



EXPLANATION OF THE STATE OF WISCONSIN WB-11 RESIDENTIAL OFFER TO PURCHASE



WB-11 RESIDENTIAL OFFER TO PURCHASE

An explanation of the WB-11 Residential Offer to Purchase

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This publication is intended to help you understand the WB-11 Residential Offer to Purchase (the offer). It is a general discussion and not a substitute for the assistance of a REALTOR® or an attorney. The Wisconsin REALTORS® Association recommends that you work with a REALTOR® and a real estate attorney when buying or selling real estate.

This publication should be reviewed together with the 2024 WB-11 Residential Offer to Purchase, which shows a mandatory use date of 8-15-24 in the upper left corner. Please have a copy of the offer in hand before continuing. The explanations discuss each offer provision or section in the order in which the various provisions appear in the offer.

EXPLANATION OF THE STATE OF WISCONSIN WB-11 RESIDENTIAL OFFER TO PURCHASE

ROLE OF THE DRAFTING AGENT

In a real estate transaction, there are two parties: the seller and the buyer. Line 1 indicates for whom the real estate agent, called a “licensee,” is drafting the offer. The licensee may work for any of the following:

- The seller (agent of seller/listing firm)
- The listing firm (agent of seller/listing firm)
- The buyer (agent of buyer)
- Both the seller and the buyer (agent of buyer and seller)

A licensee who is working for one party may still help the other party. For example, an agent who is listing a property for a seller may still draft an offer for a buyer. Sellers and buyers may be “customers” or “clients” depending on their relationship with the real estate firm with which they are working. When a seller signs a listing contract with a real estate firm, the seller is a client of that firm. That listing firm can draft an offer for a buyer; and the buyer may either be a client of the firm if the buyer signs a buyer agency agreement with that firm; or the buyer may be a customer of that firm if the buyer does not sign a buyer agency agreement with that firm. Whether a party is a client or a customer of the firm dictates the duties the firm owes to that party.

When a firm is representing a seller and a buyer as clients in the same transaction, the firm is said to have multiple representation.

GENERAL PROVISIONS

Buyer: The offer must identify the buyer(s). The buyers’ names should be printed exactly as they want their names to appear on the deed. Nicknames should not be used. Middle initials should be used. The buyers should ask an attorney about the different ways they can hold title to the property.

Address: With residential property, the street address is usually sufficient to describe the property being purchased. For some properties, the address is not enough, and a legal description must be used. An example of this would be a house with an extra lot. Instead of using the street address, the legal description would identify both the lots and the block where the lots are located, for example, Lots 4 and 5, Block 89. After the property is identified, it is referred to as “the Property” throughout the rest of the offer.

Purchase Price: The price should be written like it would appear on a bank check, for example, “Three hundred, seventy-

five thousand dollars (\$375,000).”

Sellers are not required to accept or respond to any offer even if the price offered is more than the list price. Other provisions, besides price, may affect whether the seller is willing to accept the offer. For example, if a buyer cannot close for six months or is not paying any earnest money, the seller may want a higher price or may not be willing to accept the offer.

Included In Purchase Price: The offer describes the real estate being purchased. Real estate includes the land, the buildings and fixtures. “Fixtures” are improvements that are attached to buildings or land such as sidewalks, fences, kitchen cabinets, and wall-to-wall carpeting. The offer includes a list of items that are considered fixtures in the middle of the first page of the offer. If there is something the buyer wants included but it is not clear whether it is a fixture, it should be listed on the Included in Purchase Price lines to include it in the transaction. The offer assumes all fixtures are part of the property being purchased unless a fixture is listed on the Not Included in Purchase Price lines or elsewhere in the offer. The buyer may include personal property items such as furniture, appliances or lawn mowers in the offer on the Included in Purchase Price lines.

Not Included in Purchase Price: All fixtures listed in the fixtures definition in the middle of the first page are included in the offer unless specifically excluded. The Not Included in Purchase Price section of the offer is used to list any rented fixtures or other fixtures that are not included in the offer.

The parties are reminded to exclude items that the seller does not own. It is also important to include or exclude items that may not clearly be personal property or fixtures, for example, a bookshelf that may or may not be considered a “built-in.”

The offer determines what is included in the transaction, not the seller’s property information sheets or other marketing materials. Buyers should not rely on marketing information they receive before the offer is written even if it says which items of personal property will be included in the sale. If the buyer wants to include personal property like appliances in the purchase price, they must be listed on the Included in Purchase Price lines. If these items are not listed in the offer and are not fixtures, the seller will assume the buyer does not want the items and will take them out of the property before closing. It is important that the offer is written to include and exclude the correct property.

BINDING ACCEPTANCE/ACCEPTANCE

When all the buyers and sellers have signed the offer, it is “accepted.” The date of the last of the parties’ signatures is the date of acceptance. Many deadlines in the contract will run from this date. The offer becomes a binding contract if the seller delivers the accepted offer back to the buyer by the deadline for binding acceptance stated in the offer.

If the seller wishes to change any of the terms of the buyer’s offer instead of accepting the offer as it was written, the seller will ordinarily give a counter-offer to the buyer. The counter-offer can be made before or after the deadline for binding acceptance.

CLOSING

The transaction must close on the stated date unless the parties agree to close on a different date. If the buyer and seller agree to change the closing date, this agreement should be put in writing in an amendment to the offer.

It may be difficult to select a closing date because the buyer and the seller may have different needs. For example, a buyer may wish to put the closing off for a few months to give them time to sell their current home, or a seller may be looking for a quick sale because they are transferring jobs.

The seller will decide where the closing will be held unless the parties indicate differently on the blank lines in the Additional Provisions/Contingencies section or in an addendum. After the offer is accepted, any change to the closing place must be put into writing in an amendment to the offer.

The parties are warned about the risk of wire transfer fraud and are instructed to verify any wiring instructions. The licensees in the transaction are not responsible for the transmission or forwarding of any wiring or money transfer instructions.

EARNEST MONEY

Earnest money is money paid by a buyer to show the seller that the buyer is serious. Earnest money can be paid when the offer is submitted to the seller, after the offer is accepted by the seller, or both. Earnest money is often held by the listing firm, but the parties can determine to whom the earnest money shall be delivered and who will hold it. If a firm is not holding earnest money, the buyer and seller may specify that a title company or another fiduciary holds the earnest money.

The offer specifies how earnest money will be disbursed if it is held by a real estate firm. If the earnest money is being held by a firm, and the seller rejects the buyer’s offer or lets the offer expire without accepting it, the firm shall promptly disburse the earnest money to the buyer. If a firm is holding the earnest money and the transaction closes, the firm disburses it according to the closing statement.

If a firm is holding the earnest money and the transaction does not close, generally the firm needs a written disbursement agreement signed by all parties to the transaction. If the buyer and seller cannot agree on a disbursement agreement for earnest money held by a firm, they must work it out or go to

small claims court. The real estate firm holding the earnest money cannot decide who is entitled to the earnest money. Earnest money disputes in one-to-four-family residential transactions may be decided in small claims court.

If a transaction failed to close and the firm is holding earnest money and the parties have not delivered a signed written disbursement agreement, the firm can take no action regarding the earnest money during the 60 days after the scheduled closing date. After the 60 days, the firm may:

1. Continue to do nothing, leaving the resolution of the dispute to the parties and their attorneys.
2. Start a lawsuit naming the buyer and the seller and asking the small claims court to resolve the dispute. The firm will then either deposit the money with the court or hold it until the suit is resolved.
3. Hire a lawyer to review the facts and determine which party should have the money. After the lawyer makes this determination:
 - a. The firm can withhold up to \$250 out of the earnest money to pay for the lawyer’s fees.
 - b. The firm must give 30 days’ advance notice by certified mail of the firm’s intent to send the money to the party selected by the lawyer. This gives a party that disagrees with the lawyer’s decision an opportunity to start a small claims lawsuit.

Even if the party that disagrees with the lawyer’s decision does not start a lawsuit within the 30 days, the party may still do so later. The lawyer does not determine who is legally entitled to the money. The lawyer’s decision merely changes the location of the money. Of course, if a lawsuit is successful, it is typically easier to collect the money from the firm than from the other party.

If the parties choose to have the earnest money held by someone other than a real estate firm, the parties will need to consult whoever is holding the earnest money regarding disbursement of earnest money.

TIME IS OF THE ESSENCE

Between acceptance and closing, there are many things that must happen by a deadline stated in the offer. The deadline may be a calendar date, such as closing, or a certain number of days from another event, such as acceptance. Once an offer has been accepted, it is wise to make a list of all the deadlines that must be met. Failure to meet a deadline may entitle the other party to terminate the offer.

Unless the Time Is of the Essence provision is modified or deleted, all deadlines must be completed by the exact deadline stated in the offer. A day or two late will not be acceptable. If a deadline is approaching and a party is not sure that the deadline can be met, the party should talk to the agent with whom the party is working or an attorney about drafting an amendment to extend the deadline in writing.

Parties should never rely on verbal extensions. Parties should be certain to get the extension amendment signed by all parties before the deadline has passed.

If the Time Is of the Essence provision is not used for some deadlines, there will be more flexibility in meeting the deadline dates; these deadlines must be met within a reasonable time. Any missed deadlines should be extended by an amendment, or an attorney should be consulted to determine exactly when the deadlines must be met.

REAL ESTATE CONDITION REPORT

A seller must provide written disclosures regarding property conditions and other matters the seller knows about and that adversely affect the property. This is done on a separate form called a Real Estate Condition Report. Sellers should complete this report when entering into a listing.

The statements made in the Real Estate Condition Report are not warranties — they are statements of things of which the seller has notice or knowledge.

A buyer who receives a Real Estate Condition Report should review it closely. If the buyer does not receive the report until after the offer has been submitted, and if any of the defects listed in the report have not been disclosed before, the buyer may be able to rescind the buyer's offer. If the buyer submits an offer after receiving the report, the buyer does not have any rescission rights based on what is disclosed in the report. The buyer should take the information in the report into account when making an offer. By statute, if the seller does not provide this report to a buyer within 10 days after an offer is accepted, the buyer may rescind the offer within two business days of the deadline for the seller to provide the Real Estate Condition Report.

Buyers should strongly consider obtaining an expert inspection of the property and not rely just on the seller's report. See the discussion of the Inspection Contingency.

PROPERTY CONDITION REPRESENTATIONS

In Wisconsin, the seller of a residence is asked to disclose what the seller knows about problems related to the property. These representations are not warranties. The representations are made in two places:

1. The seller's Real Estate Condition Report.
2. The blank lines in the Property Condition Representations section of the offer.

Sometimes the seller will not make any property condition representations such as with an as-is sale, but most buyers want to know what the seller knows about any problems with the property before making an offer.

Buyers and sellers should closely review the items listed in the definition of Conditions Affecting the Property or Transaction section on pages 2-4 of the offer. Unless the offer is modified or countered, the seller is stating to the buyer that the seller knows of no such matters affecting the property except for the items disclosed in the Real Estate Condition Report or written in the blank lines in the Property Condition Representations section. If a seller knows of any

matter that a reasonable person would think is a significant defect, even if it does not fit into one of the listed categories, the seller should disclose such information. This can be done on the blank lines or in a counter-offer.

CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION

This list in the definition of Conditions Affecting the Property or Transaction on pages 2-4 of the offer is like the list of defects in the Real Estate Condition Report. This list will remind the parties about the sorts of property conditions or other concerns that may need to be addressed in the offer. This list is used with the Property Condition Representations section.

INSPECTIONS AND TESTING

This section sets the ground rules for any inspections and testing. The buyer may only have an inspection or test if there is a contingency included in the offer. The buyer must decide which tests or inspections are appropriate for the property.

Inspections and testing are different. Inspections are usually observations, and tests involve taking and analyzing samples of materials found at the property.

- Upon advance notice, the seller must allow the inspector or tester reasonable access to all areas the buyer has included in inspection or testing contingencies in the offer. The seller must also allow appraisers access as is necessary to conduct the appraisals needed for the financing commitment, appraisal and other contingencies in the offer.
- The buyer must provide the seller with a copy of any written inspection or testing report.
- If anything is moved or removed to complete the inspection or test, it must be restored to its pre-inspection condition.
- The buyer and licensee may be present at the inspection or test.
- Except for testing for leaking carbon monoxide, liquid propane (LP) or natural gas, the right to inspect includes only the right to observe the property. Testing for such things as lead-based paint (LBP), radon or soil contamination is not permitted under an Inspection Contingency.

If a buyer wants to test for environmental hazards such as LBP, radon, mold, asbestos, soil or water contamination, the offer must contain testing contingencies. The offer includes a preprinted radon testing contingency but does not have any other preprinted testing contingencies. If a buyer wants to include other testing contingencies, the buyer may include them in an addendum or in the Additional Provisions/Contingencies section on page 10 of the offer. Testing contingencies should clearly state the purpose of the test, the area of the property that will be tested, any limitations and the timing for the testing. A seller is not required to permit any testing that has not been authorized in the offer or in an addendum to the offer. An exception to this is LBP testing; federal law requires the seller to provide the buyer

with the opportunity to inspect or test for LBP in most residential properties built before 1978.

INSPECTION CONTINGENCY

The Inspection Contingency provides for three types of inspections: a home inspection, component inspection and follow-up inspection recommended in writing in the home inspection or component inspection reports. First, the buyer may request a home inspection by a Wisconsin-registered home inspector. Wisconsin-registered home inspectors are required by law to have a certain level of expertise and to conduct their inspections and create their reports according to standards established by Wisconsin law.

The contingency also allows for inspections of particular components by qualified independent inspectors or third parties if those components are identified in the contingency. For example, a buyer may list a swimming pool or the roof as components to be inspected by a qualified independent inspector or third party. A buyer may have follow-up inspections if a written report from an authorized home inspection or component inspection recommends them, and they are done before the deadline at line 206.

A buyer must consider:

1. The types of inspections the buyer wants.
2. Whether the buyer will include component inspections.
3. How long the buyer will have to conduct the inspections and decide what to do.
4. Whether the seller will have the right to cure defects.

A buyer may not claim that an item is a defect if the buyer had notice or knowledge of the nature and extent of the defect before the buyer signed the offer. For example, if a seller noted in the Real Estate Condition Report received by the buyer before the offer was drafted that the seller was aware of defects with the smoke detectors in that the smoke detectors were missing, and the buyer's home inspector also noted missing smoke detectors, the buyer would not be able to object to that defect because the buyer had notice or knowledge of the issue before drafting the offer.

Right to Cure/No Right to Cure: When negotiating an offer, the buyer and the seller can negotiate whether the seller has the right to cure defects that the buyer objects to after the buyer's home inspection, component inspection and any follow-up inspections. If the seller does not have the right to cure defects and the buyer delivers a notice objecting to defects along with a copy of the buyer's inspection report, the offer is null and void. The notice must be issued by the deadline on line 206 in the offer.

If the seller has the right to cure and the buyer delivers a notice objecting to defects along with a copy of the buyer's inspection report, the seller can choose to cure the defects. The buyer's notice must be delivered by the deadline on line 206 of the offer. If the seller chooses not to cure the

defects, the offer is null and void. If the seller chooses to cure the defects, the seller delivers a notice to the buyer within 10 days after the delivery of the buyer's notice objecting to the defects, letting the buyer know that the seller is choosing to cure the defects. The seller then cures the defects in a good and workmanlike manner and issues a report to the buyer detailing the work done no later than three days prior to closing.

Many buyers who become aware of defects remain interested in the property and do not wish to cancel the contract. A buyer in this situation may propose a different solution. The buyer may propose an amendment to the offer that calls for the seller to repair certain defects in a specific manner, or that calls simply for the seller to credit the buyer with a sum of money so the buyer can later do the repair work. Buyers should consult with their lenders about how such a credit, if agreed to, may impact the amount of money they can borrow — a lender often views such a credit as a reduction in the purchase price. The seller is not required to agree to a proposed amendment. The buyer will lose the protections of the Inspection Contingency if no notice of defects is given, and the seller does not agree to the amendment.

The buyer can walk through the property within three days before closing to confirm that the repair work was fully completed.

RADON TESTING CONTINGENCY

The Radon Testing Contingency offers the buyer the opportunity to make the buyer's offer contingent on testing for radon. If the buyer wants to include a Radon Testing Contingency in the buyer's offer, the buyer checks the box at line 227 and sets a deadline for the contingency on line 232. The buyer and seller can choose who will pay for obtaining the radon test with the default being the buyer paying for the test. A qualified third party performs the radon test in a manner consistent with applicable Environmental Protection Agency (EPA) and Wisconsin Department of Health Services (DHS) protocols and standards indicating an EPA average radon level of less than 4.0 picoCuries per liter. If the radon test results are 4.0 picoCuries per liter or higher, the buyer can deliver a notice objecting to the radon level accompanied by a copy of the radon test results.

Like the Inspection Contingency, the buyer and seller can determine whether the seller has the right to cure if the radon level is 4.0 picoCuries per liter or higher. If the seller does not have the right to cure and the buyer delivers a notice objecting to the radon level, the offer is null and void. If the seller does have the right to cure and the buyer delivers a notice objecting to the radon level, the seller can choose not to cure, and this makes the offer null and void. If the seller has the right to cure and chooses to cure, the seller delivers a notice to the buyer of the seller's election to cure within 10 days after delivery of the buyer's notice objecting to the radon level. The seller is to cure by installing a radon

mitigation system in conformance with EPA standards in a good and workmanlike manner and providing a report of the work done and a post-remediation radon test indicating a radon level of less than 4.0 picoCuries per liter no later than three days prior to closing.

FINANCING COMMITMENT CONTINGENCY

Obtaining a loan is often the key event in most successful residential real estate transactions. Most buyers include a Financing Commitment Contingency, providing that they legally do not have to close if they cannot obtain a loan commitment. The Financing Commitment Contingency does not require that the buyer actually obtain the loan – that does not happen until the transaction closes. Instead, the buyer tries to obtain a loan commitment from a lender on the terms stated in the Financing Commitment Contingency or on other terms that are acceptable to the buyer.

A loan commitment often has conditions and requirements that the buyer must meet before the lender is obligated to make the loan. Before the buyer delivers a loan commitment to the seller, the buyer should make sure that the loan commitment terms are satisfactory, and that the buyer can satisfy the lender's requirements. If the buyer decides the terms of the loan commitment are acceptable, the buyer can give written direction to deliver the commitment to the seller or sign the loan commitment and deliver that to the seller.

A Financing Commitment Contingency must contain specific information about the terms of the loan the buyer will seek. A binding contract can only be established where all the basic elements of the financing are stated. All the blank provisions in the Financing Commitment Contingency should be filled in. If a buyer does not know exactly which loan terms are currently available, the buyer may state the least favorable terms that are acceptable to the buyer. The buyer still will be free to apply for the best financing available after the offer is accepted.

Satisfaction of Financing Commitment Contingency:

Unless otherwise agreed, the buyer is responsible for the costs of obtaining financing. The seller is entitled to ask for some evidence that the buyer is acting promptly to apply for the loan. Once the buyer receives a loan commitment, the buyer should review the commitment and decide if the terms are acceptable. If they are, the buyer can give written direction to deliver the loan commitment to the seller. Alternatively, the buyer may sign the loan commitment and deliver it to the seller to satisfy the Financing Commitment Contingency. If a lender or an agent delivers a loan commitment that is not signed by the buyer or that is not accompanied by the buyer's written direction to deliver it, it will not satisfy the contingency and the seller could terminate the offer.

Caution: Delivery of the buyer's loan commitment to the

seller satisfies the Financing Commitment Contingency. This means that the buyer will become legally bound to close unless there are other contingencies in the offer that have not been satisfied. Therefore, a loan commitment should not be delivered to the seller if it has terms and conditions that are less favorable than those stated in the Financing Commitment Contingency and not acceptable to the buyer, or if it has conditions that the buyer cannot meet. The buyer can deliver the unacceptable loan commitment to the seller to prove that the buyer has tried to get financing, but this should be done only if the buyer also delivers a written notice stating that the loan commitment is unacceptable.

Seller Termination Rights: If the buyer fails to deliver a loan commitment by the deadline in the Financing Commitment Contingency, the contract does not automatically become null and void. The seller obtains the right to terminate the offer. If the seller wants to terminate the offer, the seller delivers a written notice of termination to the buyer. However, if the buyer gets a written loan commitment into the seller's hands before the seller delivers the notice of termination to the buyer, the contract is not terminated even though the loan commitment was late. If the buyer cannot get a loan commitment by the deadline, the seller may choose to terminate the offer. The parties could instead amend the offer to extend the deadline for obtaining the loan commitment, or the parties can just wait to see what happens even though the deadline for delivery of the loan commitment has passed.

Financing Commitment Unavailability: If a buyer is unable to obtain a loan commitment, the buyer must deliver written notice to the seller stating that fact accompanied by evidence of unavailability such as a lender rejection letter or letters.

SELLER FINANCING

Though not common, the buyer and the seller can negotiate a provision giving the seller the right to finance the transaction if the buyer is rejected by the lender or does not deliver a loan commitment by the deadline in the offer. If the seller has the right to finance the transaction, the seller has 10 days from the earlier of the buyer's deadline to deliver the loan commitment or the buyer's delivery of notice of evidence of unavailability to deliver notice to the buyer of the seller's election to finance the transaction. Just because the seller and buyer negotiated the right for the seller to finance the transaction, the seller is not obligated to do so. The seller is permitted to obtain information regarding the buyer's creditworthiness before making this decision.

IF THIS OFFER IS NOT CONTINGENT ON FINANCING COMMITMENT

In certain circumstances, the buyer may elect to write an offer without a Financing Commitment Contingency. In this case, the provision at the top of page 6 of the offer

obligates the buyer to provide the seller with evidence that the buyer has the funds required to close or other evidence stated on the blank lines in the provision. This verification of funds should be from a financial institution, such as a bank, or another third party in control of the funds, such as a trustee or other fiduciary. Other evidence that parties might write in might be evidence that the buyer has an accepted offer on the buyer's property that is listed for sale or other documentation that the seller is willing to accept to provide some assurance that the buyer will be able to close without obtaining financing. If this evidence is not provided to the seller within the stated deadline, the seller has the right to terminate the offer.

In such a transaction, the buyer and seller understand that there is no Financing Commitment Contingency for the buyer's protection. However, the buyer may still obtain financing from a lender. Also, the buyer's appraiser is allowed access to the property to conduct an appraisal. The appraiser's access does not automatically create an Appraisal Contingency; if the buyer wants an appraisal contingency, the box for the Appraisal Contingency should be checked.

APPRAISAL CONTINGENCY

The Appraisal Contingency may be used when a buyer requires the property to appraise at or above the purchase price, whether or not the buyer is using a Financing Commitment Contingency. Including an Appraisal Contingency in an offer to purchase will protect the buyer from becoming contractually obligated to purchase a property that does not appraise at or above the purchase price. If the appraisal is below the purchase price, the buyer may deliver to the seller a copy of the appraisal report and a notice objecting to the appraised value.

Like the Inspection Contingency, the buyer and the seller can negotiate whether the seller has a right to cure under the Appraisal Contingency. If the seller does not have a right to cure and the buyer delivers a notice objecting to the appraised value because it was less than the agreed upon purchase price, the offer is null and void. If the seller does have the right to cure and the buyer delivers a notice objecting to the appraised value, the seller can choose to cure by amending the offer to adjust the purchase price to match the appraised value. Alternatively, the seller can choose not to cure and make the offer null and void. Any notice from the buyer objecting to the appraised value must be accompanied by a copy of the appraisal report.

As an alternative, if the appraised value is less than the agreed upon purchase price, the buyer and seller may negotiate a resolution using amendments to arrive at a purchase price agreeable to both parties.

The Appraisal Contingency makes the buyer responsible for the expense of the appraisal, and parties should make sure the deadline is long enough for either the buyer's appraiser or the buyer's lender's appraiser to conduct an appraisal.

CLOSING OF BUYER'S PROPERTY CONTINGENCY

Some buyers do not have enough money to buy a new home until they have sold their current home. These buyers can include the Closing of Buyer's Property Contingency in their offer. The contingency allows a buyer to try to sell and close on their property by the date specified. If the buyer's property does not sell and close by the specified date, the buyer is not obligated to buy the new property, and the offer becomes null and void. If the buyer will not be able to close on the sale of the buyer's property by the deadline, but the buyer wants to continue with the transaction, the buyer can deliver verification of sufficient funds to close or proof of a bridge loan along with a written waiver of the contingency.

During this time, the seller may continue to advertise the property and look for backup buyers.

BUMP CLAUSE

If a buyer includes a Bump Clause in the buyer's offer and the seller accepts an offer from another buyer, the seller may notify the first buyer in writing that they have accepted another offer and trigger the buyer's Bump Clause. If the buyer does not deliver the documentation or satisfy the conditions listed in the Bump Clause by the deadline on line 336, the buyer will be "bumped" from the transaction, allowing the seller to elevate another offer to primary if the seller chooses. The Bump Clause may require the buyer to deliver a waiver of the Closing of Buyer's Property Contingency if that was included in the offer, waiver of other contingencies, proof of funds or a bridge loan, payment of additional earnest money or other documents. The buyer's deadline to satisfy the listed requirements begins with the buyer's actual receipt of the bump notice.

A seller is not obligated to try to bump the primary offer but could try to renegotiate the existing offer terms in response to receipt of another offer. If a seller does try to bump the primary offer, the secondary offer does not need to be better than the existing primary offer.

SECONDARY OFFER

When a seller already has an accepted offer with the first, or "primary" buyer, the seller must be certain that any new offer that the seller accepts states that it is a secondary offer. If a buyer is aware that a seller has already accepted an offer as primary, the buyer can check the box for the Secondary Offer provision to submit a secondary offer.

The seller may elevate a secondary buyer into primary position merely by giving written notice to the secondary buyer, but this should not be done unless the primary offer has been cancelled. A secondary buyer is locked in and cannot withdraw the secondary offer for the number of days entered in the provision. This is done to give the seller an opportunity to try to bump the primary buyer and not lose both buyers. A seller would not want to give a bump notice

to the primary buyer, have the secondary buyer withdraw the secondary offer, and then also lose the primary buyer.

The seller may accept more than one secondary offer. The seller may make any of the secondary offers primary if the original primary offer is terminated. No secondary offer has priority over any other. The seller may elevate any secondary offer to primary regardless of the order of acceptance or offer terms.

HOMEOWNERS ASSOCIATION

The seller and buyer can negotiate who is responsible for paying any one-time transfer fee charged by a homeowners association if one will be charged.

CLOSING PRORATIONS

The seller and buyer will be responsible to pay their respective shares of the bills that will come due after closing such as property taxes, water bills or natural gas bills. After closing, the buyer may get a bill that includes usage before and after the closing. Therefore, costs such as taxes as well as water and sewer charges are “prorated,” or divided between the buyer and the seller, on an estimated basis. The seller pays the buyer the estimated amount the seller owes on the bill at closing, as shown on the closing statement.

Because the actual amount of taxes often is not known at the time of closing, the parties can choose from three formulas for determining the number that will be used as the basis for the proration of real estate taxes or provide their own formula for that computation on the blank line. The three provided formulas are:

1. Proration based on the net general real estate taxes for the preceding year, or the current year if available. This is the default choice if no selection is made.
2. Current assessment multiplied by current mill rate.
3. The sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior year, or the current year if known, multiplied by the current mill rate.

The formula used must be chosen on a case-by-case basis.

If the seller or an agent knows of unusual circumstances that affect the estimates for the property taxes or other bills such as a tax reassessment, the passing of a school bond issue or unusually high water usage, this should be disclosed to the buyer. The second formula might be useful in situations where there has been a recent property tax reassessment. Receipt of a reassessment notice from the local assessor triggers the disclosure duty for the seller or for the listing agent if the agent is aware and the seller has not already disclosed this. In transactions with new construction, the third formula might be used to compute the tax proration.

Each side risks that the actual property taxes will be different than the estimates used to calculate the closing prorations. The buyer and the seller can agree to adjust the property tax proration after the actual tax bill is received. If the parties

choose this option, the buyer and seller are responsible to complete the re-proration; it is not the responsibility of the agents involved in the transaction.

TITLE EVIDENCE

In Wisconsin, when a seller gives title to the property to a buyer at closing, there are many items that affect the status of the buyer’s title. The titles to most properties are subject to local zoning ordinances, utility easements, property taxes that are not paid until the end of the year, and other conditions. The purpose of reviewing title and getting title insurance is to make sure that there are not any items affecting the buyer’s title that should not be there, for example, judgments, unpaid mortgages, or other claims by neighbors or the government. Title problems can be expensive to fix and can make it hard to later sell the property.

Title evidence can be a difficult area to understand. If a title problem arises, expert advice should be obtained. Representatives of the title insurance company can be helpful in explaining title problems, but only an attorney can give legal advice.

Conveyance of Title: The seller is obligated to deliver a warranty deed to the buyer unless otherwise agreed by the parties. However, if the seller is a trust, then a trustee’s deed is used and if the seller is an estate, then a personal representative’s deed is used. The deed is the document the seller uses to transfer title to the property to the buyer in a real estate transaction. The seller also warrants that “clear title” has been transferred. In simplest terms, this means there are no liens or encumbrances against the property when the buyer receives the deed to the property. However, there are exceptions. For example, the seller cannot control utility easements; the gas or electric company may have an easement and the right to place and maintain its lines on the property. This would be an exception.

A buyer should investigate all municipal, zoning and building ordinances and codes, utility distribution easements, and recorded building and use restrictions and covenants to make sure they do not prohibit any of the buyer’s plans, especially if the buyer plans to change the way in which the property will be used.

Title Evidence: The seller must order and pay for a title insurance commitment for the buyer. In Wisconsin, private title insurance companies search the government records to determine the status of title to the property being sold. The title company then issues a commitment in which it agrees to ensure the buyer against unforeseen title “defects” if the steps listed in the commitment are followed. The commitment is an important guide for buyers and their attorneys.

The seller must be sure that the title commitment is delivered to the buyer not less than five business days before closing. This allows the buyer time to review the commitment to see if there are objectionable matters affecting the title.

Gap Endorsement: The title commitment will contain an effective date. The title company is indicating that in reviewing the title records, it did not search the records after the effective date, and the buyer will not be insured by the title company against matters appearing after this date. When the title company provides a gap endorsement, it is agreeing that it will ensure the buyer against matters affecting title during the gap: between the effective date and the time the deed the buyer receives from the seller is recorded. The parties must indicate who will pay for the gap endorsement.

Delivery of Merchantable Title: The seller must deliver the title insurance commitment to the buyer's attorney or the buyer at least five days before closing. The commitment must show title to the property as of a date no more than 15 days before delivery of merchantable title.

Title Not Acceptable for Closing: If the title commitment indicates matters that are not acceptable, or the title company will not provide a gap endorsement, the buyer must notify the seller in writing about the buyer's objections. The seller will then have 15 days to resolve the problem. If this 15-day period extends past the closing date, the closing is automatically extended for this purpose.

Special Assessments: Property owners pay real estate taxes. When there is a municipal project that specially benefits particular properties, such as installing new sidewalks, the property owners may also have to pay a separate tax called a special assessment.

If work on the project has started, and/or the local municipality has passed a final resolution ordering the work that will be paid for with special assessments (a levy), it is assumed that the purchase price reflects this improvement, and that the seller should pay the assessment. For example, the property is more appealing and valuable if the street was recently repaved. If the special assessment has not been levied and the work has not started, then the offer assumes that the assessment should be paid by the buyer when the bill comes due after closing.

LEASED PROPERTY

If tenants occupy the property and their lease extends past the date set for closing, the buyer will assume the seller's rights and responsibilities as landlord at the time of closing. Therefore, all the terms of the seller's rental agreement with each tenant, whether the agreement is written or verbal, should be carefully reviewed. All tenants' leases, applications, payment histories and other records should be reviewed before the offer is written, or a contingency should be added for this review. These and other rental property issues should be discussed with an attorney and may be addressed in a rental property addendum that is made part of the offer.

DEFINITIONS

Actual Receipt: Actual Receipt is defined to mean that a party, not the party's recipient for delivery, if any, has the document or written notice physically in the party's possession,

regardless of the method of delivery. The term Actual Receipt appears in the Seller Termination Rights section of the Financing Commitment Contingency, in the If This Offer Is Not Contingent on Financing section, and in the Bump Clause. It is important to remember that timelines are triggered by actual receipt start when the party actually has the notice, not when it was delivered to or received by an agent.

Business Day: If a deadline is based on business days, it means a calendar day other than Saturday, Sunday, any legal public holiday under Wisconsin or federal law, and any other day designated by the U.S. President such that the postal service does not receive registered mail or make regular deliveries on that day.

Deadlines: This section establishes the rules for calculating the exact moment in time when a deadline expires. Most contingency deadlines are calculated as a certain number of days from "acceptance." If there was a counter-offer that was accepted, the dates on that form will determine the date of acceptance. In calculating the deadline, do not count the day acceptance occurred. For example, if the seller accepted a buyer's offer on July 1, and the Financing Commitment Contingency is to be fulfilled within 30 days of acceptance, then the deadline is July 31 at midnight.

Unless otherwise specified, a deadline for a certain date will run through midnight of the last day. If the parties prefer deadlines that end when people can be reached, such as 5:00 p.m., this must be stated in the offer.

Defect: The term "Defect" is used in the Conditions Affecting the Property or Transaction definition on pages 2-4 of the offer and in the Inspection Contingency. A defect is a condition that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed or replaced, would significantly shorten or adversely affect the normal life of the premises.

Firm: Firm refers to a licensed sole proprietor broker or a licensed broker business entity.

Party: Party means the buyer or seller, and "parties" refers to both the buyer and the seller.

Property: "Property" is defined as the real estate described at lines 4-8 of the offer.

OPTIONAL PROVISIONS

The offer contains optional provisions for the buyer and seller. If the buyer wants to include an optional provision in the contract, then the box in front of it must be marked with an X or some other mark. When choosing an optional section, the agent drafting the offer will mark it with an X and fill in appropriate blanks in the provision. Examples of optional provisions include the Financing Commitment, Appraisal and Inspection Contingencies.

PROPERTY DIMENSIONS AND SURVEYS

If the boundaries or size of the lot, the square footage of the home or room dimensions are important to a buyer, the buyer should verify this information. The information provided by the seller or the agent is likely to be an estimate. Buyers may want to know the total square footage of the home they are buying, but there are different formulas used to make this calculation. If this information is important to the buyer, the buyer should measure the rooms or the building or have someone measure them.

Buyers should not assume that things such as fences, tree lines or utility poles mark the exact boundaries of the lot. If there is any doubt about the location of the boundaries or the dimensions of the lot, the buyer should obtain a survey. The seller may have a survey map, but an older survey may not show new improvements such as fences, sheds or driveways and may not accurately reflect new easements or other recent changes.

DISTRIBUTION OF INFORMATION

The Distribution of Information provisions provide written authorization from the parties to allow the real estate agents to provide certain information relating to the transaction to persons other than the parties. The parties give authority to share four categories of information with the MLS, appraisers and other settlement service providers:

1. Copies of the accepted offer to the buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction.
2. Financing concession and sold data.
3. Active listing, pending sales, seller concessions and assistance, and other information needed by appraisers researching comparable sales, market conditions and listings.
4. Copies of the accepted offer to the seller or the seller's agent of another property that the seller intends on purchasing.

MAINTENANCE

The seller is obligated to maintain the property and all personal property included in the purchase price until the earlier of closing or the buyer's occupancy in materially the same condition it was in as of the date on line 1 of the offer except for ordinary wear and tear.

PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING

If the property is damaged by fire, a tornado or other causes after the offer is accepted, the seller should immediately obtain an estimate of the cost to repair the damage. If this cost is 5% of the sale price or less, the seller must notify the buyer, repair the damage, and restore the property to the condition it was in on the date on line 1 of the offer. Before the closing, the seller must provide lien waivers, if applicable, for any repairs or restoration.

If the damage exceeds 5% of the sale price, the seller must notify the buyer of this fact. The buyer may then decide to

proceed with the offer or to cancel it. If the buyer decides to proceed, the buyer is entitled to the seller's insurance proceeds, if any, plus a credit against the purchase price equal to the seller's insurance deductible. The buyer will want to find out whether the seller has insurance and how much the insurance company is willing to pay before proceeding with an offer for a property that has been damaged.

BUYER'S PRE-CLOSING WALK-THROUGH

Regardless of whether the buyer has had inspections or tests done, the buyer has the right to see the property again within three days before closing. There are two purposes for this walk-through:

1. To be sure the property has been maintained in the condition it was in at the time of the offer and that any damage that occurred since then has been repaired.
2. To make sure that any defects the seller agreed to cure were correctly repaired.

OCCUPANCY

The right to occupy the property is usually considered the most important right of a property owner. The offer provides that, unless there are tenants, occupancy will be given to the buyer at the time the transaction closes. If the parties all agree, the time of occupancy can be changed in the Additional Provisions/Contingencies section of the offer. The buyer could let the seller occupy for a period of time after closing, or the seller could let the buyer occupy before closing. If the buyer and seller agree to one of these different occupancy arrangements, they should have a written occupancy agreement. These occupancy agreements can be complicated, so the parties should consider talking to an attorney about the details of the agreement.

The parties agree in the Occupancy provision that all personal property that is not included in the sale, and that all debris, refuse and personal property must be removed from the house, garage and yard before the buyer takes occupancy. The seller agrees to leave the property in broom-swept condition. If tenants occupy any part of the property at the time the offer is made, the purchase of the property does not affect the tenants' rights under their lease. The seller and the buyer may wish to have a special agreement that addresses how the seller should manage certain situations that might arise with the tenants before closing, for example, renewal of leases, evictions or obtaining past-due rent.

DEFAULT

All parties have the obligation to act diligently and in good faith to complete all the provisions in the contract. If a party does not perform the party's obligations under the contract, the other party may consider this to be a breach of contract or a default. The results can be serious.

A party who believes a breach or default has occurred should:

- Carefully review the offer and the documents related to it such as any counter-offer, addenda, Real Estate Condition Report and any amendments to the offer to see if the documents support this belief.

- Seek legal advice. Real estate agents cannot give legal advice. An attorney can review the documents, investigate the facts, give an opinion about whether there is a breach, and discuss potential remedies and the time and expenses involved in pursuing such remedies.

Some potential legal remedies available to the buyer and seller include:

- Asking the courts to make the buyer buy, or make the seller sell, the property (specific performance).
- Allowing the seller to keep the buyer's earnest money (liquidated damages).
- Asking the courts to make the other party pay money for the losses resulting from the breach (actual damages).

ENTIRE CONTRACT

In this section, the parties agree that everything that has been represented or agreed to is stated in the contract. For example, if the buyer was given an information sheet before making the offer that said, "Washer and Dryer included," the washer and dryer are not included in the sale unless the offer says so. If the parties believe they have reached an agreement on a particular point, they should be sure that agreement is reflected in writing in the offer to purchase. This provision also states that the offer is binding on the parties themselves, and in case a party dies, their successors will be bound by the contract. Successors to the contract may be an estate or heirs of the decedent.

NOTICE ABOUT SEX OFFENDER REGISTRY

The buyer should contact the Wisconsin sex offender registry by telephone or on the internet if the buyer has questions or concerns about sex offenders. If asked about sex offenders, the seller can point to this source of official information and be protected from liability without having to answer any questions with specific information the seller might know.

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT

Buyers purchasing a property from a person classified as a "Foreign Person" are subject to the federal tax law provisions of the Foreign Investment in Real Property Tax Act (FIRPTA). Although such transactions are infrequent, there can be significant adverse consequences for buyers who do not comply with FIRPTA. FIRPTA is about the Internal Revenue Service (IRS) taxing foreign persons selling U.S. real estate. Their concern is that foreign persons will sell their property and leave the country without paying the tax due on the sale. The IRS solution is to make the buyer responsible for making sure the tax is collected because the buyer will still be here, and they have an identifiable asset that can be attached with a lien, if need be, that is, the property.

A Foreign Person does not include a resident alien individual, U.S. green card holders, U.S. citizens and non-citizens who fulfill the requirement of the substantial presence test generally are not subject to FIRPTA. Whether an individual or entity is a Foreign Person is a legal opinion interpreting and applying federal tax law that should be given only by an

attorney or tax professional and never by a real estate licensee.

If the seller is a Foreign Person, no FIRPTA exception applies, and if the buyer does not pay or withhold the tax amount, the IRS may hold the buyer liable for the unpaid tax, and a tax lien may be placed on the property to secure payment. One exception is for the seller to provide a sworn certification under penalties of perjury regarding the seller's non-foreign status in accordance with IRC § 1445, as is called for in the WB-11 Residential Offer to Purchase.

SELLER PAYMENT OF COMPENSATION TO BUYER'S FIRM

If the box is checked, the seller agrees to pay to the buyer's firm the amount filled in on the blank line, such as a dollar amount or a percentage of the purchase price, toward the buyer's brokerage fees at closing. Payment made under this provision represents an economic adjustment only and does not create any agency relationship between the buyer's firm and the seller. In this situation, the buyer would have a buyer agency agreement with the buyer's firm, and the seller will be helping to pay the commission the buyer owes to their firm.

ADDITIONAL PROVISIONS/CONTINGENCIES

The offer form is long, but it does not include all the contract language that the buyer and seller may need in a transaction. The blank lines on page 10 of the offer can be used to add a contingency or other language as needed. Any offer language that does not meet a party's needs can be changed or stricken during drafting.

DELIVERY OF DOCUMENTS AND WRITTEN NOTICES

The buyer and seller must agree how they will deliver documents and notices relating to the offer.

The offer states five ways for the parties to communicate:

- Personal delivery
- Fax transmission
- Commercial delivery service (UPS, FedEx, etc.)
- U.S. mail
- Email

The parties must decide which method(s) work best for them. There may be advantages and disadvantages to each delivery method. For example, the parties may not want to use the mail because of the length of time a mailed document takes to get to the other party.

For reasons of speed, cost and convenience, email is the most common delivery choice. Any party wishing to use email delivery in a consumer transaction must give electronic consent to the use of electronic documents, electronic signatures and email delivery. Electronic consent is often obtained when sending a document for electronic signatures. A consumer most often checks a box to provide electronic consent before electronically signing a document. The email address used in the offer may be the party's own email

address or the real estate agent's email address. An agreement should be reached about how emails that do not come directly to the party will be managed.

With all methods, delivery is considered complete at the moment the document leaves the control of the party that is delivering it. For example, if the parties are using U.S. mail as a delivery method, the document is considered delivered when the postage is paid, and it is deposited in the U.S. mail.

PERSONAL DELIVERY/ACTUAL RECEIPT

When there are two or more buyers, or two or more sellers, personal delivery of a document or notice to just one of them is considered a completed delivery. Similarly, when there are two or more sellers or two or more buyers and a deadline runs from actual receipt, the deadline will begin to run as soon as one of them actually receives the document.

ADDENDA/DRAFTING LICENSEE

Sometimes the offer to purchase does not contain everything needed for a specific transaction. An addendum may be used to add additional contingencies or agreements between the buyer and seller. Examples of topics that could be addressed in an addendum are testing contingencies; provisions for well, water or septic testing; or LBP disclosures and inspections. The name of the licensee who drafted the offer and the name of the firm with which that agent is associated goes on the line on the bottom of page 10 of the offer.

WIRE FRAUD WARNING

The parties are advised of the dangers of wire fraud. The parties are instructed to verify wire transfer instructions and not to initiate any wire transfer without confirming instructions. Agents and firms are not responsible for transmitting, forwarding or verifying any wiring or money transfer instructions.

SIGNATURE LINES AND PRESENTATION INFORMATION

The buyer or buyers use the first two signature lines on page 11 of the offer to sign the offer. The offer would then be delivered to the seller for consideration. If the seller is going to accept the offer, the seller or sellers use the next pair of signature lines to sign the offer and accept it. The name of the agent who presented the offer and the name of that agent's firm, and the date and time the offer was presented go on the lines under the seller's signature lines. If the seller is going to reject and/or counter the offer, the seller initials to indicate this on the lines provided for this purpose at the bottom of page 11 of the offer.

EXPLANATION OF THE STATE OF WISCONSIN WB-11 RESIDENTIAL OFFER TO PURCHASE

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