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Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

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Inside This Issue

WB-11 Residential Offer to Purchase– 2010 Edition

The Department of Regulation and Licensing has made its final substantive and formatting revisions to the WB-11 Residential Offer to Purchase. The optional-use date for the revised WB-11 is November 1, 2009, and the mandatory-use date is March 1, 2010.

The current WB-11 was last revised in the late 1990s and became mandatory for use on November 1, 1999. Although the existing offer form has generally served REALTORS® well, after 10 years the time has come for an update.

In the big picture, the new WB-11 is not drastically different. At the same time, a few WB-11 provisions have undergone some exciting substantive changes to help bring the offer up to date with current practice and hopefully improve ease of use. The DRL has tried to make changes that make the residential offer a bit more understandable and user-friendly for consumers and licensees alike. Many revisions simply clarify and improve the provisions already in place that generally seem to be working well. Other revisions attempt to resolve some of the gray issues that have popped up occasionally in the past or bring the offer up to speed with new practices that have evolved since 1999. A few provisions no longer appear in the offer as they are no longer necessary.

This *Legal Update* reviews the changes made to the WB-11 Residential Offer to Purchase. The section-by-section discussion points out the changes adopted by the DRL and provides some practice tips for getting the best results with this new version of the WB-11.

REALTORS® may begin using the revised WB-11 residential offer as soon as the form becomes available on ZipForm and in paper form. Please visit the Forms Update Resource page at www.wra.org/formsupdate for information about forms availability.

Forms Revision Process

As in the past, the bulk of the decision-making on the revisions to the DRL-approved real estate forms has occurred at the meetings of the DRL Real Estate Contractual Forms Advisory Committee (Advisory Committee). Established under Wis. Stat. Ch. 452, the Advisory Committee reviews any changes made to DRL-approved forms and reports to the DRL Real Estate Board and to DRL Secretary Celia Jackson. The Advisory Committee is appointed for one-year terms by Secretary Jackson and is comprised of real estate licensees and attorneys, including REALTOR® members. For additional information about the Advisory Committee, see Wis. Stat. § 452.06(1) and http://online.drl.wi.gov/boards/BoardMembers.aspx?aid=57.

In addition, the Wisconsin REALTORS® Association Forms Committee, chaired by Dwight Kruse, has reviewed drafts of the forms and provided valuable recommendations to the Advisory Committee – many of which have been adopted into the forms. The suggestions and recommendations of the WRA Committee

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and the Advisory Committee have been intended to make the forms the best they can be by clarifying language, creating better definitions, fixing provisions that do not work well in day-to-day practice and generally improving the forms for the benefit of consumers and licensees alike.

The Updated Residential Offer

The sample copy of the updated WB-11 Residential Offer to Purchase appearing on Pages 20-28 of this issue is the DRL's final form, while the forms WRA members will enjoy using will have undergone a touch more formatting and polishing. In the following discussions, the existing WB-11 (mandatory-use date 11-1-99) will be referred to as the "1999 Offer," and the newly updated WB-11 will be referred to as the "2010 Offer." It may be helpful to compare the 1999 Offer with the 2010 Offer draft while reading the following discussion. All references to line numbers are to the 2010 Offer unless otherwise designated.

Format

The type size is a bit larger in the 2010 Offer to make it a bit easier to read. The updated WB-11 is on letter-sized paper and is nine pages long. The layout has been improved, for instance, the CAUTIONS and NOTES start on new lines at the left margin to draw more attention to them and help make sure that they are not overlooked.

The layout was designed to accommodate carbon forms: the odd-numbered pages have blank lines to fill in, boxes to check and items where one or more items must be stricken while the even-numbered pages contain only text.

REALTORS® must remember that Wis. Admin. Code § RL 16.06(1) prohibits the altering of Department-approved forms by placing blank lines containing inserted provisions between provisions of the approved form text in such a manner as to create the appearance and implication that they are approved by the DRL. In other words, extra provisions or extra blank lines may not be inserted between the numbered lines of the DRL-approved forms. The rule does not change the ability to use the blank lines provided in the 2010 Offer at lines 165-172 and 438-444 or to attach an addendum per line 436.

REALTOR® Practice Tips: When using DRL-approved forms, REALTORS® must be aware that they are prohibited from altering the forms by adding blank, unnumbered lines to DRL-approved forms and must instead place additional material in the blank lines provided in the form or use addenda.

Who is Drafting the Offer? (Lines 1-2)

Lines 1-2 of the 2010 Offer provide, "LICENSEE DRAFTING THIS OFFER ON _____ [DATE] IS (AGENT OF BUYER) (AGENT OF SELLER/LISTING BROKER) (AGENT OF BUYER AND SELLER) STRIKE ONES NOT APPLICABLE." The new language provides proper choices for the various representation models that came into play on July 1, 2006, when the Agency Law Modernization Act went into effect.

This new language recognizes that the agent drafting the offer may not be licensed as a broker and thus the change to "Licensee." Now there is a proper selection for the agent drafting the offer to make (by striking the choices that do not apply) for each different representation scenario:

- If the property is listed with another broker and the agent drafting the offer is a buyer's agent under a buyer agency agreement, the agent is the "agent of buyer."
- If the property is listed with another broker and the agent drafting the

offer is a subagent of the listing broker, the agent is the "agent of seller/listing broker."

- If the agent drafting the offer is an agent in the same company as the listing agent but there is no buyer agency agreement with the buyer, the agent is the "agent of seller/listing broker."
- If the agent drafting the offer is an agent in the same company as the listing agent, there is a buyer agency agreement with the buyer and the drafting agent has been working with the buyer as a designated agent, the agent is the "agent of buyer."
- If the agent drafting the offer is the listing agent, there is a buyer agency agreement with the buyer and the drafting agent has been working with the buyer as a dual agent, the agent is the "agent of buyer and seller."

If the licensee is the buyer in the offer to purchase, and thus not acting in an agency capacity, the licensee should line out all of Lines 1-2 and indicate elsewhere in the offer that he or she is a licensed real estate agent/broker purchasing the property for personal use/investment/speculation/resale, as the case may be.

Earnest Money (Lines 10-12)

The first change in the General Provisions on Lines 3-22 of the 2010 Offer appears in the Earnest Money provision on Lines 10-12. The term "paid" was replaced with "will be mailed, or commercial or personally delivered" with regard to additional earnest money that is due after the offer has been accepted. This change was made in hopes of reducing confusion as to what the term "paid" actually meant and when "paid" occurred.

Agents drafting the offer should consider how the earnest money will be delivered. If the seller does not want to hear the old story that "the check is in the mail," perhaps the "mailed, or" language on Line 11 should be lined out.

A blank line is provided at Lines 11-12 of the 2010 Offer to identify parties other than the listing broker who are authorized to accept earnest money, for example, a title company or an attorney. If the buyer is arranging for the delivery of the additional earnest money, the agent drafting the offer may need to provide the mailing and/or street address of the listing broker – or the title company, attorney or other earnest money recipient – to the buyer.

Included in Purchase Price (Lines 14-16)

As the buyer and the drafting agent complete and review the 2010 Offer, they have just named the purchase price and now they are specifying what is included in that price: "Seller is including in the Purchase Price the Property, all Fixtures on the Property on the date of this Offer not excluded on lines 17-18, and the following additional items: ___." The Property is the real estate described on Lines 4-6 (see the definition of Property on Line 196) and Fixtures are defined on Lines 185-195 of the 2010 Offer using the same definition that appeared in the WB-1 Residential Listing Contract. The additional items often will be personal property items. For example, the buyer wants the seller to include certain appliances that are not built in (and not considered fixtures) like a stove and refrigerator, or wants the seller to leave the lawn mower.

It may be helpful for the sellers to think more about what items they will definitely want to take with them and what items can be left behind, and for buyers to think about what items they want included and what items they want the seller to remove.

REALTOR® Practice Tips:
Any items that a party might think of as "detachable" should be considered by the parties and listed in the Included or the Not Included section. If there is any uncertainty over whether the item is or is not a fixture, then it should be listed as included or not included to remove all doubt. Home entertainment systems, stereo systems, satellite dish systems, invisible fencing and other multi-component features of the home warrant careful consideration.

Not Included in Purchase Price (Lines 17-22)

This section should itemize property the seller is taking with him or her when he or she moves out, for example, the seller's prize rose bushes, property the buyer does not want, such as the pile of debris in the back yard, and rented fixtures that are owned by someone else – the seller has no right or authority to sell an item belonging to another, for example, the rented water softener or the rented LP gas tank.

REALTOR® Practice Tips:
If the seller sorts out what is staying and what is going and this is written down in the listing contract, then the listing agent can check the listing inclusions and exclusions against those in the offer and thus help safeguard against inadvertent errors.

Lines 21-22 provide a new warning: "NOTE: The Terms of this Offer, not the listing contract or marketing materials, determine what items are included/excluded." This new provision is intended to help emphasize to the parties, as well as the licensees and attorneys drafting the offer, that regardless of what is listed in the listing contract or advertised in the MLS, home magazines, broker Web sites or other media, it is the terms of the offer to purchase that control what property is and is not included in the transaction.

The Kitchen Island, Swing Set and Refrigerator.

The Wisconsin Court of Appeals decision in Brown v. Grosch (No. 2004AP1377, Ct. App. 2005) was

a driving force for the inclusion of this statement. In the ***Grosch*** case the buyer and the seller disagreed over the inclusion of a kitchen island during a residential real estate transaction and the buyer's responsibility with regard to the refrigerator and swing set that the seller was to retrieve after closing. Buffy Brown (buyer) purchased Michael and Erin Grosch's (sellers) home expecting that the kitchen island was included in the purchase because the MLS data described the property as including a "big eat-in kitchen with island and computer desk." However, the offer to purchase only listed the dishwasher, garage door opener and window treatments in the "Additional Items Included in the Purchase Price" section. The contract also identified "sellers' personal property" under "Items Not Included in the Purchase Price." The listing agent testified that the island was not a fixture and was more like a table, while the cooperating agent testified that she would have written the island in if she had realized that it was not a fixture. The buyer sued the sellers in small claims court for $4,429.22, the amount she asserted was necessary to replace the missing kitchen island, based upon an estimate for a new one. The sellers provided a quote of $382 for a comparable replacement.

The small claims court, finding that the kitchen island was several years old, assigned it a value of $300. The court than awarded $600 to the sellers based upon the value of the swing set and refrigerator ($900) that the sellers were supposed to have, less the value of the kitchen island that the buyer was supposed to have ($300). The buyer first appealed the case to the circuit court where, after a bench trial, the court entered judgment for $600 in favor of the sellers. The buyer then appealed to the Court of Appeals where both the buyer and the sellers appeared on their own without legal counsel. The Court of Appeals upheld the trial court's finding that the kitchen island was included in the sale, despite the fact that it was not mentioned in the offer to purchase or attached to the improvement.

REALTOR® Practice Tips: The offer determines the agreement between the buyer and seller. In order for the buyer to have the property included in the sale, this would have to be written into the offer. The listing contract really only expresses what the seller is willing to have included in the offer and still have it meet acceptable terms. (One must always remember the function of the listing contract: to establish the terms of an offer which, if procured, earns the broker a commission.) Similarly, MLS or office data sheets only reflect what property is available; the offer establishes the parties' agreement about personal property.

Acceptance (Lines 23-26)

While there is no substantive change in this section, the language was clarified to make clear that the signatures of the parties on an accepted offer can either all be on one copy of the offer or counterparts may be used. In that case, the parties' signatures would be on separate but identical copies of the completed offer. The 1999 Offer stated that, "Acceptance occurs when all Buyers and Sellers have signed an identical copy of the Offer, including signatures on separate but identical copies of the offer." The 2010 Offer instead provides that, "Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical copies of the Offer."

REALTOR® Practice Tips: Acceptance must be in writing in order to satisfy Wis. Stat. §706.02 requirements for a written contract conveying an interest in real estate. Most deadlines in the offer run from the date of acceptance. If there are multiple signatures, acceptance occurs when the last of the parties signs.

Binding Acceptance (Lines 27-30)

A new sentence was added to the Binding Acceptance section: "Seller may keep the Property on the market and accept secondary offers after binding acceptance of this Offer" was moved from the Sale of Buyer's Property Contingency on Page 5 of the 1999 Offer to this section. Some parties and licensees erroneously believed that the seller could not continue to market the property and accept secondary offers unless there was a Sale of Buyer's Property Contingency in effect in the offer. Placing this sentence in the Binding Acceptance section on the first page of the 2010 Offer should help make it clear that the seller is permitted to keep the property on the market and accept secondary offers after a primary offer is accepted and regardless of whether there is a Sale of Buyer's Property Contingency in the contract.

Binding acceptance occurs when the accepted offer (signed by all parties) is delivered back to the party who wrote it, generally the buyer, before the stated acceptance deadline. If the seller wishes to accept the offer, the seller must sign the offer and deliver it back by the deadline. The binding acceptance date has no meaning if the offer is being rejected or countered.

For example, a buyer submits the offer on July 1 with a binding acceptance date of July 3. The seller-husband signs on July 1, the seller-wife signs on July 2. The listing agent faxes the offer back on July 3. Acceptance occurred on July 2 and binding acceptance occurred on July 3.

REALTOR® Practice Tips: If the binding acceptance date is inadvertently missed, the seller may counter back to the buyer on the same terms and conditions to

restore the offer. The drawback is that this gives the buyer time to reconsider, and there is a risk that the buyer may get cold feet, find another property or decide the price is too high. It is always possible that the buyer may not accept the seller's counter-offer.

Optional Provisions (Lines 31-33)

The new Optional Provisions section provides the instructions to the parties regarding completion of those sections in the offer that have groups of optional provisions preceded by check boxes. Rather than repeat these instructions throughout the form, the instructions were put in a section of their own. These directions for marking the boxes of the optional provisions that the parties wish to have included in their contract apply to the provisions regarding delivery methods (Lines 34-55), Closing Prorations (Lines 117-137), the Financing Contingency (Lines 219-265), the Appraisal Contingency (Lines 266-274), the Closing of Property Contingency (Lines 307-314), the Secondary Offer provision (Lines 315-320), the Home Inspection Contingency (Lines 413-435) and the Addenda provision (Line 436). As before, the provisions are not a part of the offer if the boxes are left blank or marked "N/A."

Delivery of Documents and Written Notices (Lines 34-55)

The delivery of documents and written notices is very important in an offer to purchase. Delivery determines when binding acceptance takes place. It can determine whether a contingency has been successfully satisfied or removed, if the withdrawal of an offer or counter-offer has been timely made or even if the offer has become null and void.

In the 2010 Offer, personal delivery is the default method of delivery that will always apply. In addition, the parties may authorize other delivery methods by checking the boxes in this section. The other delivery choices in the 2010 Offer include commercial delivery, fax, U.S. mail and e-mail. The parties may choose as many delivery methods as they like.

1. **Personal Delivery.** The new language makes it clear that personal delivery is always a permissible means of delivery (unless lined out). In personal delivery, the document or notice is personally given to either the party or the party's designated recipient for delivery. The individual who hands the document to the party can confirm, ideally in an affidavit, exactly when the delivery occurred.

2. **U.S. Mail.** Commercial delivery and the U.S. mail have been separated in the 2010 Offer because many brokers advise against the U.S. mail method because it is often unreliable and it can be difficult to prove some mail deliveries. (For example, how do you prove when the seller put the offer in the mailbox on the corner next to the drugstore?) In mail delivery, a document or written notice must be placed in the U.S. mail with all postage prepaid and it must be addressed to the party's delivery address specified in the offer. If no address is provided, then mail delivery cannot be used. The document or notice is deemed delivered when it is deposited in the mail, not when it is received.

3. **Commercial Delivery.** In commercial delivery, the document or notice must be deposited with a commercial delivery service such as UPS or Federal Express with all fees prepaid or charged to an account with the delivery service. As with the U.S. mail, it must be addressed to the party's delivery address specified in the offer. If there is no address provided, then commercial delivery cannot be used. The document or notice is deemed delivered when it is deposited with the commercial delivery service, not when it is received.

4. **Fax.** For fax delivery, the document or notice must be transmitted via fax to the fax number provided by the party in the offer. If there is no fax number provided, then fax delivery cannot be used. It does not matter if the party is not there when the document is faxed because the document is deemed delivered when the fax is transmitted, not when it is received.

5. **E-Mail.** E-mail is a permitted form of delivery of documents and written notices to a party who is a consumer only if the consumer has first received mandatory disclosures and consented electronically as required by federal law. Just checking the box on line 46 of the 2010 Offer is not enough to authorize e-mail delivery to the parties. The provision is not fully implemented unless there is also an e-mail address given for the respective party. In addition, lines 46-49 plainly indicate that each consumer who provides an e-mail address on the first page of the 2010 Offer is representing that he or she has successfully given the electronic consent required by federal law.

E-Mail Delivery and E-Commerce

In this day and age of the Internet and e-mail, more and more REALTORS® are using these technologies to improve efficiency and consumer appeal. In order to take advantage of this technology when it comes to the delivery of documents and written notices relative to the 2010 Offer, a couple of preliminary steps must be taken.

Federal E-Sign law provides, with respect to consumers, that whenever a statute, regulation or other rule of law requires that information relating to a transaction be provided in writing, electronic documents (documents sent on the computer by e-mail) may be used only if certain disclosures are first provided to the consumer and the consumer consents electronically to the use of electronic documents and signatures. Wisconsin E-Commerce law does

not override this federal requirement.

An example of the disclosures a consumer must receive appear in the document entitled Consent for Use of Electronic Documents and Signatures in Consumer Real Estate Transactions that is available on the E-Commerce REALTOR® Resource page at www.wra.org/ecommerce in both PDF and Word versions. The disclosures my be copied into the text of an e-mail, used as an attachment to an e-mail, posted on a Web site, etc., so that the party may read them and then give consent electronically. The consumer's electronic consent may consist of the consumer replying to an e-mail in which the consumer has typed in his or her name (as his or her signature) on the reply e-mail or signing a paper disclosure document, scanning it and e-mailing it back. Electronic consent also may be given on a Web site on which the consumer clicks the appropriate button to indicate he or she has read and agrees to the disclosures.

Listing brokers will have often obtained the electronic consent of the seller for purposes of the transaction to sell the listed property and buyer's agents will typically obtain the electronic consent of the buyer for the transaction involving the desired property acquisition. When working with a buyer-customer who expresses the desire to incorporate e-mail as a form of delivery in the terms of the offer, the selling agent will have to provide the required disclosures and receive electronic consent from the buyer prior to writing the buyer's offer to purchase, inserting an e-mail address for the buyer on line 55 of the 2010 Offer and checking the box on line 46.

REALTOR® Practice Tips: Applicable federal E-commerce law requires electronic consent when documents that are required to be in writing, by law, are to be delivered by e-mail to consumers. When a party who is a consumer wants to be able to receive documents and notices by e-mail, the party must receive the federally mandated disclosures and consent electronically to electronic signatures and electronic documents delivered by e-mail.

REALTORS® should carefully consider what e-mail address will be specified in the 2010 Offer on behalf of a party and discuss this with the parties. One major concern will be whether the e-mail at the address used can and will be checked regularly. If someone other than the party is undertaking the responsibility of checking the e-mail and alerting the actual party, that person must understand the possible liability because the e-mail will be delivered upon transmission and it may be used in situations where the timeframe is very short and the slightest delay may impact the outcome of a contingency or the validity of the contract itself.

Some brokers have talked about whether it is necessary to confirm that the other party has consented electronically or request proof of the other party's electronic consent when the party's e-mail address has been provided in the Delivery section. Requesting proof of the buyer's electronic consent is not a requirement because it is presumed that the other broker is practicing competently and would not have allowed the other party to sign an offer that represents that the party electronically consented "to the use of electronic documents, e-mail delivery and electronic signatures in the transaction" when they have not.

While a broker may request evidence of the other party's electronic consent, the law does not require the agent working with the other party to furnish such proof.

See the February 2008 *Legal Update* "Electronic Commerce and E-Mail Delivery," at www.wra.org/LU0802, and the E-Commerce REALTOR® Resource page, online at www.wra.org/ecommerce, for the forms and procedure for this electronic consent.

REALTOR® Practice Tips: Effective delivery requires the use of one of the methods authorized by the parties in the offer.

REALTOR® Practice Tips: When drafting the offer, do not

leave the seller's delivery information blank. Otherwise the seller may need to counter the offer to add his or her desired delivery contacts if personal delivery will not suffice as the sole authorized means of delivery. Before drafting the offer, the cooperating agent should contact the listing agent or the seller if the property is not listed, to obtain the seller's delivery information if it is not known.

REALTOR® Practice Tips: Be sure that when the offer is delivered to the seller and when it is returned to the buyer that ALL the pages are included. Submit all nine pages to the seller; when the seller delivers an accepted offer back to the buyer or a rejection or a counter-offer, the seller should sign or initial at the bottom of Page 9 and then the send back all nine pages.

Personal Delivery/Actual Receipt (Lines 56-57)

The statement in this section came from the Delivery/Receipt section on Page 4 of the 1999 Offer. The Personal Delivery/Actual Receipt provision stands for the proposition that if there are multiple individuals who are the buyers or the sellers, personal delivery to one of the buyers, for instance, constitutes personal delivery to all of the buyers. Similarly, actual receipt by one of the multiple sellers constitutes actual receipt by all of those sellers.

Occupancy (Lines 58-62)

This provision is essentially the same as the Occupancy provision in the 1999 Offer except for the added requirement that the property be in broom-swept condition, a requirement that was introduced in the 2008 WB-1 Residential Listing Contract.

Definitions (Lines 63-114)

Page 2 begins the Definitions section, which covers most of Page 2 and part of Page 4 of the 2010 Offer.

Actual Receipt (Lines 64-65)

"Actual Receipt" is defined on lines 64-65 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 on line 250 in the Seller Termination Rights section of the Financing Contingency and on lines 313-314 in the Closing of Buyer's Property Contingency as a critical part of the "bump clause." Hopefully the inclusion of this definition will clarify when actual receipt has occurred for the sake of the parties, licensees and attorneys involved in the transaction.

Conditions Affecting the Property or Transaction (Lines 66-113)

In the 1999 Offer, there is a list of disclosure items in the definition of "conditions affecting the Property or transaction" that are similar to, but by no means identical to, the list of disclosure items found in the Real Estate Condition Report (RECR) required under Wis. Stat. Ch. 709. The RECR is mandatory in most residential real estate transactions involving one to four dwelling units. In most residential transactions, the seller would complete the RECR and make the disclosures prompted in that report. When it came time to indicate in the offer whether the seller was aware of any "conditions affecting the Property or transaction," many sellers and licensees wrongly assumed that the disclosures had already been made and may not have taken the time to review the definition of "conditions affecting the Property or transaction" or compared it to the RECR.

In an effort to bring more consistency to the transaction, the definition of "conditions affecting the Property or transaction" in the 2010 Offer consists primarily of the items listed in the RECR. Including the list of RECR defects in the offer creates a contractual obligation for the seller to make the RECR disclosures. It also reveals to the buyer the disclosures they have not yet received in cases where the buyer has not received an RECR before drafting the offer to purchase. Incorporating the RECR items into the 2010 Offer essentially forces a seller into making the disclosures or explaining why they are not doing so (for example, an "as is" sale).

This change supports the philosophy of Wis. Stat. Ch. 709 to encourage the seller to disclose what the seller knows about the condition of the property. The seller is in the best position to know the true condition of the property and all of its favorable aspects and annoying glitches. By getting this information to buyers, these home-buying consumers may make informed decisions.

REALTORS® should note, however, that there are some differences between the items listed in the definition of "conditions affecting the Property or transaction" in the 2010 Offer and the items listed in the RECR. The following disclosure items are found in the 2010 Offer, but not in the RECR content appearing in Wis. Stat. § 709.03:

- Underground or aboveground fuel storage tanks previously located on the property.
- NOTE: specific federal lead paint disclosure requirements must be complied with in the sale of most residential properties built before 1978.
- Current or previous animal or insect infestations.
- Any land division involving the Property for which required state or local permits had not been obtained.
- Violation of applicable state or local smoke detector laws; NOTE: State law requires operating smoke detectors on all levels of all residential properties.
- High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property.

Some of these elements are included in the WRA RECR forms as supplements to the statutory language. Those that are not will be added to the WRA forms in December 2009 so that the seller is asked to address the same disclosure items in the RECR and in the 2010 Offer. Consistency is important. If there are disclosure items in the 2010 Offer that do not appear in the RECR, there is a high probability that the additional items in the offer will be overlooked and not addressed, leaving the seller exposed to potential liability.

REALTOR® Practice Tips: Be sure that the seller is not trapped into inadvertently failing to make disclosures by ensuring the disclosure items in the offer are the same items listed in the RECR that the seller has completed.

Closing (Lines 115-116)

The Closing provision in the 2010 Offer provides that the closing place will be selected by the seller while the provision in the 1999 Offer indicated that the closing place was to be selected by the buyer's mortgagee or another party named on the blank line in that form. This marks a significant change.

During the revision process it became apparent that in the Milwaukee area most closings occur at the place selected by the lender, while in the Madison market most closings occur at the title company. Many transactions in vacation areas for second homes or recreational properties close at the best place available, which may include an attorney's office or the broker's office. This provision was discussed and debated at length during the revision process and it was clear that there was not one answer that would satisfy everyone.

One redeeming feature of this provision is that it provides that the closing is "at the place selected by Seller, unless otherwise agreed by the Parties in writing." Those who find the new provision unsuitable for their market may provide otherwise on the additional provisions lines in the 2010 Offer or in an addendum. It was indicated that brokerage companies and attorneys in the Milwaukee area and other areas comfortable with the 1999 form language plan to modify this new provision in an addendum.

REALTOR® Practice Tips: Modify the place of closing provision if a location selected by the seller is not appropriate for local, customary practice.

Closing Prorations (Lines 117-137)

The Closing Prorations provision in the 2010 Offer has been substantially expanded in order to assist the parties in agreeing upon suitable proration formulas for closing. This is an area that often results in confusion as well as a fair number of complaints to the DRL. Hopefully the revisions in this area will help clarify these concepts and assist the parties and licensees in recognizing the importance of these calculations and better understanding some of the choices.

Date of Closing Values. Sometimes questions submitted to the WRA Legal Hotline ask, "When a proration is calculated, what value is used – the value at the time of the offer to purchase, the value at the time of closing or some other amount?" Lines 117-118 of the new Closing Prorations provision indicate that date of closing values will be used for real estate taxes, rent, property owner's association assessments, fuel and other charges.

Day before Closing Computation. The prorations are based on date of closing values, but prorations are calculated as of the day before the closing, as is the case with the 1999 offer. The proration date is the day immediately before closing because the Internal Revenue Code requires sellers to calculate their prorations as of the day prior to closing. This offer provision eliminates the need for sellers to do an extra set of prorations for tax purposes.

Fuel Prorations. There is a new

caution in the 2010 Offer relating to fuel prorations: recognizing that it may be difficult to know the actual amount of oil or gas on the property on the date of closing or the closing day value when fuel prices can fluctuate dramatically from day to day, the caution reminds the parties to state the basis of the fuel prorations if the date of closing value will not be used.

Definition of Net General Real Estate Taxes. When it comes to proration of real estate taxes, lines 121-123 of the 2010 Offer indicate that the "net general real estate taxes" will be prorated and define the net general real estate taxes as the general property taxes after state tax credits and lottery credits have been deducted. This is helpful because there is no statutory definition or other commonly known definition for this term.

Real Estate Tax Proration Formulas. Lines 124-129 offer the parties four options for their tax proration formula:

1. The first choice is the "net general real estate taxes for the preceding year, or the current year if available," which is essentially the same as the default language in the 1999 Offer. This provision is also the default provision in the 2010 Offer and will apply if the licensees and parties in the transaction fail to catch the fact that no box has been checked and thus, no proration formula has been selected. The 2010 Offer, however, gives the parties two other formulas to consider.
2. The second choice is "current assessment times current mill rate (current means as of the date of closing)." This formula might prove 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 (and for the listing agent if the agent is aware of the reassessment and knows the seller failed to disclose). In this manner the buyer should have been made aware of the reassessment and the new assessed value.
3. The third choice is "sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior year, or current year if known, multiplied by current mill rate." This formula might be used in some new construction situations. For further discussion of new construction scenarios, see "Tax Proration for New Construction & Divided Parcels: Make Sure All Parties Pay Their Fair Share" in the June 2005 edition of the *Wisconsin Real Estate Magazine*, online at http://news.wra.org/story.asp?a=196.
4. The fourth tax proration option in the 2010 Offer is to insert your own tax proration provision in the provided blank line. For example, some parties may wish to use 95 percent or 105 percent of the prior year's taxes.

REALTOR® Practice Tips: The property tax proration formula selected in the offer will be used at closing, so agents must do their homework and make sure they have the most current information and understand the status of the property's assessment and real estate taxes. Only then can they intelligently discuss the issue with the parties and help them choose a formula wisely. There are three options to choose from or the parties can make up their own.

Buyer Caution. Next in the Tax Prorations section is a more straightforward caution to the buyer that warns of different circumstances where the property taxes may change dramatically. It is important that the parties understand that the property taxes may undergo a significant change by the time the tax bill comes at year's end so that they can negotiate an equitable proration.

Re-Proration Option. Last is a new re-proration provision used in addenda in many areas of the state with reported success: "Buyer and Seller agree to re-prorate the real estate taxes, within 30 days after the actual tax bill is received for the year of closing, with Buyer and Seller each owing his or her pro-rata share. Buyer and Seller agree this is a post-closing obligation and is the responsibility of the Parties to complete, not the responsibility of the real estate brokers in this transaction." The re-proration provision establishes a post-closing obligation on the part of the parties, not the real estate brokers, to re-prorate or make adjustments based upon the actual tax bill received at the end of the year. This is a good way to help address the parties' concerns over what happens if the real estate taxes change substantially during the year of closing and the proration at the time of closing ends up favoring one party over the other. Many brokers report that most parties do not attempt to bring the brokers into the re-proration process.

REALTOR® Practice Tips: Education and understanding are key when it comes to real estate tax assessments and prorations. It is helpful when REALTORS® explain proration formula alternatives and help the parties choose a fair and equitable formula in the given circumstances.

For additional discussion of assessments and proration challenges, see "Property Tax Proration What is Fair?" in the February 2007 edition of the *Wisconsin Real Estate Magazine*, online at http://news.wra.org/story.asp?a=655. For an outstanding overview of the property assessment process, see the *Department of Revenue's Guide for Property Owners* at www.dor.state.wi.us/pubs/slf/pb060.pdf.

No Significant Changes (Lines 138-164)

The sections for Leased Property (Lines 138-141), Rental Weatherization (Lines 142-145), Real Estate Condition Report (Lines 142-145) and Property Condition Representations (Lines 157-164) are substantially the same in the 2010 Offer

as they were in the 1999 Offer.

Definitions (Lines 173-196)

Page 4 continues the Definitions section, which began on page 2.

Deadlines (Lines 174-181)

The Deadlines definition in the 1999 Offer was called Dates and Deadlines and appeared on Page 3 of the 1999 Offer in its own section. The Deadlines definition explains how to calculate deadlines expressed as a number of days, defines business days and describes how to determine deadlines expressed in hours rather in days.

Defect (Lines 182-184)

The DRL believed that the definition of "defect" used within the Inspection Contingency should be the same as the definition of "defect" appearing in the Wis. Stat. § 709.03 RECR. The term "defect" is used throughout the definition of "conditions affecting the Property or transaction" on lines 66-113 of the 2010 Offer because those items are substantially the same as the items in the RECR. Accordingly, "defect" is defined on lines 182-184 to match the definition used in § 709.03. Consistency in this definition should help diminish the buyer and seller confusion that would surely result from having two similar yet different definitions in play within the same contract.

> **REALTOR® Practice Tips:** One source of confusion remains: REALTORS® must be aware that the definition of "defect" is similar to, but not the same as, the definition of "material adverse fact" found in Wis. Stat. § 452.01 and Wis. Admin. Code § RL 24.02. What sellers must disclose and what licensees must disclose will not always be the same thing.

Fixture (Lines 185-195)

The definition of "fixture" matches the definition used in the WB-1 Residential Listing Contract. The caution language was updated to include more modern examples such as water conditioning systems and home entertainment and satellite dish components.

Property (Line 196)

The form now clearly defines the Property to be the real estate described on lines 4-6 of the contract.

Buyer's Pre-Closing Walk-Through (Lines 204-207)

Instead of being referred to as the "Pre-Closing Inspection," this section was renamed the "Buyer's Pre-Closing Walk-Through." This change was designed to eliminate buyer misconceptions about having the home inspector accompany them during that final "inspection." This section does not give buyers the authority to conduct a new home inspection or a follow-up inspection. Rather the buyer may simply walk through the property to make sure that there have been no major changes in the condition of the property and that the seller has repaired the property in the manner agreed in the contract, most often in connection with the Inspection Contingency.

Property Damage Between Acceptance and Closing (Lines 208-217)

The changes in this section were minimal. For example, the words "if any" were added to the language relating to possible insurance proceeds in situations where the damage exceeds 5 percent of the purchase price. New language was added to indicate that, "no later than closing, Seller shall provide Buyer with lien waivers for all repairs and restoration" when the seller repairs damage that was less than the 5 percent of the selling price.

Financing Contingency (Lines 218-265)

Different changes were made to the

various financing provisions on page 5 of the 2010 Offer, including some small modernization changes, a bulking up of the provisions regarding the buyer's authorization for delivery of a loan commitment to the seller and the addition of exciting new provisions for appraisals and transactions where there is no financing contingency.

Loan Terms. On lines 219-234 of the 2010 Offer, changes were made to update the terminology. At line 219 the buyer is required to obtain a written loan commitment, and on line 225 the reference to loan fees was removed and instead the buyer agrees to pay discount points and/or loan origination fees.

Other Loan Sources. Lines 235-236 of the 2010 Offer provide that, "if Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 165-172 or 438-444 or in an addendum attached per line 436." The DRL believed that the buyer should inform the seller if he or she is using multiple loan sources or obtaining a construction loan or land contract financing. Customized provisions addressing those arrangements are to be included in an addendum or in the additional provisions blank lines.

Authorization for Delivery of Loan Commitment. In the Buyer's Loan Commitment section on lines 237-244, language has been changed to make sure that a loan commitment is not forwarded to the seller or the listing agent (if the seller's recipient for delivery) unless and until the buyer has reviewed and approved the loan commitment and given written instructions that the loan commitment be delivered. The WRA and the DRL both had concerns that loan commitments are still occasionally forwarded to the seller without the buyer's approval or without the buyer having ever seen the commitment terms. Another concern was the practice of some brokers to get advance permission from the buyer to forward loan commitments to the seller in an addendum, a Broker Disclosure to Customers or other document, such that there was no assurance that the buyer had the opportunity to review the specific loan commitment terms before it was forwarded to the seller. Thus, the buyer became bound to the contract, assuming no other unresolved contingencies, and was likely going to have to borrow the purchase money on terms and conditions that could be unfavorable or beyond what the buyer could afford.

Written Delivery Directions. New language in the Buyer's Loan Commitment provision is designed to eliminate these practices and protect buyers against having loan commitments that the buyer has never seen forwarded to the seller. Lines 240-244 in the 2010 Offer provide, "Buyer and Seller agree that delivery of a copy of any written loan commitment to Seller (even if subject to conditions) shall satisfy Buyer's financing contingency if, after review of the loan commitment, Buyer has directed, in writing, delivery of the loan commitment. Buyer's written direction shall accompany the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability." Thus, the buyer must review the loan commitment and give written delivery instructions for the delivery of the loan commitment and that written directive that must accompany the loan commitment when it is delivered to the seller.

Notice of Unacceptability. As in the 1999 Offer, delivery of a loan commitment does not satisfy the contingency if it is accompanied by a notice of unacceptability. If the buyer reviews the loan commitment and finds that it is not acceptable, the loan commitment alone should not be submitted to the seller because that would satisfy the Financing Contingency. If the buyer is dissatisfied with the loan commitment, it may be submitted to the seller along with a notice of unacceptability to help demonstrate to the seller that the financing specified in the contingency is not available. Of course, if the loan commitment does provide the financing described in the Financing Contingency, the buyer cannot deem it to be unacceptable and give a notice of unacceptability. A notice of unacceptability may be drafted by REALTORS® in the same way that a notice of defects is prepared – using the WB-41 Notice Relating to Offer to Purchase.

REALTOR® Practice Tips: A valid delivery of a loan commitment to the seller or the seller's recipient for delivery requires that (1) the buyer has first reviewed the loan commitment, (2) the buyer has directed in writing that the loan commitment be delivered to the seller and (3) the written direction accompanies the loan commitment. If any of these elements are missing, delivery of the loan commitment will be invalid and the seller will have grounds to terminate the offer if the loan commitment deadline has passed.

REALTOR® Practice Tips: REALTORS® should encourage lenders to add language to their loan commitment documents whereby buyers can approve/accept the commitment and direct that the commitment be forwarded to the seller (or the listing agent or other seller recipient for delivery). Brokers may also wish to prepare a short form that their agents can use for this purpose. Buyers also may simply write on the bottom of the loan commitment that they approve/accept the commitment and direct that it be forwarded to the seller.

REALTOR® Practice Tips: When it comes to the delivery of loan commitments and directions to deliver loan commitments and the frenzied last-minute

communications often involved, it may be very helpful if e-mail has been properly authorized as a method of delivery (provided the consumer has consented electronically and other federal law requirements have been met).

Cautions. The 2010 Offer contains a new caution in the Buyer's Loan Commitment section that reminds the licensees and parties that a loan commitment may contain conditions and requirements that must be met before the lender becomes obligated to provide the purchase money. This alerts the parties and reminds the licensees that a conditional commitment fulfills the contingency but does not guarantee that the lender will lend.

The term "loan commitment" is not defined in the 2010 Offer, making it difficult to assert that any document that says it is a loan commitment and is issued by a lender that agrees to provide the loan described in the commitment to the buyer is not in fact a loan commitment. Loan commitments generally have conditions or contingencies of some sort, ranging from a condition that insurance binders be produced at closing, to a contingency for an appraisal, to a contingency for the sale of the buyer's home. Many times the loan commitment is required to be delivered before the loan underwriting process and other lender procedures have run their course, so there will naturally be unresolved conditions.

REALTOR® Practice Tips: Delivery of a loan commitment satisfies the terms of the Financing Contingency, but many additional steps may be needed if the buyer is actually going to get the funds. The longer the time that is given for the Financing Contingency, the better the chances that there will be fewer unresolved conditions and requirements in the buyer's loan commitment. Loan underwriting procedures require adequate time to run their course, and if an early answer is forced, it will likely contain a long list of conditions and contingencies.

In addition, the caution that appeared in all caps in the 1999 Offer has been modified in the 2010 Offer on lines 246-248 to add the underlined language: "BUYER, BUYER'S LENDER AND AGENTS OF BUYER OR SELLER SHALL NOT DELIVER A LOAN COMMITMENT TO SELLER OR SELLER'S AGENT WITHOUT BUYER'S PRIOR WRITTEN APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY." Thus, everyone is warned not to deliver loan commitments without the written approval of the buyer or a notice of unacceptability.

If This Offer is not Contingent on Financing (Lines 259-265)

The 2010 Offer includes a new provision that automatically applies if the buyer does not include a Financing Contingency. Many times with the 1999 Offer, agents and sellers became frustrated when the buyer did not have a Financing Contingency included in the offer. The agents and sellers would assume that it was a cash offer and become upset when they realized that the buyer was still seeking mortgage funding. Misunderstandings of this nature should be minimized with the inclusion of the If This Offer is not Contingent on Financing provision on lines 259-265 of the 2010 Offer.

This provision will help parties and licensees understand that all offers without Financing Contingencies are not necessarily "cash offers." At the same time, the provision requires that the buyer, within seven days of acceptance, provide written evidence from a financial institution or a third party in control of the funds that the buyer will have the amount required for the purchase available at closing. If the buyer does not provide this evidence, the seller may terminate the offer. There is no deadline given for the seller's termination.

The If This Offer is not Contingent on Financing provision also acknowledges that buyers may choose to obtain mortgage financing from a lender even though they did not include a Financing Contingency, but they will not enjoy the benefits and protections of the Financing Contingency. If the buyer wishes to have a Financing Contingency, they would need to check the box at line 219 and complete the financing provisions. The language does permit the buyer to have the property appraised, so the seller must give the appraiser access to the property, but that does not mean that there is an Appraisal Contingency. If the buyer wishes to have an Appraisal Contingency, he or she would need to check the box at line 266.

Appraisal Contingency (Lines 266-274)

A new optional contingency provides the buyer with the ability to condition his or her offer on the property appraising for at least as much as the agreed-upon purchase price. Licensees and members of the public seem genuinely excited about the inclusion of this contingency in the form.

The primary reason to include an Appraisal Contingency in an offer to purchase is to protect the buyer against becoming contractually obligated to purchase a property that does not appraise at or above the purchase price and, as a result, the lender will not make the loan. If the buyer uses a separate Appraisal Contingency and receives a loan commitment subject to an appraisal, the separate Appraisal Contingency is not waived by delivering the loan commitment to the seller. If there is no separate Appraisal Contingency and the buyer delivers a loan commitment that is subject to an appraisal, the buyer is assuming the risk that the property will appraise at the required value.

If the property does not appraise at that value, a buyer without a separate Appraisal Contingency is in breach of contract if he or she does not close. If an independent Appraisal Contingency is used, the buyer is protected and is not in breach if the property does not appraise at the required value, even if a loan commitment subject to an appraisal had previously been submitted to the seller.

Distribution of Information (Lines 275-280)

The Distribution of Information provisions provide written authorization from the parties to the licensees to provide certain information relating to the transaction that is often needed for appraisers attempting to get comparable information, listing information and other data required under the increasing number of tougher appraisal standards.

As economic instability continues to impact many segments of the economy and as home prices continue to decline in many housing markets throughout the country due to job losses and increased foreclosures, Fannie Mae, Freddie Mac and the Federal Housing Administration find it necessary and prudent to require additional information in appraisals relative to properties located in declining markets. A declining market is considered to be any neighborhood, market area or region that demonstrates a decline in prices or deterioration in other market conditions as evidenced by an oversupply of existing inventory or extended marketing times.

Effective April 1, 2009, the federal guidelines for Fannie Mae, Freddie Mac and FHA appraisals require the use of the Market Conditions Addendum (Fannie Mae Form 1004MC/ Freddie Mac Form 71). Information and instructions on completing the Addendum is available online at www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2008/0830.pdf. Appraisals of properties located in declining markets must include at least two comparable sales that closed within 90 days prior to the effective date of the appraisal. The appraiser must also include a minimum of two active listings or pending sales in addition to three closed comparable sales. The appraiser must ensure that active listings and pending sales are market-tested and have reasonable market exposure to avoid the use of over-priced properties as comparables. The comparable listings should be truly comparable and the appraiser should bracket the listings using both dwelling size and sales price whenever possible. Appraisers must adjust active listings to reflect list to sale price ratios for the market, adjust pending sales to reflect the contract purchase price whenever possible or adjust pending sales to reflect list to sale price ratios. Appraisals must include the original list price, any revised list prices and the total days on the market.

Appraisers must reconcile the adjusted values of active listings or pending sales with the adjusted values of the settled sales provided such that the final value conclusion is not based solely on the comparable listing or pending sales data. Appraisals must include an absorption rate analysis and report any known sales concessions on active or pending sales. The appraiser must verify data via local parties to the transaction: agents, buyers, sellers, lenders, etc. (if the sale cannot be verified by a party, then public records or other impartial data source that can be replicated may be used). The MLS by itself is not considered a verification source.

Accordingly, appraisers will be contacting listing agents and other licensees looking for information about active listings and pending sales. However, licensees are not permitted to disclose confidential information and the terms of a pending offer are confidential. Therefore an agent should get permission, preferably in writing, from the parties before providing listing contract and pending sale information to appraisers. The agent may want to explain to the parties that the information is being requested due to federal appraisal requirements and that valid appraisals will be difficult for all buyers to obtain if licensees and the parties are unwilling to comply with these requests.

For more information about the Market Conditions Addendum, visit www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-09ml.doc and www.freddiemac.com/sell/guide/bulletins/pdf/bll112408.pdf.

Default (Lines 281-300)

A modification was made to the Buyer Default section as a result of the Wisconsin Supreme Court decision in ***Osborn v. Dennison***, 2009 WI 72. In the case, the buyer and seller disputed whether a seller can sue for actual damages without first directing the listing broker to return the earnest money to the buyer, per the Default section of the DRL-approved WB-11 Residential Offer to Purchase form (1999). The circuit court ruled that the sellers were limited to collecting the $2,000 in earnest money as liquidated damages because the sellers chose liquidated damages (the $2,000) when they refused the buyer's request for the return of the money. The Court of Appeals affirmed. The sellers appealed to the Wisconsin Supreme Court, which held in a 7-0 decision that according to the terms of the offer to purchase, the seller's failure to direct the return of the buyer's earnest money prior to or at the same time suit is filed for actual damages eliminates the seller's option to seek actual damages for the alleged breach. This 7-0 decision was good because it took the WB-11 contract language at face value and applied it in a straightforward manner.

After reviewing this case, the DRL

decided it would be better to simplify the Default provisions to remove the two-step process that was discussed in the case because the DRL believed it was unnecessary. The language on lines 233-234 of the 1999 Offer read that when a buyer defaults the seller may "terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) direct the Broker to return the earnest money and have the option to sue for actual damages." By modifying the language in the 2010 Offer, the DRL hoped to simplify the steps parties must take and to provide greater clarity. Thus, lines 286-287 of the 2010 Offer provide that when a buyer defaults the seller may, "terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual damages." If a seller is going to sue for actual damages, the seller no longer needs to first to direct the broker to return the earnest money. This may result in listing brokers being named in such lawsuits so that the earnest money held in the trust account can be disbursed to the winning party in that case per the court's order.

Notice about Sex Offenders (Lines 304-306)

While REALTORS® have been using WRA forms that had been modified to include a notice about the sex offender registry, this notice is now included in the 2010 Offer. The insertion of this language will not only keep consumers informed, but will also help licensees and sellers achieve immunity.

Under Wis. Stat. §§ 452.24, 704.50 and 706.20, real estate licensees, landlords, property managers and sellers all have a duty, if asked by a person in connection with a real estate transaction, to disclose any actually known information concerning any sex offenders. Specifically, if asked whether a particular person is required to register as a sex offender, about the location of sex offenders in a neighborhood or for any other information about the sex offender registry, the licensee, owner or property manager must disclose whatever actual knowledge he or she has on the subject.

However, the real estate licensee, owner or property manager will have immunity relating to the disclosure of such information if he or she promptly gives the person requesting the information a written notice indicating that the person may obtain the sex offender/registry information by contacting the Department of Corrections via either the Internet or by a toll-free telephone number. In other words, even if the licensee, owner or property manager knows something about sex offenders in the neighborhood, the licensee, owner or property manager will have immunity if the person asking the question is referred to the DOC. Instead of answering based upon what they have heard or read, the licensee, owner or property manager can instead just refer the person to the DOC's sex offender registry for factual and accurate information.

REALTOR® Practice Tips: For additional information about sex offenders, see *Legal Update 02.05*, "Sex Offender Registry," online at www.wra.org/LU0205, and the Sex Offenders Registry Resource page at www.wra.org/sexoffenders.

Closing of Buyer's Property Contingency (Lines 307-314)

Over the years there has been some confusion over how to handle the Sale of Buyer's Property Contingency at lines 278-286 of the 1999 Offer. At times licensees wish to remove the sale portion of the contingency, leaving the offer contingent upon closing. Others struggle with determining the beginning and the end of the bump period. Several changes have been implemented in the 2010 Offer to address these and other concerns in the provision at lines 307-314 of the 2010 Offer:

CLOSING OF BUYER'S PROPERTY CONTINGENCY: This Offer is contingent upon the closing of the sale of Buyer's property located at _____, no later than _____. If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer of acceptance. If Buyer does not deliver to Seller a written waiver of the Closing of Buyer's Property Contingency and _____ [INSERT OTHER REQUIREMENTS, IF ANY (e.g., PAYMENT OF ADDITIONAL EARNEST MONEY, WAIVER OF ALL CONTINGENCIES, OR PROVIDING EVIDENCE OF SALE OR BRIDGE LOAN, etc.)] within __ hours of Buyer's Actual Receipt of said notice, this Offer shall be null and void.

This provision assumes that although an accepted offer on the buyer's property is beneficial, at the end of the day the closing is what really counts. Accordingly, the sale component was removed, leaving the offer contingent upon only the closing of the sale of the buyer's property. In addition, the great majority of REALTORS® using the WB-11 Sale of Buyer's Property Contingency also use the Continued Marketing option (bump clause), so the DRL decided it would be helpful to combine the two provisions into one contingency. Thus, the Closing of Buyer's Property Contingency in the 2010 Offer looks only at when the sale of the buyer's property closes and automatically includes a bump clause. The starting point for the bump clause remains "within __ hours of Buyer's Actual Receipt" of the bump notice, but hopefully the use of this provision will be improved by the addition of the definition of Actual Receipt (Lines 64-65 of the 2010 Offer). Hopefully this all will provide a cleaner, clearer provision for licensees and consumers.

The statement concerning the seller's right to continue marketing

the property and accept secondary offers that was in the Sale of Buyer's Property Contingency in the 1999 Offer has been moved to the Binding Acceptance section at lines 28-29 of the 2010 Offer. This was done to emphasize that the seller's right to market the property and accept secondary offers was not tied to any contingency regarding the sale or closing of the buyer's property.

In the situation where the parties would like to have separate provisions, for example, the buyer does not have a Closing of Buyer's Property Contingency, but the seller would still like to incorporate a bump clause, then the provision would need to be included separately.

REALTOR® Practice Tips: If a party wants to have a separate bump clause in conjunction with any other provision or contingency, it will have to be inserted in additional provisions or in an addendum. A separate bump clause may be constructed by copying the second two sentences of the Closing of Buyer's Property Contingency from the 2010 Offer and substituting the name of the contingency or provision that is to be tied to the bump in place of the reference to "Closing of Buyer's Property Contingency."

Secondary Offer (Lines 315-320)

The WRA Committee and the DRL were satisfied with the Secondary Offer provision as it was in the 1999 Offer, so no changes were made in the 2010 Offer.

Pre-/Post-Closing Occupancy Provision Deleted. The provision for pre-closing and post-closing occupancies appearing on lines 293-297 of the 1999 Offer was removed from the 2010 Offer. Consequently, the WRA has revised and updated the WRA Addendum O–Occupancy Agreement. See the WRA Forms Update page at www.wra.org/formsupdate for the latest forms availability information.

Title Evidence (Lines 328-371)

Several changes have been proposed for the Title Evidence section to clarify the parties' responsibilities for ordering and paying for title insurance. The Gap Endorsement was promoted from a caution at the end of the Provision of Merchantable Title subsection to its own subsection.

Conveyance of Title (Lines 329-341). The first subsection in the Title Evidence section relates to the Conveyance of Title. The provisions regarding this topic were modified to add a title warranty exception for present uses of the property in violation of municipal and zoning ordinances, recorded deed restrictions, subdivision covenants, etc., and to clarify that the seller is responsible to prepare and execute the necessary closing documentation at the seller's cost and to pay the Wisconsin real estate transfer fee.

The WRA and DRL Committees looked at whether there was a need to include anything with regard to property condition defects as possible exceptions to title given the long discussions regarding merchantable title that occurred during the listing contract revisions. This concern was discussed in the January 2005 *Wisconsin Real Estate Magazine* article "Disclosures and Exclusions to Warranties of Title," online at http://news.wra.org/story.asp?a=36. If the use of the property (e.g., basement bedroom without required egress) violates municipal or zoning ordinances, recorded deed restrictions, subdivision covenants, etc., then it would violate the Conveyance of Title section at lines 188-193 of the 1999 Offer and the title warranty the seller gives the buyer. Even though that illegal basement bedroom should be disclosed in the RECR and/or by the broker if he or she knows about it, it should also be listed as an exception to the warranty of merchantable title in the offer (and then in the deed) because a buyer could potentially sue a seller based upon the warranty in the deed. This has happened before but it is rare. Thus, the 2010 Offer adds "present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate Condition Report and in this Offer" to the list of title exceptions allowed in the provision of merchantable title.

The DRL Real Estate Contractual Forms Advisory Committee also decided to educate the consumer by adding the statement that, "Seller shall complete and execute the documents necessary to record the conveyance at Seller's cost and pay the Wisconsin Real Estate Transfer Fee."

Title Evidence (Lines 342-345). There is no longer any reference to abstracts in this renamed subsection of the Title Evidence provisions. Consumers are often confused by the fact that there are two title insurance policies issued: the owners' policy that is provided by and paid for by the seller, and the lender's policy that is provided by and paid for by the buyer. In another effort to better educate the parties, language stating that "Seller shall pay all costs of providing title evidence to Buyer. Buyer shall pay all costs of providing title evidence required by Buyer's lender" was added.

Gap Endorsement (Lines 346-350). While the 1999 Offer cautioned the buyer to consider updating the effective date of the title commitment prior to closing or purchasing a gap endorsement, the 2010 Offer contains a new Gap Endorsement provision that requires that, "Seller shall provide a 'gap' endorsement or equivalent gap coverage at (Seller's) (Buyer's) STRIKE ONE ('Seller's' if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the title insurance commitment and before the deed is recorded, provided the title company will issue the endorsement. If a gap

endorsement or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 356-362)."

Some committee members indicated that they believed gap endorsements could not be issued for estates and foreclosures and might not be available for short sales and in other specific circumstances. Accordingly, this new provision recognizes that gap endorsements may not always be available from the title companies. When that is the case, the buyer can follow the procedures in the Title Acceptable for Closing subsection or amend the offer to provide for some other mutually agreed upon resolution. The parties are to indicate whether the gap endorsement will be provided at the seller's or buyer's expense.

Provision of Merchantable Title (Lines 351-355). The statements regarding responsibility for payment of title evidence costs and urging buyer consideration of a gap endorsement have been revised and moved to other Title Evidence subsections. The provision now requires that the title insurance commitment be delivered to the buyer's attorney or the buyer not less than five business days before closing. The 1999 Offer had provided a delivery deadline of not less than three business days before closing. The DRL felt it was better to give the buyer's attorney/buyer a longer time to review the title commitment.

Special Assessments/Other Expenses (Lines 363-371). This subsection was updated by correcting the statutory reference for impact fees, adding special charges for current services as provided in the statutes and making minor language changes.

Earnest Money (Lines 372-397)

The DRL removed the note from the Disbursement subsection that read: "(Note: Wis. Admin. Code s. RL 18.09(1)(b) provides that an offer to purchase is not a written disbursement agreement pursuant to which the broker may disburse.)." Section RL 18.09 is on the list of issues for the DRL to address because there is an apparent discrepancy between Wis. Admin. Code § RL 18.09(1)(b), which authorizes the broker to disburse from his or her trust account:

> "As directed in a written earnest money disbursement agreement signed by all parties having an interest in the trust funds. A closing statement is a written earnest money disbursement agreement for the purposes of this subsection. An offer to purchase, lease, exchange agreement or option is not a written earnest money disbursement agreement for the purpose of this subsection."

and § RL 18.09(1)(f), which authorizes the broker to disburse, "Upon authorization granted within the contract." Removal of the note from the language in the 2010 Offer will allow brokers who might have provisions in addenda or additional provisions that specify to whom the earnest money is returned under certain circumstances to stop losing sleep over the internal inconsistencies within their contracts. No other changes were made to the Earnest Money provisions.

Inspections and Testing (Lines 398-412)

The Inspections provisions and the Testing provisions in the 1999 Offer have been combined into one section with the goal of comparing and contrasting the two functions. The provisions emphasize that testing is different than inspection and that the authorization for testing needs to be established in separate contingencies designed to measure the particular substances in question.

- According to lines 399-401 of the 2010 Offer, "an 'inspection' is defined as an observation of the Property which does not include testing of the Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized." On the other hand, lines 401-402 indicate that "a 'test' is defined as the taking of samples of materials such as soils, water, air or building materials from the Property and the laboratory or other analysis of these materials."
- The 2010 Offer now gives buyers and licensees explicit permission to accompany all individuals conducting inspections and tests.
- These provisions require that the buyer provide copies of all inspection and all testing reports to the seller and listing broker without exception. This requirement covers all inspection and all testing and is completely independent from the Inspection Contingency or other provisions in the 2010 Offer.
- Appraisal inspections are now included under these provisions. Appraisers must be given "reasonable access to the Property upon advance notice, if necessary to satisfy the contingencies in this Offer" just like other inspectors and testers.
- This provision clearly states that any seller authorizations for inspections do not in any way give permission or authorization for any testing. For example, an Inspection Contingency allowing a registered home inspector to conduct a home inspection does not signal that the seller has consented to a radon test, a test for LBP, soil borings or any other manner of testing. If any testing will be conducted, a separate provision must be drafted and added to the contract via the additional provisions blank lines or in an addendum. The NOTE on lines 405-407 gives guidance on the elements to cover when drafting effective testing contingencies.

REALTOR® Practice Tips: If the buyer wants any testing – the taking of samples for lab anal-

ysis – a separate testing contingency must be included in the offer. Test results and home inspection reports are not the same thing.

Inspection Contingency

There is no doubt that the Inspection Contingency has been the source of confusion and has generated more calls to the Legal Hotline over the last 10 years than any other contract provision. While the overall process in the Inspection Contingency in the 2010 Offer has not changed substantially, several changes have been made to clarify those elements that have caused difficulties in the past. The Inspection Contingency provisions in the 2010 Offer separate the Home Inspection provision from the provision for component inspections by qualified experts. The Inspection Contingency in the 2010 Offer reminds the buyer that the home inspection, any specialized component inspections and any follow-up inspections recommended in a written inspection report must all be completed by the stated deadline. This reorganized contingency defines a "Notice of Defects" and emphasizes that a proposed amendment is not a Notice of Defects.

Inspections, Not Testing. The Inspection Contingency in the 2010 Offer begins by reminding REALTORS® and the parties that the Inspection Contingency is not the place to authorize testing. Line 413 states, "this contingency only authorizes inspections, not testing (see lines 398-412)." The blank lines within the contingency are not the place to write in tests that the buyer wishes to have performed. If the buyer wants testing, then separate provisions for those tests should be stated in the Additional Provisions sections or in addenda.

REALTOR® Practice Tips: Authorization for testing requires a separate testing contingency because the Inspection Contingency does not give the buyer the right to conduct testing of the property, for example, for asbestos or radon. A testing contingency is not created by listing such substances on the blank lines in the Inspection Contingency – this only serves to create confusion, not a successful testing provision.

Three Types of Inspection. The 2010 Offer separates the Home Inspection provision from the authorization for component inspections by qualified independent experts and adds explicit authority for follow-up inspections.

(1) Home Inspections. Lines 413-415 provide: "This Offer is contingent upon a Wisconsin registered home inspector performing a home inspection of the Property which discloses no Defects."

(2) Component Inspections. Lines 415-418 provide: "This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing an inspection of _____ (list any Property component(s) to be separately inspected, e.g., swimming pool, roof, foundation, chimney, etc.)."

The language calling for specialized experts to inspect particular property components is now in a separate sentence because it was confusing when it was blended together with the home inspection in the 1999 Inspection Contingency. There also is a parenthetical prompt after the blank line to remind drafting licensees of the purpose of the long blank line in the contingency. This is not a place to insert "entire premises" or tests. This blank line is for the buyer to state the specific property components or items they would prefer to have inspected by a specialist or that require expertise beyond that of a registered home inspector, for example, a swimming pool, roof or foundation.

The component inspections are to be performed by a qualified independent inspector or independent qualified third party. Component inspections accordingly must be performed by an individual who is both qualified and independent.

The term "qualified 3rd party" comes from Wis. Stat. § 452.23(2)(b), which provides that licensees do not need to disclose "information relating to the physical condition of the property or any other information relating to the real estate transaction, if a written report that discloses the information has been prepared by a qualified 3rd party and provided to the person. In this paragraph, 'qualified 3rd party' means a federal, state or local governmental agency, or any person whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the 3rd party in order to prepare the written report."

Both the WRA and DRL Committees also believed that it was important that the component inspector be independent – not related to the parties or the brokers in the transaction and thus capable of objective, unbiased evaluation.

(3) Follow-Up Inspections. Lines 303-305 of the 1999 Offer allude to follow-up inspections, but no procedures or timelines are given. It is very confusing when the home inspector recommends follow-up inspections but there is no guidance regarding deadlines and the buyer's ability to give a notice of defects with regard to the follow-up inspection reports. Home inspectors recommend follow-up inspections on a regular basis and it would seem that a buyer should have the ability to have these done without relying upon the willingness of the seller to amend the offer to allow the follow-up inspections or agree to an extended notice of defects deadline.

Accordingly, lines 419-420 of the 2010 Offer indicate that "Buyer may

have follow-up inspections recommended in a written report resulting from an authorized inspection performed provided they occur prior to the deadline specified at line 423." In other words, a buyer may have a follow-up inspection if a written inspection report from the Wisconsin-registered home inspector or a component inspector recommends that additional inspections be performed.

All inspections must be ordered by the buyer and are at the buyer's cost, as provided at lines 418-419. In addition, all home inspections, component/specialized inspections and any follow-up/additional inspections recommended by the home inspector or the other qualified independent inspectors must be completed, and any notice of defects be given by the deadline stated at line 423.

Timing. The 2010 Offer reminds the buyer that the home inspection, any specialized component inspections and any follow-up inspections recommended in a written inspection report must all be completed by the stated deadline. The caution on lines 421-422 warns, "CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as well as any follow-up inspection(s)." It is critical that the buyer allow adequate time in the Inspection Contingency so that the home inspection, any component inspections and any follow-up inspections can all be conducted; the inspectors can render their written reports and the buyer can determine whether to give a notice of defects, propose an amendment or accept the property in its present condition. In addition, the buyer will not have the authorization to perform follow-up inspections until the buyer receives the written inspection reports from the home inspector and component inspectors to see what they have formally recommended. Often buyers provide too short of a time period that does not give them enough time to have the inspection, receive a report, have follow-up inspections, and then address the entire notice of defects and right to cure process or fashion a specific customized remedy via an amendment.

> **REALTOR® Practice Tips:** The single most important thing when drafting an inspection contingency is to give the parties enough time to accomplish the home and component inspections and any follow-up inspections, review the inspection reports and engage in back-and-forth negotiations before the buyer decides whether to give a notice of defects. Think long! Give the parties as much time as possible to accomplish this critical phase of the home sale process.

Notice of Defects Defined. Lines 423-425 of the 2010 Offer explain that the Inspection Contingency "shall be deemed satisfied unless Buyer, within __ days of acceptance, delivers to Seller, and to listing broker if Property is listed, a copy of the written inspection report(s) and a written notice listing the Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects)." Thus, this provision defines a Notice of Defects as the written notice that lists the defects from the written inspection reports to which the buyer objects. The home inspection, component and follow-up inspection reports each may discuss numerous aspects of the property and list one or more defects. It is up to the buyer to decide which, if any, of those listed defects are a source of concern to the buyer such that the buyer wants to list them in the Notice of Defects.

A REALTOR® would prepare a Notice of Defects using a WB-41 Notice Relating to Offer to Purchase by listing the defects mentioned in the written inspection reports to which the buyer objects. This notice would then be delivered to the seller and the listing broker, accompanied by copies of all of the written inspection reports, by the deadline stated in line 423.

> **REALTOR® Practice Tips:** A Notice of Defects goes on a WB- 41 Notice Relating to Offer to Purchase. It is extremely helpful if it is prepared to identify what it is – "This is a Notice of Defects." The Notice of Defects just lists the defects. A Notice of Defects does not specify the details of the seller's repairs (that would require an amendment). A copy of the inspection report(s) must accompany a Notice of Defects. Note that this means the entire inspection report – the inspection contingency does not provide for the submission of just the summary pages.

If the seller does not have a right to cure the defects listed in the buyer's Notice of Defects, the fact that the buyer is giving that Notice of Defects means that the buyer is ending the transaction and causing the offer to become null and void. On the other hand, if the seller does have the right to cure, then the buyer is giving the seller the opportunity to cure those defects in a good and workmanlike manner. The seller also might respond with a proposed amendment if the seller wants to repair less than all of the defects listed in the buyer's Notice of Defects or wants to suggest another way to address the buyer's concerns.

Amendment Not a Notice of Defects. Line 426 of the 2010 Offer states, "CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement." Licensees and parties often seem to have difficulty understanding the distinction between a Notice of Defects and a proposed amendment. While a buyer may choose to give a Notice of Defects as described in the Inspection Contingency, or may choose instead to propose an amendment to suggest a different way to address the defects that concern the buyer, each performs a distinct function and they

are not interchangeable. If the buyer wants to propose an amendment, for example, for a price reduction rather than having the seller repair the leaking crack in the basement, the buyer may do so but must be very careful to ensure that there will be enough time to give a Notice of Defects or take other action if the seller does not accept the proposed amendment.

> **REALTOR® Practice Tips:** A Notice of Defects goes on a WB- 41 Notice Relating to Offer to Purchase. A WB-40 Amendment to Offer to Purchase will not work for a Notice of Defects. Using a WB-40 will be subject to challenge by the seller as non-compliant with the stated contract procedures and requirements and will likely result in the buyer being unable to object to defects and having to purchase the property in its present condition without any seller repairs.

Definition of Defects. "Defects" is no longer defined within the Inspection Contingency and is instead defined in the Definitions section on Page 4 of the 2010 Offer. Line 427 in the Inspection Contingency reminds everyone that there is an applicable definition on lines 182-184. As was the case in the 1999 Offer, for the purpose of the Inspection Contingency, defects do not include structural, mechanical or other conditions the nature and extent of which the buyer had actual knowledge or written notice of before signing the offer. If the buyer knew the full nature and extent of the roof damage, for instance, before the buyer signed the offer, then the buyer may not list the roof damage on a Notice of Defects.

Right to Cure. The Right to Cure section in the 2010 Offer retains the same process and procedures that were present in the 1999 Offer with a couple of minor exceptions:

1. It is specified that a seller's "notice of election to cure" must be written.
2. The seller's 10-day response period is measured from the buyer's delivery rather than the seller's receipt of the Notice of Defects.

Signatures (Lines 446-463)

The blank lines asking for the parties' Social Security numbers have been deleted from the 2010 Offer. However, the parties need to provide this information at some point so that it may be used to complete the Wisconsin Real Estate Transfer Return for the closing. The state of Wisconsin requires that the Social Security numbers of the seller and the buyer appear on the transfer return. If a party wants to keep his or her Social Security number confidential until required for the transfer return, the party may either (1) provide the number to his or her agent as confidential information, together with the direction that it can be made available only to the person preparing the transfer return for the closing, or (2) make arrangements to provide the number to the closing agent at closing.

WB-11 RESIDENTIAL OFFER TO PURCHASE

LICENSEE DRAFTING THIS OFFER ON _____ [DATE] IS (AGENT OF BUYER) (AGENT OF SELLER/LISTING BROKER) (AGENT OF BUYER AND SELLER) STRIKE ONES NOT APPLICABLE

GENERAL PROVISIONS The Buyer, _____, offers to purchase the Property known as [Street Address] _____ in the _____ of _____, County of _____ Wisconsin (Insert additional description, if any, at lines 165-172 or 438-444 or attach as an addendum per line 436), on the following terms:

■ PURCHASE PRICE: _____ Dollars ($_____).

■ EARNEST MONEY of $ _____accompanies this Offer and earnest money of $ _____ will be mailed, or commercially or personally delivered within _____ days of acceptance to listing broker or _____.

■ THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise provided below.

■ INCLUDED IN PURCHASE PRICE: Seller is including in the Purchase Price the Property, all Fixtures on the Property on the date of this Offer not excluded at lines 17-18, and the following additional items: _____.

■ NOT INCLUDED IN PURCHASE PRICE: _____.

CAUTION: Identify Fixtures that are on the Property (see lines 185-195) to be excluded by Seller or which are rented and will continue to be owned by the lessor.

NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are included/excluded.

ACCEPTANCE Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical copies of the Offer.

CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines running from acceptance provide adequate time for both binding acceptance and performance.

BINDING ACCEPTANCE This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or before _____. Seller may keep the Property on the market and accept secondary offers after binding acceptance of this Offer.

CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.

OPTIONAL PROVISIONS TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX (☐) ARE PART OF THIS OFFER ONLY IF THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OFFER IF MARKED N/A OR ARE LEFT BLANK.

DELIVERY OF DOCUMENTS AND WRITTEN NOTICES Unless otherwise stated in this Offer, delivery of documents and written notices to a Party shall be effective only when accomplished by one of the methods specified at lines 36-55.

(1) Personal Delivery: giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at lines 50 or 53.

☐ (2) Commercial Delivery: depositing the document or written notice fees prepaid or charged to an account with a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at lines 50 or 53 for delivery to the Party's delivery address at lines 51 or 54.

☐ (3) Fax: fax transmission of the document or written notice to the following telephone number:
Buyer: (_____) _____ Seller: (_____) _____

☐ (4) U.S. Mail: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the Party, or to the Party's recipient for delivery if named at lines 50 or 53 for delivery to the Party's delivery address at lines 51 or 54.

☐ (5) E-Mail: electronically transmitting the document or written notice to the party's e-mail address, if given below at lines 52 or 55. If this is a consumer transaction where the property being purchased is used primarily for personal, family or household purposes, each consumer providing an e-mail address below has first consented electronically to the use of electronic documents, e-mail delivery and electronic signatures in the transaction, as required by federal law.

Seller's recipient for delivery (optional): _____
Delivery address for Seller: _____
E-Mail address for Seller (optional): _____
Buyer's recipient for delivery (optional): _____
Delivery address for Buyer: _____
E-Mail address for Buyer (optional): _____

PERSONAL DELIVERY/ACTUAL RECEIPT Personal Delivery to, or Actual Receipt by, any named Buyer or Seller constitutes Personal Delivery to, or Actual Receipt by all Buyers or Sellers.

OCCUPANCY Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Offer at lines 165-172 or 438-444 or in an addendum attached per line 436. At time of Buyer's occupancy, Property shall be in broom swept condition and free of all debris and personal property except for personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent. Occupancy shall be given subject to tenant's rights, if any.

DEFINITIONS

■ ACTUAL RECEIPT**:** "Actual receipt" means 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.

■ CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION**:** "Conditions affecting the Property or transaction" are defined to include:

a. Defects in the roof.
b. Defects in the electrical system.
c. Defects in part of the plumbing system (including the water heater, water softener and swimming pool) that is included in the sale.
d. Defects in the heating and air conditioning system (including the air filters and humidifiers).
e. Defects in the well, including unsafe well water.
f. Property is served by a joint well.
g. Defects in the septic system or other sanitary disposal system.
h. Underground or aboveground fuel storage tanks on or previously located on the property. (If "yes", the owner, by law, may have to register the tanks with the Department of Commerce at P.O. Box 7970, Madison, Wisconsin, 53707, whether the tanks are in use or not. Regulations of the Department of Commerce may require the closure or removal of unused tanks.)
i. "LP" tank on the property (specify in the additional information whether the tank is owned or leased).
j. Defects in the basement or foundation (including cracks, seepage and bulges).
k. Property is located in a floodplain, wetland or shoreland zoning area.
l. Defects in the structure of the Property.
m. Defects in mechanical equipment included in the sale either as Fixtures or personal property.
n. Boundary or lot line disputes, encroachments or encumbrances (including a joint driveway).
o. Defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, lead in paint, lead in soil, lead in water supplies or plumbing system, or other potentially hazardous or toxic substances on the Property. **NOTE: specific federal lead paint disclosure requirements must be complied with in the sale of most residential properties built before 1978.**
p. Presence of asbestos or asbestos-containing materials on the Property.
q. Defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic substances on neighboring properties.
r. Current or previous animal, insect, termite, powder-post beetle or carpenter ant infestations.
s. Defects in a wood burning stove or fireplace or of defects caused by a fire in a stove or fireplace or elsewhere on the Property.
t. Remodeling affecting the Property's structure or mechanical systems or additions to Property during Seller's ownership without required permits.
u. Federal, state, or local regulations requiring repairs, alterations or corrections of an existing condition.
v. Notice of property tax increases, other than normal annual increases, or pending property reassessment.
w. Remodeling that may increase Property's assessed value.
x. Proposed or pending special assessments.
y. Property is located within a special purpose district, such as a drainage district, that has the authority to impose assessments against the real property located within the district.
z. Proposed construction of a public project that may affect the use of the Property.
aa. Subdivision homeowners' associations, common areas co-owned with others, zoning violations or nonconforming uses, rights-of-way, easements or another use of a part of the Property by non-owners, other than recorded utility easements.
bb. Structure on the Property is designated as an historic building or part of the Property is in an historic district.
cc. Any land division involving the Property for which required state or local permits had not been obtained
dd. Violation of applicable state or local smoke detector laws; **NOTE: State law requires operating smoke detectors on all levels of all residential properties.**
ee. High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property.
ff. Other defects affecting the Property.

(**Definitions Continued on page 4)**

CLOSING This transaction is to be closed no later than _____, _____ at the place selected by Seller, unless otherwise agreed by the Parties in writing.

CLOSING PRORATIONS The following items, if applicable, shall be prorated at closing, based upon date of closing values: real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owner's association assessments, fuel and _____.

CAUTION: Provide basis for fuel prorations if date of closing value will not be used.

Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing. Net general real estate taxes (defined as general property taxes after state tax credits and lottery credits are deducted) shall be prorated at closing based on [CHECK BOX FOR APPLICABLE PRORATION FORMULA]:

☐ The net general real estate taxes for the preceding year, or the current year if available (NOTE: THIS CHOICE APPLIES IF NO BOX IS CHECKED)

☐ Current assessment times current mill rate (current means as of the date of closing)

☐ Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior year, or current year if known, multiplied by current mill rate (current means as of the date of closing)

☐ _____.

CAUTION: Buyer is informed that the actual real estate taxes for the year of closing and subsequent years may be substantially different than the amount used for proration especially in transactions involving new construction, extensive rehabilitation, remodeling or area-wide re-assessment. Buyer is encouraged to contact the local assessor regarding possible tax changes.

☐ Buyer and Seller agree to re-prorate the real estate taxes, within 30 days after the actual tax bill is received for the year of closing, with Buyer and Seller each owing his or her pro-rata share. Buyer and Seller agree this is a post-closing obligation and is the responsibility of the Parties to complete, not the responsibility of the real estate brokers in this transaction.

LEASED PROPERTY If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written) (oral) STRIKE ONE lease(s), if any, are _____ _____. Insert additional terms, if any, at lines 165-172 or 438-444 or attach as an addendum per line 436.

RENTAL WEATHERIZATION This transaction (is) (is not) STRIKE ONE exempt from State of Wisconsin Rental Weatherization Standards (Wis. Admin. Code Ch. Comm 67). (Buyer) (Seller) STRIKE ONE ("Buyer" if neither is stricken) will be responsible for compliance, including all costs, with applicable Rental Weatherization Standards (Wis. Admin. Code Ch. Comm 67). If Seller is responsible for compliance, Seller shall provide a Certificate of Compliance at closing.

REAL ESTATE CONDITION REPORT Wisconsin law requires owners of property which includes 1-4 dwelling units to provide Buyers with a Real Estate Condition Report. Excluded from this requirement are sales of property that has never been inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for example, personal representatives who have never occupied the Property). The form of the Report is found in Wis. Stat. § 709.03. The law provides: "§ 709.02 Disclosure . . . the owner of the property shall furnish, not later than 10 days after acceptance of the contract of sale . . ., to the prospective Buyer of the property a completed copy of the report . . . A prospective Buyer who does not receive a report within the 10 days may, within 2 business days after the end of that 10 day period, rescind the contract of sale . . . by delivering a written notice of rescission to the owner or the owner's agent." Buyer may also have certain rescission rights if a Real Estate Condition Report disclosing defects is furnished before expiration of the 10 days, but after the Offer is submitted to Seller. Buyer should review the report form or consult with an attorney for additional information regarding rescission rights.

PROPERTY CONDITION REPRESENTATIONS Seller represents to Buyer that as of the date of acceptance Seller has no notice or knowledge of conditions affecting the Property or transaction (lines 66-113) other than those identified in Seller's Real Estate Condition Report dated _____, which was received by Buyer prior to Buyer signing this Offer and which is made a part of this Offer by reference COMPLETE DATE OR STRIKE AS APPLICABLE and

_____
_____
_____
_____ INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT

ADDITIONAL PROVISIONS/CONTINGENCIES _____
_____
_____
_____
_____
_____
_____
_____

DEFINITIONS CONTINUED FROM PAGE 2

■ DEADLINES: **"**Deadlines" expressed as a number of "days'' from an event, such as acceptance, are calculated by excluding the day the event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day. Deadlines expressed as a specific number of "business days" exclude Saturdays, Sundays, any legal public holiday under Wisconsin or Federal law, and other day designated by the President such that the postal service does not receive registered mail or make regular deliveries on that day. Deadlines expressed as a specific number of "hours" from the occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as closing, expire at midnight of that day.

■ DEFECT: "Defect" means 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 expected normal life of the premises**.**

■ FIXTURE: A "Fixture" is an item of property which is physically attached to or so closely associated with land or improvements so as to be treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises, items specifically adapted to the premises and items customarily treated as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and cooling units and attached equipment; water heaters and treatment systems; sump pumps; attached or fitted floor coverings; awnings; attached antennas; garage door openers and remote controls; installed security systems; central vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; storage buildings on permanent foundations and docks/piers on permanent foundations.

CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water conditioning systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines 17-18.

■ PROPERTY: Unless otherwise stated, "Property" means the real estate described at lines 4-6.

PROPERTY DIMENSIONS AND SURVEYS Buyer acknowledges that any land, building or room dimensions, or total acreage or building square footage figures, provided to Buyer by Seller or by a broker, may be approximate because of rounding or other reasons, unless verified by survey or other means. Buyer also acknowledges that there are various formulas used to calculate total square footage of buildings and that total square footage figures will vary dependent upon the formula used.

CAUTION: Buyer should verify total square footage formula, total square footage/acreage figures, land, building or room dimensions, if material.

BUYER'S PRE-CLOSING WALK-THROUGH Within 3 days prior to closing, at a reasonable time pre-approved by Seller or Seller's agent, Buyer shall have the right to walk through the Property to determine that there has been no significant change in the condition of the Property, except for ordinary wear and tear and changes approved by Buyer, and that any defects Seller has agreed to cure have been repaired in the manner agreed to by the Parties**.**

PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING Seller shall maintain the Property until the earlier of closing or occupancy of Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary wear and tear. If, prior to closing, the Property is damaged in an amount of not more than five percent (5%) of the selling price, Seller shall be obligated to repair the Property and restore it to the same condition that it was on the day of this Offer. No later than closing, Seller shall provide Buyer with lien waivers for all repairs and restoration. If the damage shall exceed such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds**,** if any, relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring the Property.

IF LINE 219 IS NOT MARKED OR IS MARKED N/A LINES 259-265 APPLY.

☐ **FINANCING CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written _____ [INSERT LOAN PROGRAM OR SOURCE] first mortgage loan commitment as described below, within _____ days of acceptance of this Offer. The financing selected shall be in an amount of not less than $ _____ for a term of not less than _____ years, amortized over not less than _____ years. Initial monthly payments of principal and interest shall not exceed $ _____.___. Monthly payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance premiums. The mortgage may not include a prepayment premium. Buyer agrees to pay discount points and/or loan origination fee in an amount not to exceed _____% of the loan. If the purchase price under this Offer is modified, the financed amount, unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments shall be adjusted as necessary to maintain the term and amortization stated above.

CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 230 or 231.

☐ **FIXED RATE FINANCING:** The annual rate of interest shall not exceed _____%.

☐ **ADJUSTABLE RATE FINANCING:** The initial annual interest rate shall not exceed _____%. The initial interest rate shall be fixed for _____ months, at which time the interest rate may be increased not more than _____% per year. The maximum interest rate during the mortgage term shall not exceed _____%. Monthly payments of principal and interest may be adjusted to reflect interest changes.

If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 165-172 or 438-444 or in an addendum attached per line 436.

■ BUYER'S LOAN COMMITMENT: Buyer agrees to pay all customary loan and closing costs, to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. If Buyer qualifies for the loan described in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline at line 220. **Buyer and Seller agree that delivery of a copy of any written loan commitment to Seller (even if subject to conditions) shall satisfy Buyer's financing contingency if, after review of the loan commitment, Buyer has directed, in writing, delivery of the loan commitment. Buyer's written direction shall accompany the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability.**

CAUTION: The delivered commitment may contain conditions Buyer must yet satisfy to obligate the lender to provide the loan. BUYER, BUYER'S LENDER AND AGENTS OF BUYER OR SELLER SHALL NOT DELIVER A LOAN COMMITMENT TO SELLER OR SELLER'S AGENT WITHOUT BUYER'S PRIOR WRITTEN APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.

■ SELLER TERMINATION RIGHTS: If Buyer does not make timely delivery of said commitment; Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written loan commitment.

■ FINANCING UNAVAILABILITY: If financing is not available on the terms stated in this Offer (and Buyer has not already delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of same including copies of lender(s)' rejection letter(s) or other evidence of unavailability. Unless a specific loan source is named in this Offer, Seller shall then have 10 days to deliver to Buyer written notice of Seller's decision to finance this transaction on the same terms set forth in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's notice is not timely given, this Offer shall be null and void. Buyer authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

■ IF THIS OFFER IS NOT CONTINGENT ON FINANCING: Buyer shall provide Seller within 7 days of acceptance written evidence from a financial institution or a third party in control of the funds, that Buyer shall have the required funds available at closing. If Buyer does not provide written evidence, Seller has the right to terminate this Offer by delivering written notice to Buyer. Buyer may or may not obtain mortgage financing but does not need the protection of a financing contingency. Seller agrees to allow Buyer's appraiser access to the Property for purposes of an appraisal. Buyer understands and agrees that this Offer is not subject to the appraisal meeting any particular value, unless this Offer is subject to an appraisal contingency, nor does the right of access for an appraisal constitute a financing contingency.

☐ **APPRAISAL CONTINGENCY:** This Offer is contingent upon the Buyer or a lender of Buyer's choice having the Property appraised by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated subsequent to the date of this Offer indicating an appraised value for the Property equal to or greater than the agreed upon purchase price. This contingency shall be deemed satisfied unless Buyer, within _____ days of acceptance, delivers to Seller, and to listing broker if Property is listed, a copy of the appraisal report which indicates that the appraised value is not equal to or greater than the agreed upon purchase price**.** If the appraisal report does not indicate an appraised value for the Property equal to or greater than the agreed upon purchase price, Buyer may terminate this Offer upon written notice to Seller.

CAUTION: An appraisal ordered by Buyer's lender may not be received until shortly before closing. Consider whether deadlines provide adequate time for performance.

DISTRIBUTION OF INFORMATION Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing service sold databases; and (iii) provide active listing, pending sale, closed sale and financing concession information and data**,** and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching comparable sales, market conditions and listings**,** upon inquiry.

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

If Buyer defaults, Seller may:

(1) sue for specific performance and request the earnest money as partial payment of the purchase price; or

(2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual damages.

If Seller defaults, Buyer may:

(1) sue for specific performance; or

(2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

In addition, the Parties may seek any other remedies available in law or equity.

The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the discretion of the courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes covered by the arbitration agreement.

NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS DOCUMENT CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT CLOSING. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.

ENTIRE CONTRACT This Offer, including any amendments to it, contains the entire agreement of the Buyer and Seller regarding the transaction. All prior negotiations and discussions have been merged into this Offer. This agreement binds and inures to the benefit of the Parties to this Offer and their successors in interest.

NOTICE ABOUT SEX OFFENDER REGISTRY You may obtain information about the sex offender registry and persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at http://www.widocoffenders.org or by telephone at (608) 240-5830.

☐ **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at _____, no later than _____. If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer of acceptance. If Buyer does not deliver to Seller a written waiver of the Closing of Buyer's Property Contingency and _____ _____ **[INSERT OTHER REQUIREMENTS, IF ANY (e.g., PAYMENT OF ADDITIONAL EARNEST MONEY, WAIVER OF ALL CONTINGENCIES, OR PROVIDING EVIDENCE OF SALE OR BRIDGE LOAN, etc.)]** within ____ hours of Buyer's Actual Receipt of said notice, this Offer shall be null and void.

☐ **SECONDARY OFFER:** This Offer is secondary to a prior accepted offer. This Offer shall become primary upon delivery of written notice to Buyer that this Offer is primary. Unless otherwise provided, Seller is not obligated to give Buyer notice prior to any deadline, nor is any particular secondary buyer given the right to be made primary ahead of other secondary buyers. Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller prior to delivery of Seller's notice that this Offer is primary. Buyer may not deliver notice of withdrawal earlier than _____ days after acceptance of this Offer. All other Offer deadlines which are run from acceptance shall run from the time this offer becomes primary.

TIME IS OF THE ESSENCE "Time is of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3) occupancy; (4) date of closing; (5) contingency deadlines STRIKE AS APPLICABLE and all other dates and deadlines in this Offer except:_____ _____ _____. If "Time is of the Essence" applies to a date or deadline, failure to perform by the exact date or deadline is a breach of contract. If "Time is of the Essence" does not apply to a date or deadline, then performance within a reasonable time of the date or deadline is allowed before a breach occurs.

TITLE EVIDENCE

■ CONVEYANCE OF TITLE: **Upon payment of the purchase price, Seller shall convey the Property by warranty deed (or other conveyance as provided herein)** free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate Condition Report and in this Offer, general taxes levied in the year of closing and _____ _____ _____ _____ which constitutes merchantable title for purposes of this transaction. Seller shall complete and execute the documents necessary to record the conveyance at Seller's cost and pay the Wisconsin Real Estate Transfer Fee.

WARNING: Municipal and zoning ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or uses and therefore should be reviewed, particularly if Buyer contemplates making improvements to Property or a use other than the current use.

■ TITLE EVIDENCE: Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall pay all costs of providing title evidence to Buyer. Buyer shall pay all costs of providing title evidence required by Buyer's lender.

■ GAP ENDORSEMENT: Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's) STRIKE ONE ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the title insurance commitment and before the deed is recorded, provided the title company will issue the endorsement. If a gap endorsement or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 356-362).

■ PROVISION OF MERCHANTABLE TITLE: For purposes of closing, title evidence shall be acceptable if the required title insurance commitment is delivered to Buyer's attorney or Buyer not less than 5 business days before closing, showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines 329-337, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

■ TITLE NOT ACCEPTABLE FOR CLOSING: If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title by the time set for closing. In such event, Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event that Seller is unable to remove said objections, Buyer shall have 5 days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

■ SPECIAL ASSESSMENTS/OTHER EXPENSES: Special assessments, if any, levied or for work actually commenced prior to date of this Offer shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer.

CAUTION: Consider a special agreement if area assessments, property owner's association assessments, special charges for current services under Wis. Stat. § 66.0627 or other expenses are contemplated. "Other expenses" are one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments) relating to curb, gutter, street, sidewalk, municipal water, sanitary and storm water and storm sewer (including all sewer mains and hook-up/connection and interceptor charges), parks, street lighting and street trees, and impact fees for other public facilities, as defined in Wis. Stat. § 66.0617(1)(f).

EARNEST MONEY

■ HELD BY: Unless otherwise agreed, earnest money shall be paid to and held in the trust account of the listing broker (Buyer's agent if Property is not listed or Seller's account if no broker is involved), until applied to purchase price or otherwise disbursed as provided in the Offer.

CAUTION: Should persons other than a broker hold earnest money, an escrow agreement should be drafted by the Parties or an attorney. If someone other than Buyer makes payment of earnest money, consider a special disbursement agreement.

■ DISBURSEMENT: If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after clearance from payor's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to broker within 60 days after the date set for closing, broker may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; or (4) any other disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to exceed $250, prior to disbursement.

■ LEGAL RIGHTS/ACTION: Broker's disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by broker. At least 30 days prior to disbursement per (1) or (4) above, broker shall send Buyer and Seller notice of the disbursement by certified mail. If Buyer or Seller disagree with broker's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with 1-4 dwelling units and certain other earnest money disputes. Buyer and Seller should consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the broker harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable Department of Regulation and Licensing regulations concerning earnest money. See Wis. Adm. Code Ch. RL 18.

INSPECTIONS AND TESTING Buyer may only conduct inspections or tests if specific contingencies are included as a part of this offer. An "inspection" is defined as an observation of the Property which does not include testing of the Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized. A "test" is defined as the taking of samples of materials such as soils, water, air or building materials from the Property and the laboratory or other analysis of these materials. Seller agrees to allow Buyer's inspectors, testers and appraisers reasonable access to the Property upon advance notice, if necessary to satisfy the contingencies in this Offer. Buyer and licensees may be present at all inspections and testing. Except as otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the Property. NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the test, (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other material terms of the contingency. Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed unless otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller, and to listing broker if Property is listed. Seller acknowledges that certain inspections or tests may detect environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

☐ **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 398-412). This Offer is contingent upon a Wisconsin registered home inspector performing a home inspection of the Property which discloses no Defects. This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing an inspection of _____ _____ (list any Property component(s) to be separately inspected, e.g., swimming pool, roof, foundation, chimney, etc.) which discloses no Defects. Buyer shall order the inspection(s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection performed provided they occur prior to the deadline specified at line 423.

CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as well as any follow-up inspection(s).

This contingency shall be deemed satisfied unless Buyer, within _____ days of acceptance, delivers to Seller, and to listing broker if Property is listed, a copy of the written inspection report(s) and a written notice listing the Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.

For the purposes of this contingency, Defects (see lines 182-184) do not include structural, mechanical or other conditions the nature and extent of which Buyer had actual knowledge or written notice before signing this Offer.

■ **RIGHT TO CURE:** Seller (shall)(shall not) STRIKE ONE have a right to cure the Defects. (Seller shall have a right to cure if no choice is indicated.) If Seller has right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within 10 days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects, (2) curing the Defects in a good and workmanlike manner and (3) delivering to Buyer a written report detailing the work done within 3 days prior to closing. This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not cure or (b) Seller does not timely deliver the written notice of election to cure.

☐ **ADDENDA:** The attached _____ is/are made part of this Offer.

ADDITIONAL PROVISIONS/CONTINGENCIES

_____
_____
_____
_____
_____
_____
_____

This Offer was drafted on_____, _____ [date] by [Licensee and Firm] _____

(x) _____
Buyer's Signature▲ Print Name Here► Date▲

(x) _____
Buyer's Signature▲ Print Name Here► Date▲

EARNEST MONEY RECEIPT Broker acknowledges receipt of earnest money as per line 10 of the above Offer.

_____ Broker (By) _____

SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.

(x) _____
Seller's Signature▲ Print Name Here► Date▲

(x) _____
Seller's Signature▲ Print Name Here► Date▲

This Offer was presented to Seller by [Licensee and Firm] _____ on

_____ at _____ a.m./p.m.

This Offer is rejected _____ _____ This Offer is countered [See attached counter] _____ _____
Seller Initials▲ Date▲ Seller Initials▲ Date▲

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