



LEGAL UPDATE

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A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

The 2021 WB-15 Commercial Offer to Purchase Revisions

The WB-15 Commercial Offer to Purchase (WB-15) received a major overhaul in 2021. The Real Estate Examining Board (REEB) approved the WB-15 with an optional use date of January 1, 2021, and mandatory use date of February 1, 2021. This *Legal Update* is intended to provide insight into those changes.

Whenever WB offer to purchase forms are modified, the WB-11 Residential Offer to Purchase historically receives the first series of updates because the residential form is the most frequently used by Wisconsin real estate licensees as well as consumers. Therefore, once the WB-11 is updated, typically the remaining offers to purchase are updated by frequency of use and incorporate many of the applicable changes made in the WB-11, allowing for the WB offers to have as much consistency as possible while maintaining each form's respective uniqueness.

Thus, the WB-15 Commercial Offer to Purchase, like all of the recently modified WB offers to purchase are laid out to reflect the flow of the transaction. While this transactional flow offers a more intuitive transaction document, it does create a longer form, making the 2021 WB-15 12 pages. This *Legal Update* will provide an analysis of the provisions and language modified in the 2021 WB-15. For this reason, if the *Legal Update* does not discuss a section in the 2021 WB-15, that is because the language was not substantially modified from the 2012 WB-15 and those provisions are more deeply discussed in the March 2012 *Legal Update* at www.wra.org/LU0312.

To see the 2012 WB-15 in its entirety with the changes highlighted, visit www.wra.org/formsupdate.

2021 WB-15 Commercial Offer to Purchase

The majority of the first page of the 2021 WB-15 did not receive substantial changes but rather simple updates such as clarification on lines 19-20 that "Not included in the purchase price is Seller's personal property (unless excluded on lines 12-15) and the following," as well as the relocation of the definition of fixture to be closer to the included/not included section for ease of use.

Closing (lines 44-51)

This provision calls for the parties to write in a specific date as the closing date in the blank line provided. The 2012 WB-15 previously

provided the closing date as "on or before _____." Further, the new provision provides if the date falls on a Saturday, Sunday, or federal or state holiday, the closing will be held on the next business day.

Wire fraud warning

The danger of wire transfer fraud and other cybercrimes have led to the inclusion of a wire fraud warning in the caution immediately following the Closing provision. The caution tells the parties they should personally contact the title company or other party hosting the closing to independently verify the details of any wire transfer, that this contact should be by telephone or in person and that it is the responsibility of the parties and not the licensees in the transaction.



REALTOR® Practice Tip

For more information about wire fraud, see the WRA's LegalTalks at www.wra.org/LegalTalks/WireTransferFraud.

Earnest Money (lines 52-84)

Line 53 indicates the amount of any earnest money accompanying the offer. Line 54 states, "If Offer was drafted by a licensee, receipt of the earnest money accompanying this Offer is acknowledged." This language is intended to replace the earnest money receipt content in the 2012 Offer. The 2021 WB-15 automatically complies with this requirement if the agent drafting the offer has received earnest money.

If there is no earnest money accompanying the offer, then there will be no amount on line 53 and line 54 will not apply.

Delivery of earnest money after acceptance (lines 59-63)

When it comes to a party paying earnest money after acceptance of the offer, lines 55-56 allow the buyer to deliver the earnest money electronically, if the buyer prefers, instead of mailing the earnest money, having it commercially delivered or personally delivering the funds. Line 56 provides a default of five days after acceptance if nothing is filled in on the blank line.

Lines 57-62 identify for who will hold the earnest money. The offer allows the funds will be held by the person named on lines 57-59. The offer presumes the person to whom the earnest money is delivered will hold the funds throughout the transaction. If that is not the case, then

other language may need to be written into the offer. A default is provided as to whom the buyer will deliver the earnest money to and who will hold it during the transaction. In addition, the terminology refers to the “drafting Firm” to be more accurate and easier to understand. “Drafting Firm” has not been previously used in the forms and is not defined but may make sense to the parties as well as licensees. Everyone should be able to understand what it means – the real estate firm that has drafted the offer. In addition, the language includes “other identified as _____.” “Other” might be a title company the listing firm uses for holding earnest money in transactions. In some markets, designating a title company to hold the earnest money instead of a real estate firm, requires the drafter to make choices and strike out the language that does not apply.

Escrow agreement if money not held by firm

In the caution on lines 60-62, the parties are urged to have an escrow agreement drafted if someone other than a firm holds the earnest money because the offer provisions for disbursement of earnest money on lines 64-74 apply only to disbursements by a real estate firm. If a third person such as a title company holds the money, there are no automatic rules stating when the money is disbursed and to whom. In the absence of such provisions, third persons like title companies may require the signature of both parties before they will disburse, which tends to defeat the purpose of having an escrow agreement to establish an automatic mechanism and predetermined standards.

Earnest money disbursement by firm (lines 71-81)

The Disbursement subsection, now called Disbursement If Earnest Money Held By A Firm, clarifies the provisions on lines 64-74 only apply if the earnest money was held by a firm. The 2021 WB-15 eliminated the Held By subsection in the Earnest Money section because it was seen as repetitive.



“Conditions Affecting Property or Transaction” (lines 104-173)

This section now appears immediately after the Property Condition Representations section. The content of the definition has been modified so it matches the content of the updated Real Estate Condition Report (RECR) that was required for use beginning July 1, 2018, as well as anticipated legislation being pursued by the WRA during the 2021-2022 legislative session.

Restating these items in the definition of Conditions Affecting the Property or Transaction encourages sellers to make disclosures or explain why they are not doing so, eg., an “as is” sale. This supports the philosophy of Wis. Stat. Ch. 709 to encourage seller disclosure regarding the condition of the property. The seller is in the best position to know the true condition of the property. Getting this information to buyers enables buyers to make better-informed decisions.

The following changes as indicated in underline, were made on lines 105-173 of the 2021 WB-15.

- Item a. added (including cracks, seepage, and bulges).
- Item b. added (including the air filters and humidifiers).
- Item c. added Defects in a well on the Property or in a well that serves the Property, including unsafe well water, a joint well serving the Property or any Defect related to a joint well serving the Property.
- Item d. added water quality issues caused by unsafe concentrations of or unsafe conditions relating to lead.
- Item e. added Defects in septic system or other private sanitary disposal system on or serving the Property or any out-of-service septic system serving the Property note closed or abandoned according to applicable regulations.
- Item f. added or any Defects in such tanks presently or previously on the Property; LP tanks on the Property or any defects in such LP tanks.
- Item g. added lead in soil, presence of asbestos or asbestos-containing materials
- Item h. added manufacture of or
- Item i. added such as order to correct building code violations
- Item p. added Current or previous termite, powder post beetle, or carpenter ant infestations or Defects cause by animal, reptile, or insect infestations.
- Item q. added Property or
- Item s. added Nonowners having rights to use part of the Property, other than public rights-of-way, including, but no limited to, private rights-of-way and private easements, other than recorded utility easements; lack of legal access or access restrictions; restrictive covenants and deed restrictions; shared fences, walls, wells, driveways, signage or other shared usages; or leased parking.
- Item y. added a written agreement affecting riparian rights related to the Property; or the bed of the abutting navigable waterway is owned by a hydroelectric operator.
- Item z. added A dam is totally or partially located on the property; or an ownership interest in a dam not located on the

Property will be transferred with the Property because the dam is owned collectively by a homeowners' association, lake district, or similar group of which the Property owner is a member.

- Item bb. added Presence of or a Defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of hazardous or toxic substances on neighboring properties.
- Item cc. added Owner's receipt of notice of property tax increases, other than normal annual increases, or notice or knowledge of a pending property reassessment, remodeling that may increase the property's assessed value, or pending special assessments.
- Item dd. added Agreements that bind subsequent owners of the property, such as a lease agreement or an extension of credit from an electric cooperative.
- Item ee. added Remodeling, replacements, or repairs affecting the Property's structure or mechanical systems that were done or additions to the Property that were made during the owner's period of ownership without the required permit.
- Item ff. added Rented items located on the Property or items affixed to or closely associated with the Property.
- Item gg. added Owner is foreign person as defined in the Foreign Investment in Real Property Tax Act in 26 IRC § 1445(f).
- Item hh. added including, without limitation, drainage easement or grading problems; or excessive sliding, settling, earth movement or upheavals.



REALTOR® Practice Tip

To learn more about the changes to the condition reports and pending legislation, see the September 2020 *Wisconsin Real Estate Magazine* article, "What's That? Changes to the WRA Disclosure Reports? Tell Me More!" at www.wra.org/WREM/Sep20/Disclosure.

Proposed Use Contingencies (lines 174-202)

While the check box was removed, the Proposed Use Contingency continues to be an umbrella contingency. However, there were a few other modifications made to the contingency. For instance, the blank lines that indicate the buyer's proposed purpose has been moved closer to the subcategories to which the purpose applies. Further, the language on lines 174-175 introducing the contingency is more streamlined. The overall contingency has a default of 30 days if the line on 176 is left blank.

The subcategories still maintain check boxes so a buyer can choose which provision is appropriate for the offer. A new Zoning Contingency has been included as the first main subcategory on lines 185-186 providing that the buyer can verify the zoning and the property's zoning allows the buyer's proposed use described at the lines above in the proposed use.

All of the remaining subcategories have been slightly modified to create more efficient language.

Land Use Approval/Permits (lines 198-202)

This contingency also received modifications. The changes include a clarification that whichever is selected, buyer or seller, on line 198 will

also obtain and pay for all of the items checked. The language now also includes "Seller agrees to cooperate with Buyer as necessary to satisfy this contingency. Buyer shall deliver, within ___ days of acceptance, written notice to Seller if any item cannot be obtained, in which case this Offer shall be void."

Map of the Property (lines 203-224)

This contingency remains substantially the same as the 2012 WB-15. However, the language now references an update to ALTA/NSPS Land Title Survey and includes a default of 30 days for the deadline if the line is left blank on 206.

The language was modified to provide on line 218 that the contingency shall be deemed satisfied unless the buyer "within 5 days after the deadline for delivery of said map" rather than using the 2012 language of "within five (5) days of earlier of."

Document Review Contingency (lines 225-245)

Once again, the Document Review Contingency remains substantially the same as the 2012 WB-15, except there is now a default on line 226 of 30 days if the deadline is left blank. A deadline default of five days is also now included in the contingency satisfaction section on line 242 and the timing runs from after the deadline for delivery as opposed to the "earlier of receipt" as previously provided in the 2012 WB-15.

Environmental Evaluation Contingency (lines 246-291)

The Environmental Evaluation Contingency also received a few updates while remaining substantially the same. The contingency on lines 249-252 now includes the definition of defect in a note that has the definition on lines 523-535. The contingency satisfaction provision now includes a default deadline of 30 days if the line on 258 is left blank. Additionally, the contingency right to cure section was reformatted to provide a better flow to the contract language. In addition, if the seller has the right to cure, line 264 now includes a blank line with a 10-day default if the seller chooses to cure and delivers a written notice stating the seller will cure to the buyer within the stated days after buyer's delivery of the Notice of Defects.

Finally, the Environmental Site Assessment has been moved to be part of the Environmental Evaluation Contingency.

Inspection Contingency (lines 307-340)

The Inspection Contingency has been formatted differently. However, substantively, very little has changed.

The contingency itself is presented as a list of three numbered parts on lines 195-203:

- (1) the qualified independent inspector(s) conducting an inspection,
- (2) separate inspections as specified on lines 311-312, and
- (3) follow-up inspections recommended in the written report of the two inspections conducted above.

The contingency provides for a default deadline of 20 days if the deadline on line 320 is left blank.

A note has been added on lines 326-329 that gives the definition of "defect" as part of the sequence of provisions regarding the Notice of Defects. The definition of defect is also included on lines 523-525.

Financing Commitment Contingency (lines 342-383)

The Financing Contingency has been renamed the Financing Commitment Contingency, reflecting a more accurate understanding that the buyer is obtaining a loan commitment and not a guarantee that the buyer will actually receive financing at closing if the contingency is satisfied.

The financing provisions within the contingency were reorganized a bit.

- On line 343 the prompt following the blank line has been modified and now says, “loan type or specific lender, if any.” This replaces the former language, which said to insert the loan program or source and was not always understood.
- Lines 346-348 indicate, “Buyer acknowledges that lender’s required monthly payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance premiums.” This provision primarily educates buyers regarding the different costs that may be included in their total monthly payment.
- Line 349 indicates the buyer agrees to pay discount points in an amount not to exceed ___% and includes a default of “0” for that blank line.
- Lines 351-353 update the costs the buyer agrees to pay as part of the loan process. These costs may include wire fees as well as customary loan and closing costs and loan origination fees.
- Lines 352-353 confirm the “Seller agrees to allow lender’s appraiser access to the Property” for those who incorrectly tried to argue this was not allowed as part of the lending process.
- In a separation subsection called Loan Amount Adjustment at lines 354-356, the provision describes the terms of the desired loan commitment automatically adjust if the purchase price changes.

Adjustable Rate Financing (lines 359-365)

Changes were made to the Adjustable Rate Financing provision on lines 359-365 so the provision now contemplates a first and subsequent interest rate increases and includes defaults based on the predominant financing available in the market.

Satisfaction of Financing Commitment Contingency (lines 366-376)

A subsection now labeled Satisfaction of Financing Commitment Contingency tells the buyer how to satisfy the contingency. If the buyer qualifies for the loan described in the Financing Commitment Contingency, or another loan that is acceptable to the buyer, the buyer makes an authorized delivery of a copy of the loan commitment to the seller, as before, to satisfy the contingency.

How delivery of the loan commitment is authorized has changed. Delivery is authorized if the loan commitment is signed by the buyer or if the loan commitment is delivered along with the buyer’s written directions for delivery.

The buyer’s directions for delivery could be given 1) as a WB-41 Notice Relating to Offer, 2) on a separate document, 3) by email or 4) by other written means. Just forwarding the loan commitment without the buyer’s signature or without written delivery directions is not sufficient to satisfy the contingency.

Caution to Buyer (lines 374-376)

The revised caution reminds the licensees and parties 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 licensees that a conditional loan commitment fulfills the contingency if delivered but does not guarantee the lender will lend.

Seller Termination (lines 377-379)

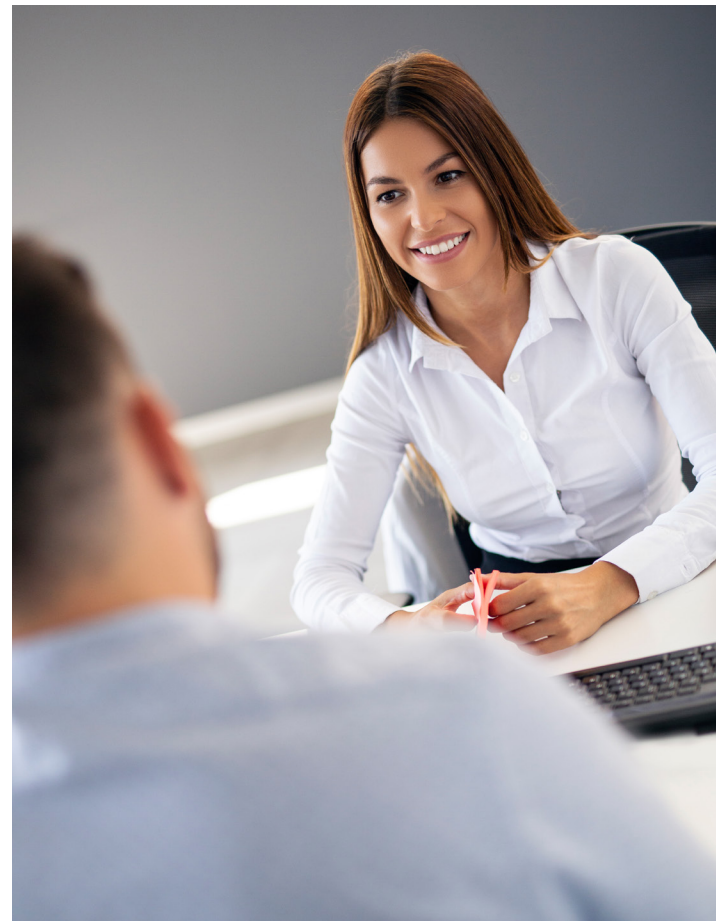
This provision operates just like the corresponding provision in the 2012 Offer. The seller may deliver a Notice of Termination if the seller has not actually received the buyer’s loan commitment. The notice must be delivered by the seller before the seller’s actual receipt of the buyer’s loan commitment, even if that occurs after the contingency deadline at line 344.

Seller Financing (lines 384-391)

The Seller Financing language has been split apart from the Financing Commitment Unavailability provision on lines 380-383 and the Seller Financing Contingency is now its own separate contingency. If the offer is to include the option for seller financing, the check box at line 384 will need to be checked.

In this contingency the seller has 10 days after the buyer’s delivery of evidence of unavailability or the deadline for delivery of the loan commitment at line 344, whichever comes first, to deliver written notice to the buyer informing the buyer the seller will provide financing.

If the seller decides the seller will provide financing, it will be in the form of a note and mortgage on the same terms expressed in the



Financing Commitment Contingency. This section does not give the seller the authority or opportunity to provide land contract financing or find the buyer a third-party lender to finance the buyer's transaction. The time for closing can be extended as needed if the seller is providing financing. The buyer authorizes the seller to obtain any credit information reasonably appropriate to determine the buyer's credit worthiness for seller financing.

If the seller does not give notice within the 10 days, then the opportunity for seller financing is waived. If the seller does not provide financing, the offer continues. The 2012 offer provided that under such events, the offer became null and void.

If this Offer is Not Contingent on Financing Commitment (lines 392-403)

If the Financing Commitment Contingency box on line 342 is not checked, then the provision on lines 392-403, If This Offer Is Not Contingent on Financing Commitment, automatically applies. This provision establishes a mechanism for a buyer without a Financing Commitment Contingency to provide the seller with some assurance the buyer has the financial ability to purchase the property.

The 2021 WB-15 gives a blank line for the time frame with a default of seven days.

The documentation to be delivered may be reasonable written verification from a financial institution or third party in control of the buyer's funds that the buyer has, at the time of verification, sufficient funds to close, as is the case in the 2012 offer.

However, the WB-15 language provides for a second choice: the parties may write in on lines 396-397 whatever documentation they agree the buyer should deliver to the seller. If something is written in on lines 396-397, the buyer may choose whether to deliver the reasonable third-party written verification of the buyer's financial wherewithal or the documentation specified in the blank lines. However, if nothing is included on those lines the seller is entitled to receive the reasonable third-party financial verification.

If the buyer does not provide the written verification or documentation, the seller may terminate the offer. The seller terminates by delivering written notice to the buyer prior to the seller's Actual Receipt of the buyer's documentation.

The If This Offer Is Not Contingent On Financing Commitment provision assists with clarifying that all offers without a Financing Commitment Contingency are not necessarily "cash offers" as the provision acknowledges buyers may choose to obtain mortgage financing from a lender even though they did not include a Financing Commitment Contingency. However, the buyer will not enjoy the benefits and protections of the Financing Commitment Contingency.

The language permits the buyer to have the property appraised, so the seller must give the appraiser access to the property, but that does not mean there is an Appraisal Contingency.

Appraisal Contingency (lines 404-422)

The Appraisal Contingency now has a right to cure. If the buyer is dissatisfied with the appraised value, the buyer can deliver a copy of the appraisal report along with a notice objecting to the appraised value.

The Appraisal Contingency has a STRIKE ONE feature for indicating whether the seller does or does not have the right to cure. If the seller

has the right to cure, the seller may deliver a written notice to the buyer adjusting the purchase price to match the appraised value. The time frame for the seller's notice is expressed as a blank line with a default of five days on line 413 after delivery of the buyer's notice of objection. The parties also agree to promptly execute an amendment to the offer, if initiated by either party, to change the purchase price to match the appraised value.

If the seller does not have a right to cure or does not deliver notice adjusting the purchase price, the offer is null and void.

NEW Secondary Offer (lines 423-429)

A buyer would check the box of the Secondary Offer language when the buyer knows the seller has an accepted primary offer. The language acknowledges the secondary offer only becomes "primary upon delivery of written notice to the Buyer that the offer is primary." The language also states the seller is not obligated to give the buyer notice of being primary before any deadline and provides that no secondary buyer is given priority over any other secondary buyer. Therefore, unless a secondary offer buyer modifies the language the seller can have as many secondary offers as they would like, and they all have equal priority.

The secondary offer provision does require the buyer to be "locked in" for the number of days stated on line 427 and includes a default of 7 days if left blank. The buyer can give the seller written notice withdrawing the secondary offer any time prior to receiving notice from the seller that the offer has become primary. However, the buyer cannot withdraw until after the "lock in" period on line 427 has passed.

Lastly, lines 428-429 provide, "All other Offer Deadlines that run from acceptance shall run from the time this Offer becomes primary."

Title Evidence (lines 453-499)

Very few changes were made in the provisions regarding title evidence.

Conveyance of Title (lines 454-467)

Other than a new addition of a prompt on line 462 indicating the blank lines should be used to "insert other allowable exceptions from title, if any," there were no changes to the Conveyance of Title subsection.

On lines 468-471, language was added at line 471 to confirm the buyer will pay recording costs for the deed or other conveyance and all costs of providing the title evidence required by the buyer's lender.

Gap Endorsement (lines 472-477)

On lines 472-477, there were a few word changes but nothing substantial.

Delivery of Merchantable Title (lines 478-481)

This subsection is now titled Delivery of Merchantable Title.

Title Not Acceptable for Closing (lines 482-489)

The language now provides for a default deadline of 15 days on line 484 for the seller to remove title objections.

Special Assessments/Other Expenses (lines 490-499)

The language adds a definition of the term "levied" based on the general special assessment process described in Wis. Stat. § 66.0703(8). Lines 492-493 were added to define levied.

Estoppel Letters (lines 505-508)

The language was updated to include a default of no later than seven days before closing for the deadline for the seller to deliver to the buyer the estoppel letters dated within 15 days before closing as a default.

Definitions

Actual Receipt (lines 510-512)

The definition of Actual Receipt has been modified to indicate if a document or notice is electronically transmitted, then actual receipt occurs when the party opens the electronic transmission, in other words, the email.

Business Day (lines 513-515)

A definition of Business Day was added, taken largely from the content of the Deadlines definition in the 2012 Offer. Business Day means a calendar day other than Saturday, Sunday, a Wisconsin or federal holiday, and other days designated by the President for no mail delivery. The definition of Deadlines, in turn, was also modified.

Deadlines (lines 516-522)

The definition of Deadlines, in turn, uses the term the Business Day, which is now defined, and defines Midnight as 11:59 p.m. Central Standard Time. In all other respects this Deadlines definition remains as it was before. The Deadlines definition explains how to calculate deadlines and explains how to determine deadlines expressed in hours rather than days.

Firm (line 526)

The definition of Firm was added.

Party (line 527)

The definition of Party was added.

Distribution of Information (lines 536-542)

The Distribution of Information provision provides 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 needed for compliance with appraisal standards.

Item (iv) language on lines 541-542 allows the seller, if the seller is purchasing a new property, to provide a copy of the offer of the property to the sellers of the new property being purchased, should that be required.

NEW Maintenance (lines 543-545)

This provision has been separated from the Property Damage Between Acceptance and Closing section. This language provides the seller shall maintain the property and all personal property included in the purchase price in materially the same condition as it was on the date on line 1 of the offer.

Property Damage Between Acceptance and Closing (lines 546-555)

The new Maintenance section is immediately followed by the Property Damage Between Acceptance and Closing provision, which includes new obligations for the seller:

1. If the property is damaged in an amount not more than five percent of the purchase price, the seller must:
 - promptly notify the buyer, in writing
 - restore the property
 - provide the buyer with copies of all required permits and lien waivers no later than closing
2. If the property is damaged in an amount that exceeds five percent of the purchase price, the seller must:
 - promptly notify the buyer, in writing, of the damage

The buyer then decides whether to cancel the offer or carry out the offer and receive the seller's insurance proceeds and a credit in the amount of the seller's deductible on his insurance policy.

Occupancy (lines 560-563)

The word "refuse" was added on line 562.

NEW Foreign Investment in Real Property Tax Act (FIRPTA) (lines 590-619)

Buyers purchasing a property from a person classified as a "foreign person" are subject to the federal tax law provisions of the Foreign Investment in Real Property Tax Act (FIRPTA).

Although these transactions are infrequent in residential transactions, they are more common in commercial transactions.

FIRPTA is tax law. FIRPTA is about the Internal Revenue Service (IRS) taxing foreign persons selling United States real estate. Their concern is foreign persons selling their property and leaving the country without paying the tax due on the sale. The IRS decided to make the buyer responsible for making sure the tax is collected because the buyer will still be here, along with the identifiable asset that can be attached with a lien if need be to ensure collection of the taxes.

FIRPTA, as stated in § 1445 of the Internal Revenue Code (IRC), provides a buyer must pay or withhold up to 15% of the total amount realized in the sale if the seller is a "Foreign Person" and no exception from FIRPTA withholding applies.

The FIRPTA section is divided into small subsections. A seller who is not a foreign person is asked to provide a certification of non-foreign status, but that can be provided before or at closing.

If the seller fails to deliver certification of the seller's non-foreign status, then the buyer has options.

- First option: the buyer can withhold 15% of the amount realized by the seller in accordance with IRC § 1445.
- Second option: if the seller failed to deliver the certification, the buyer could pursue the default remedies in the offer.

The offer presumes the seller is not a foreign person unless the seller communicates differently in the property condition report or in a notice delivered to the buyer within 10 days after acceptance.

The section begins on line 590 by advising the parties that under § 1445 of the IRC, a buyer of a United States real property must pay or withhold up to 15% of the total "Amount Realized" in the sale if the seller is a "Foreign Person" and no exception from FIRPTA withholding applies. Lines 593-594 explain a "Foreign Person" and lines 594-595 explain the "Amount Realized."

Lines 596-598 warn the parties that the buyer may be held directly liable by the IRS for the unpaid tax and a tax lien may be placed upon the property they are buying.

Lines 599-601 represent the seller is not a foreign person and includes two exceptions: unless (1) Seller represents Seller is a Foreign Person in a condition report incorporated in this Offer per lines 93-95, or (2) no later than 10 days after acceptance, Seller delivers notice to Buyer that Seller is a Foreign Person, in which cases the provisions on lines 607-609 apply.

If Seller Is a Non-Foreign Person **(lines 602-606)**

Ideally the seller certification will be done at or just before closing. In this instance, the title company, would then provide the qualified substitute certification to the buyer and thus ensure the buyer is protected from any withholding responsibility or liability.

If Seller is a Foreign Person **(lines 607-609)**

If the seller is a foreign person, then the buyer will withhold the money owed to the IRS unless the parties can agree on a FIRPTA exemption or find another way to resolve the situation.

Compliance with FIRPTA **(lines 610-615)**

This section details for the parties what happens if the buyer would need to withhold under § 1445.

Lines 616-619 emphasize that real estate licensees and title companies are not responsible for making FIRPTA determinations and indicates all representations regarding FIRPTA will survive the closing (see line 616).

REALTOR® Practice Tip

To learn more about FIRPTA see the July 2020 *Legal Update* at www.wra.org/LU2007.

REALTOR® Practice Tip

Review the WRA-created FIRPTA Flowchart at www.wra.org/Resources/Transactional/Form_Update_Resource.

NEW Tax Deferred Exchange **(lines 651-654)**

Generally, if a business or investment property is exchanged solely for business or investment property of a like kind, no gain or loss is recognized under Internal Revenue Code Section 1031. The 2021 WB-15 includes an educational note about Tax Deferred Exchanges attempting to encourage cooperation with any documentation necessary to complete the exchange. The new language also provides that the “exchangor shall hold the cooperating party harmless from any and all claims, costs or liabilities that may be incurred as a result of the exchange.”

REALTOR® Practice Tip

Tax Deferred Exchanges are part of Internal Revenue Code Section 1031.

Delivery (line 671)

The email delivery provision on line 671 was significantly modified to reflect a more modernized understanding of the e-commerce and electronic consent discussion. Additionally, the email addresses for buyers and sellers were separated to each have their own line.

REALTOR® Practice Tip

To learn more see the November 2019 *Legal Update*, “WB-11 Residential Offer to Purchase – 2020 Edition – Part III,” at www.wra.org/LU1911.

Removed Closing of Buyer’s **Property Contingency**

The Closing of Buyer’s Property Contingency on lines 471-478 of the 2012 WB-15 was removed because so few commercial buyers need to sell a property in order to purchase the commercial property on which the offer is being written. Therefore, the forms committee recommended the REEB remove the contingency from the 2021 WB-15. Obviously the 2012 contingency language or other language like the contingency from the WB-11 Residential Offer to Purchase could be included in a buyer’s offer, if needed, when writing a 2021 WB-15.

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