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**EXPLANATION OF  
STATE OF WISCONSIN  
RESIDENTIAL LISTING CONTRACT**

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# EXPLANATION OF THE STATE OF WISCONSIN RESIDENTIAL LISTING CONTRACT

This publication is intended to help you understand the WB-1 Residential Listing Contract (“the listing”). It is a general discussion and cannot substitute for the assistance of a REALTOR® or an attorney. We recommend that you work with an experienced REALTOR® and/or a real estate attorney when selling real estate.

This publication should be reviewed together with the WB-1 Residential Exclusive Right to Sell Listing Contract (“Listing”). Please have the Listing in hand before continuing.

## **“EXCLUSIVE RIGHT TO SELL”**

**Line 1**

In line 1, the seller hires the broker to sell the property. The Broker is given the exclusive right to market the property and negotiate the sale. If the seller or another broker finds a buyer during the term of the listing contract, the listing broker will review the offer with the seller, handle all negotiations and close the transaction. Other forms of listing arrangements are possible, and may be discussed with a broker.

## **PROPERTY DESCRIPTION**

**Lines 2 - 4**

In most cases, it is adequate to use the street address for the description of the property. However, there may be reasons to clarify this description by using the space at lines 237-247 for a legal description or other explanations.

## **TERMS OF LISTING**

**Lines 5 - 16**

**Price:** This is not the price at which the seller must sell the property. It is the price at which the broker will market the property. If a full price offer is made by a ready, willing and able buyer (and the offer meets the other requirements stated in the listing), the broker will earn the commission. The seller may accept an offer at a price that is lower or higher than list price.

**Terms:** In most cases, the seller wants to be paid in cash at closing. There may be circumstances, however, where the seller is willing to sell by an installment sale (known in Wisconsin as a “Land Contract”). The seller may also be willing to offer the buyer financing in the form of a first or second mortgage.

**Occupancy:** Usually, a seller is able to arrange to move out on the closing date. In some cases, the seller must be able to stay in the property until a specific date. If this is the case, the seller specifies how long they must stay in the property so interested buyers know this when they draft their offer.

**Property Included in List Price:** Although the seller is selling Real Estate, items of personal property may also be included in the sale. There may be items that would legally be considered part of the real estate (fixtures) which the seller does not wish to sell. There also may be items of personal property which the seller wants to include with the house when it is sold. The broker can work with the seller to identify these items so that the broker can market the property to prospective purchasers appropriately. Items in these categories are often referred to as “Inclusions” and “Exclusions.”

If there are fixtures or other items on the property that the broker or a prospective purchaser would assume would be part of the sale, the seller should be sure to specify that they are not being sold with the house. For example, many water softeners are rented. The buyer may assume that the seller owns it and that the buyer will own it when he closes the purchase. Sellers should avoid disputes by clarifying which items will be sold with the house and which will not.

## **CONDITION OF TITLE**

**Lines 17 -21**

The seller agrees to give the eventual buyer a personal guarantee that he is receiving “clear title.” The seller guarantees clear title at closing by signing a document called a “Warranty Deed.” Sellers should find and review any title insurance policy the seller received when the seller purchased the property. There may be “unusual” encumbrances against the title such as a shared driveway agreement or an easement given to

neighbors to allow for fences or garage encroachments. Sellers should verify which persons will have to sign offers, deeds and other documents necessary to sell the property if an encumbrance exists.

## **TITLE EVIDENCE**

**Line 22**

The seller agrees to provide title evidence (usually title insurance) to the buyer at seller's cost as part of the terms in any offer to purchase.

## **SELLER REPRESENTATIONS REGARDING PROPERTY CONDITIONS** **Lines 23 - 28**

The Broker will ask the seller to complete a "Real Estate Condition Report." As an owner of the property, the seller knows things about its condition that might not be discovered by the broker, the buyer, or even the buyer's home inspector. The broker needs to know about the property's condition before spending time and money to market the property. The broker also will provide this information to prospective buyers. If there are problems with the property's condition that may discourage buyers, the broker will work with the seller to help decide what repairs should be made before marketing the property.

If the property is sold "as is," with no representations as to its the seller should consult legal counsel about how to proceed. Otherwise, the seller makes representations to the broker and to prospective purchasers on the Real Estate Condition Report, in the listing contract (lines 133 - 156), and in the offer to purchase. The seller must make sure that all representations are correct in the property condition report, the listing contract and in any offer to purchase.

## **MARKETING**

**Lines 29 - 34**

Most brokers have a standard marketing program designed to quickly sell your home. However, the seller may wish to discuss specific marketing activities with the broker, such as: how will the broker advertise the property? What publications will be used; will it be on the Internet; will open houses be held; and how will "For Sale" signs be used to market the property.

The seller is obligated to notify the broker if the seller becomes aware of any prospective buyers. For example, a buyer driving through the neighborhood may see the broker's sign and knock on the seller's door to talk about the property. This buyer must be referred to the broker so the broker can follow-up and try to get the buyer to write an offer.

## **OTHER BROKERS**

**Lines 35 - 38**

A property is more likely to sell if other real estate agents try to sell the property to buyers they are working with. When your broker cooperates with other brokers in an effort to get your property sold, this is known as "co-brokerage." This is typically done through the "Multiple Listing Service".

Other brokers may become involved in the sale as:

1. A "subagent" of the seller, or
2. A "buyer's agent."

When the cooperating broker is a subagent, the seller is the broker's client and the buyer is that broker's "customer." If the cooperating broker is acting as a buyer's agent, the broker has signed a buyer agency agreement with the prospective buyers and the buyers are the "clients" of that broker.

Brokers have duties to both clients and customers, but these duties differ. The AGENCY DISCLOSURE PROVISIONS section in this document further explains these duties.

## **TERM OF CONTRACT**

**Lines 39 - 40**

A listing contract has a beginning date and an ending date. Most brokers will want the listing to last for several months to provide a reasonable amount of time to market and sell the property. As the end of the listing term approaches, the listing broker may ask the seller to agree to extend the listing. If the seller wants to continue working with the broker, the seller must sign an agreement extending the listing or the broker must stop all marketing activities when the original listing term expires.

## **EXCLUSIONS**

**Lines 41 - 48**

The seller may have previously listed the property for sale with another broker. The prior broker may be entitled to a commission if a buyer who, during the prior broker's listing term, 1) was shown the property, 2) negotiated for the property with the broker or the seller, or 3) wrote an offer on the property, contracts to buy it within one year after that prior broker's listing expires ("protected buyer"). Because the seller wouldn't want to pay both the prior broker and the new broker, this clause says that, if the first broker earns a commission, the seller won't have to pay a commission to the new broker. The new broker is entitled to know the names of all "protected buyers." The seller must furnish a list of these names to the new broker within one week after the new listing is signed. The seller can request this information in writing from the prior listing broker.

There may be other buyers the seller wants to exclude from the listing. For example, a neighbor or relative may have expressed an interest in buying the property. The names of persons in this category should be listed on lines 47 and 48 of the listing contract. Because a broker could spend a great amount of time and money only to have an excluded buyer buy the house near the end of the broker's term, the broker may wish to limit the time the seller has to sell the property to the excluded buyer(s). This deadline would be stated on line 47. Essentially, the seller has until that deadline to enter into a valid, binding contract with the excluded buyer. If the seller has not accepted an offer from the excluded buyer by the deadline, then the exclusion expires and the buyer is included in the listing.

## **COMMISSION**

**Lines 49 - 63**

The commission the seller agrees to pay the listing broker is stated on line 49.

If any of these things happen during the term of the listing (or, within one year after the term of the listing for "protected buyers") then the broker has earned the commission:

1. The seller enters into an enforceable contract to sell the property;
2. The seller enters into an agreement giving a buyer an "option" to buy the property in the future and the buyer later buys the property;
3. The seller exchanges the property for another property;
4. Title to the property transfers to another owner in any other way (such as signing a deed to a friend or relative - or even to another owner of the property, unless the seller does this as a result of a divorce judgment);
5. The broker presents the seller with an offer which meets the terms of the listing (see "Terms of Listing" above) - even if the seller does not accept this offer.

The sale to a buyer does not need to "close" to entitle the broker to a commission. There may be many reasons why a valid, binding contract does not close. For example, the seller or the buyer may decide they do not want to close or there may be some reason a party is not able to close. The broker's commission is earned when a valid binding offer is entered into.

## **EXTENSION OF LISTING**

**Lines 64 - 79**

When a broker has a buyer who is a "likely prospect" at the end of the listing contract term, this section of the listing contract extends the term of the listing contract for these prospects for one year. Specifically, the listing provides that buyers who have submitted offers or who have negotiated with the seller or a broker are eligible for this one year extension ("protected buyers").

Unless the seller has 1) received a written offer from, or 2) personally negotiated with a "protected buyer," the broker must notify the seller in writing of the names of all buyers the broker believes fall into this "protected" category. The broker must do this within 3 days after the listing expires.

## **TERMINATION OF LISTING**

**Lines 80 - 83**

If, during the term of the listing, the seller would want to terminate the listing contract, the seller only has the legal right to do so if the broker has not met his or her obligations under the listing contract. If the broker has met the broker's obligations but the seller still needs to terminate the listing, the seller can do so but would likely owe the broker some money as damages. The best thing for a seller to do at a time like this is to contact the broker and discuss the situation.

For the duration of the listing contract term, the only person the seller ordinarily deals with is the real estate agent. However, the listing contract is actually between the seller and the agent's company. The agent is not authorized to release the seller from the listing or to agree to an earlier termination. The agent's broker owns the listing contract and any release or early termination must be agreed to in writing by the agent's supervising broker.

## **SELLER COOPERATION WITH MARKETING EFFORTS**

**Lines 84 - 89**

The listing contract requires the seller to work with the broker. For example, the broker will need the seller's permission to put a "lockbox" on the property. A lockbox holds a key to the house so that cooperating brokers can show the property to buyers. The broker may wish to put information regarding the property onto an Internet Web site. If the seller objects to this, the broker must know in advance so it can be determined whether the property will likely sell with these restrictions in place.

For the duration of the listing contract term, the seller may learn of prospective purchasers that the broker does not know of. For example, prospective buyers may see the "For Sale" sign in the yard and come to the door to ask questions about the property. Or the seller may mention to someone at work that he or she is selling the property and this person then shows a serious interest in buying. Instead of trying to strike a deal with such a buyer without the involvement of the broker, the seller has an obligation to notify the broker in writing about these persons.

## **ATTORNEY FEES**

**Lines 90 - 91**

The listing contract provides that if the seller or the broker brings a lawsuit to resolve a dispute about the listing contract, the winner will be entitled to recover its attorney fees from the loser.

## **FAIR HOUSING**

**Lines 92 - 95**

The seller is expected to follow the state and federal laws regarding Fair Housing and to not unlawfully discriminate against prospective purchasers.

## **EARNEST MONEY**

**Lines 96 - 102**

If the seller enters into a contract with a buyer, the buyer should pay "earnest money" to show a good faith intent to proceed with the transaction. The amount of earnest money paid and the timing of payment will be negotiated in the sales contract.

The seller agrees that the broker may hold the money in its trust account. The broker must follow contract and legal restrictions on how the broker can disburse the earnest money. For example, the seller may feel that the buyer has broken the contract and that all earnest money should immediately be disbursed to the seller. Although the broker is the seller's agent, the broker may not be able to give the seller the earnest money unless the buyer agrees or a court orders the broker to do so.

The seller also agrees that, if a transaction fails and the earnest money is to be disbursed to the seller, the broker is entitled to one-half of the earnest money as its full commission on the failed transaction. The disbursement of earnest money to the seller and the broker on a failed transaction does not terminate the listing. The broker can still try to earn another commission by finding another buyer before the listing term expires.

## **REAL ESTATE CONDITION REPORT**

**Lines 103 - 109**

Buyers want to know all about the problems affecting the property that the owner knows about. For residential properties, this information is usually provided on a form called the Real Estate Condition Report. In the

listing the seller agrees to provide complete, accurate information on this form. You also agree that the broker can give copies of the completed form to prospective purchasers, and that the seller will revise the report if the seller learns of new problems.

## **OPEN HOUSE AND SHOWING RESPONSIBILITIES**

**Lines 110 - 117**

There are likely to be many people who will walk through the home during the listing. There will be prospective buyers, other agents and there may be home inspectors and appraisers coming through the property. There is a risk of injury to them and/or loss to the seller. For example, a prospective buyer or an agent could slip down the stairs or on an icy sidewalk, or someone could remove a piece of jewelry from a dresser drawer during an open house. The seller is expected to make the property safe and secure. The broker may give advice on this topic, but the responsibility to prepare the property falls on the seller's shoulders.

Some buyers bring video cameras to open houses and individual showings. This helps them remember the features of the home, but this also presents privacy and safety concerns. This will be permitted unless the seller specifies otherwise in writing. The seller can use the "blank" space on page 4 to indicate if videotaping should not be allowed.

## **LEASED PROPERTY**

**Lines 118 - 121**

The property for sale may be occupied by tenants. The seller, as the landlord, has certain rights and obligations regarding tenants. In any offer the seller enters into to, the seller agrees to transfer the seller's rights to the new owner, who will become the new landlord. The seller must also transfer all security deposits and prepaid rents to the new owner. The sale of the property, however, does not end the obligations the seller may have regarding the tenants. The seller should consider asking the buyer to legally protect the seller against claims made by the tenants after the property is sold. The broker should have a "rental property addendum" which will be used to address these issues in the offer.

## **DEFINITIONS**

**Lines 122 - 173**

**Adverse Fact / Material Adverse Fact** (See lines 184 - 191, 214 - 215)

The broker is the seller's agent, but has duties to all parties to the transaction. When the broker learns of a material adverse fact, the broker is legally obligated to disclose this to the buyer - even if the seller requests that this not be done. Not all adverse facts relate to physical defects in the property. For example, if the broker learns that the seller is not able to, or does not intend to, complete the sale, this must be disclosed to the buyer.

**Conditions Affecting the Property or Transaction** (See lines 23 - 27)

Sellers should examine each of these items carefully. In the listing contract, the seller represents to the broker that the seller does not have any knowledge or information about these items that could adversely affect the property or transaction. The broker has an obligation to ask the seller about known defects and the broker is also entitled to know in advance whether he or she is going to be spending time and money on a property with defects or other problems. This list is similar to, but not the same, as the items in the Real Estate Condition Report.

An offer to purchase will also have this same list of items that the seller must represent to the buyer. The seller should be careful to not represent that the property is free of any defect if the seller has information to the contrary. There may be things about the property which the seller does not consider to be defects but which a buyer may feel differently about. The last item listed is a kind of "catch-all." Essentially, if the seller knows about a problem with the property which the seller would want to know if the seller was buying the property, this should be disclosed to the broker and to buyers. Any modification to this list of items should be made at lines 237 - 247 or in an addendum.

**Fixtures** (See lines 9 - 16)

Although it is not possible to define exactly what should be considered part of the real estate and therefore included with the sale, this section lists items called fixtures which are assumed to be included with the property. If any of these items will not be included in the sale, they should be excluded on lines 15 - 16.

**Delivery**

This section of the listing describes the procedure the seller and the listing broker would use when sending notices to one another. These procedures include the mail, commercial delivery services, faxes, and personal delivery.

**Procure** (See lines 49 - 57)

The broker's job is to find a buyer and get an acceptable offer. The broker does not ensure that the offer will close. The term used in real estate for finding a buyer is to "procure" a buyer. This means that the broker must find a buyer who is ready, willing and able to purchase the property and who submits a written offer on terms that meet the requirements of the listing contract, or which are otherwise acceptable to the seller.

**AGENCY DISCLOSURE PROVISIONS****Lines 174 - 236**

Persons who have signed a written contract with a broker are clients of that broker. Persons who do not have a written contract with a broker, but who are helped by the broker are customers of the broker. A broker might help a buyer who is a customer by notifying the buyer of properties for sale in the marketplace, showing properties to the buyer, drafting an offer to purchase for the buyer, and providing other brokerage services.

A seller who signs a listing contract is the client of the broker. The broker has obligations to the seller - and to the other parties involved in the transaction. One obligation is the duty of confidentiality. For example, the seller's agent might acquire information about the maximum price a particular buyer is willing to pay for the property. Because this is information which the broker knows a reasonable person would want kept confidential, the broker is not allowed to provide this information to the seller without the written consent of the buyer. The broker owes the same duty of confidentiality to the seller regarding the lowest price the seller would accept. On the other hand, the seller may know of a significant problem with the property and specifically ask the broker to keep this confidential. The broker, however, cannot do this.

There are other categories of information that the broker should keep confidential. For example, a seller may be moving out of state, or may be in the process of a divorce. In these situations a buyer may assume that a lower offer will be more readily accepted. If the seller wants the broker to keep this information confidential, this information should be specified as confidential in the listing (see lines 233 - 234.).

Some buyers enter into buyer agency agreements. Under these agreements, the broker has an obligation to provide a higher level of service than if the buyer is a customer. If a broker's company has both the listing contract with the seller and a buyer agency agreement with the buyer, the broker is providing client services to both the seller and the buyer. This relationship the broker has with the seller and the buyer is called multiple representation. The broker, with the express written consent of both parties, may continue to represent and provide services to both parties in the multiple representation relationship. This consent can be given in the listing contract (see line 219).

**ADDITIONAL PROVISIONS****Lines 237 - 247**

The seller or the listing broker may wish to make changes to the listing contract form. If these changes are agreed to, they may be stated in these lines. If the changes or additions are too long to fit in the lines provided they can be written or typed on a separate page called an addendum. An addendum should be referred to and made a part of the listing at line 248.

**CAUTION****Lines 249 - 254**

This contract is a legal and binding contract. The seller is creating obligations to the broker and to prospective purchasers when the listing contract is signed. Sellers should make sure that they understand the listing contract's requirements before signing it. As with all contracts, there is an obligation for both the seller and the listing broker to work diligently and in good faith to sell the property.

A seller cannot rely only on the real estate agent or broker for all services the seller may need. It is recommended that each party consult with an attorney. The real estate agent is prohibited from giving legal advice. The seller may also need the assistance of other professionals such as a tax advisor and home inspector.