 2012 and 13.9 percentage points in 2008.

TIPPING POINT STATE

Wisconsin tipped the scales in 2016, putting Trump over 270 in the electoral college by less than 23,000 votes. Wisconsin once again tipped the scales in 2020, putting Biden over 270 in the electoral college by less than 21,000 votes. With seven months to go until the 2024 presidential election, the road to the White House could run directly through Wisconsin as the swing state, pivotal in deciding which party emerges victorious.

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With WRA PDF Forms Library access now included with your WRA membership, you automatically receive access to all PDF versions of the WRA and WB forms included in the PDF Forms Library. You simply need to agree to the product's terms of use upon accessing the library at **www.wra.org/Forms**, and then you're in.

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LEGAL UPDATE LIVE CE CREDIT

EARN ONE HOUR OF 2023-24 CE CREDIT WITH THE MARCH 27 LEGAL UPDATE LIVE

On March 27, WRA President & CEO Tom Larson, along with the WRA legal team, discussed the latest updates about NAR's proposed settlement agreement in a livestreamed session of the WRA's Legal Update Live series.

This March 27 Legal Update Live webinar has been converted into an alternate CE Course 6 for the 2023-24 biennium. WRA members can earn one hour of complimentary credit for CE Course 6.

EARN YOUR CE CREDIT WITH THESE EASY STEPS

1. Go to **www.wra.org/mycourses** and log in with your WRA credentials.
2. Scroll down to the **Current Courses** section on that webpage.
3. Click on **Complimentary CE — Member Benefit** on that page.
4. Finally, click **Launch Course**.
5. Watch the video, take the exam, and enjoy your complimentary CE!

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TECH COURSE: MODERNIZE YOUR MARKETING AND STAY IN BUDGET

MAY 16, 2024

Print and direct mail have been replaced by targeting techniques like social media and search engine optimization. Hosted by tech guru Craig Grant, this course helps you update your marketing efforts without exceeding your budget.

• Course: Market Like a Rockstar on a Roadie's Budget
• Date/time: May 16, 9:00 a.m. – 10:00 a.m.
• Format: Virtual
• Fee: $30

Full details and registration: www.wra.org/BLF

TECH COURSE: TECH TOOLBOX

June 13, 2024

Tech this, tech that — tech advice is everywhere. But what should really be in your tech toolbox? Join this virtual course and let instructor Craig Grant help you choose the best hardware, software and even apps that can help improve your real estate business.

• Course: The Real Estate Pro's Essential Technology Toolbox
• Date/time: June 13, 9:00 a.m. – 10:00 a.m.
• Format: Virtual
• Fee: $30

Full details and registration: www.wra.org/BLF

TECH COURSE: VIRTUAL MARKETING

July 11, 2024

Augmented reality (AR) and virtual reality (VR) are here to stay and are changing how consumers shop for homes. In this course, tech guru and instructor Craig Grant explains AR and VR and also shares tips for how you can leverage them in your real estate business.

• Course: How to Virtually Market and Sell Real Estate
• Date/time: July 11, 9:00 a.m. – 10:00 a.m.
• Format: Virtual
• Fee: $30

Full details and registration: www.wra.org/BLF

BUYER'S REP DESIGNATION COURSE
May 16–17, 2024

Recently updated with new information, the Accredited Buyer's Representative (ABR) designation course explores residential real estate transactions from the buyer's perspective to give you the skills to succeed as a buyer's agent. You'll learn how to attract more buyers and elevate your services to ensure you're meeting all your fiduciary responsibilities when representing buyers.

- Course: ABR Designation Course
- Date/time: May 16-17, 9:00 a.m. – 4:00 p.m. each day
- Format: Virtual
- Fee: This course offering is available at no charge for WRA members!

Full details and registration: www.wra.org/ABR

RENE CERTIFICATION COURSE
May 29–30, 2024

As a REALTOR®, you encounter many types of people, personalities and situations in your real estate practice. The Real Estate Negotiation Expert (RENE) certification arms you with a unique set of skills to effectively and successfully handle negotiations in your transactions.

- Course: RENE Certification Course
- Date/time: May 29-30, 9:00 a.m. – 4:00 p.m. each day
- Format: Virtual
- Fee: $200 for WRA members

Full details and registration: www.wra.org/RENE

WRA ANNUAL CONVENTION
September 29–October 1, 2024

It's back: Save the date for the WRA's showcase event of the year! This fall, dive into the ultimate WRA experience at the Kalahari in Wisconsin Dells: networking, training and entertainment. Join hundreds of fellow Wisconsin REALTORS® for the prime opportunity to connect, create memories and elevate your skills.

2024 event highlights include keynote speakers, dozens of workshops, market insights, networking opportunities, CE, chairman's installation dinner, the annual golf outing, awards recognition, everyone's favorite icebreaker party and much more. Be on the lookout for more details.

See you in Wisconsin Dells on September 29-October 1!

OFFERING	FORMAT	DETAILS & REGISTRATION
EVENTS		
WRA Annual Convention: Sept. 29-Oct. 1, 2024	Live in Wisconsin Dells	Save the date!
PRE-LICENSE TRAINING		
ONGOING TRAINING		
Broker Pre-license Course	On Demand	www.wra.org/BPL
Sales Pre-license Course	On Demand	www.wra.org/SPL
Sales Pre-exam Review	On Demand	www.wra.org/SalesPreExamReview
PROFESSIONAL DEVELOPMENT TRAINING		
SCHEDULED TRAINING		
Tech Marketing in Budget Course: May 16, 2024	Virtual	www.wra.org/BLF
ABR Designation Course: May 16-17, 2024	Virtual	www.wra.org/ABR
RENE Certification Course: May 29-30, 2024	Virtual	www.wra.org/RENE
Tech Toolbox Course: June 13, 2024	Virtual	www.wra.org/BLF
Tech Virtual Marketing Course: July 11, 2024	Virtual	www.wra.org/BLF
ONGOING TRAINING		
GRI On Demand	On Demand	www.wra.org/GRI
Home Essentials Video Series	On Demand	www.wra.org/HomeEssentials
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
REAL ESTATE CONTINUING EDUCATION		
SCHEDULED TRAINING		
CE Courses 1-3: September 5, 2024	Virtual	www.wra.org/CE2324
CE Courses 4-6: September 10, 2024	Virtual	www.wra.org/CE2324
CE Courses 7-9: September 12, 2024	Virtual	www.wra.org/CE2324
CE Courses 10-12: September 17, 2024	Virtual	www.wra.org/CE2324
CE Electives 1-3: September 19, 2024	Virtual	www.wra.org/CE2324
CE Electives 4-6: September 24, 2024	Virtual	www.wra.org/CE2324
ONGOING TRAINING		
2023-24 Real Estate CE	Self-study Book	www.wra.org/CE2324
2023-24 Real Estate CE	On Demand	www.wra.org/CE2324
2023-24 Commercial CE	On Demand	www.wra.org/CE2324
2023-24 WI/MN Dual License CE	On Demand	www.wra.org/CE2324
WRA WEBINARS AND FORUMS		
SCHEDULED TRAINING		
Equine Properties Forum: November 1, 2024	Virtual	www.wra.org/BLF
PARTNER WEBINARS		
THE PAPERLESS AGENT WEBINARS		
May 7, 2024	Virtual	www.wra.org/paperlessagent
May 16, 2024	Virtual	www.wra.org/paperlessagent
June 4, 2024	Virtual	www.wra.org/paperlessagent
June 20, 2024	Virtual	www.wra.org/paperlessagent

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

WRA
Wisconsin REALTORS® Association

PROFESSIONAL STANDARDS ENFORCEMENT

ELEVATING PROFESSIONALISM STATEWIDE

Your membership, your professionalism — elevated. The WRA's professional standards enforcement program raises the bar on ethics and professionalism at the statewide level.

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