

New Offers, New RECR, New VLDR

The mandatory use date of the new WB-11 Residential Offer to Purchase Take 2 and the WB-14 Residential Condominium Offer to Purchase is September 1, 2020.

Early in the year there was proposed legislation to update the Real Estate Condition Report and the Vacant Land Disclosure Report, but the state Senate did not meet because of the pandemic and the proposed legislation may need to be re-introduced in 2021. The new offers, however, were drafted to include the expected modifications.

The WRA has updated the RECR and the VLDR to include the same proposed modifications that were captured in the offers. This new content appears in italics in the condition reports. These new offers and condition reports are all available on zipForm.

When taking a listing after September 1, 2020 should licensees ask sellers to complete the new versions of the RECR and the VLDR?

Yes. The WRA VLDR and RECR contain the expected legislative modifications and were drafted to match the content of the new offers.

Should licensees ask sellers to complete the new WRA RECR and VLDR on current listings if there are no accepted offers?

Sellers are not required to do so, but it may be good to see if they are willing. The new condition report forms address additional disclosures which may be beneficial for buyers. The disclosures in the new RECR will match the disclosures in the “Conditions affecting the Property or Transaction” in the new WB-11 and the new WB-14. The disclosures in the new VLDR will be the same as the disclosures in the new WB-13 Vacant Land Offer to Purchase expected to be released at the beginning of 2021. Again, a new condition report should possibly be requested only if the listing does not have an accepted offer.

Is a seller required to provide the new WRA RECR and VLDR on accepted offers?

No. The property condition representations made at the time of the offer do not need to be updated.

If sellers do not wish to complete the new WRA RECR and VLDR on all current listings that do not have an accepted offer, should we document that we tried?

Although it is prudent practice to document, with a paper trail, communication with clients it would not be required because the sellers in those situations have already completed a condition report and the new content in the WRA report forms is not in the statutes and thus not mandatory.

What if a residential offer or condominium offer is drafted and the seller has provided the old RECR?

The new content in the WRA report forms is not in the statutes and thus not mandatory.

What is the new content in the RECR that is mirrored in the residential and the condominium offers?

The first is a clarification in the disclosure of rights of way and easements. There were reports of confusion regarding whether the seller was to be disclosing public rights-of-way or just private rights of way and easements. The answer is the seller is only being asked about private rights-of-way and easements, so the language was modified to specify the inquiry is about private uses.

The WRA RECR now asks: “F8. *Other than public rights of ways*, are you aware of nonowners having rights to use part of the property, including, but not limited to, *private rights-of-way* and easements other than recorded utility easements?” The italicized words are the language that was added.

With regard to the anticipated legislation establishing riparian rights for properties on flowages, the following questions were added to the WRA RECR:

F17m. Are you aware of a written agreement affecting riparian rights related to the property?

F17n. Are you aware that the property abuts the bed of a navigable waterway that is owned by a hydroelectric operator? Under Wis. Stat. s. 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a hydroelectric operator, as defined in s. 30.132 (1) (b), may be required to ask the permission of the hydroelectric operator to place a structure on the bed of the waterway.

There also is a new question in the WRA RECR regarding the status of the seller with regard to FIRPTA:

G4m. Is the owner a foreign person, as defined in 26 USC 1445 (f)? (E.g. a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate.) Section 1445 of the Internal Revenue Code (26 USC 1445), also known as the Foreign Investment In Real Property Tax Act or FIRPTA, provides that a transferee (buyer) of a U.S. real property interest must be notified in writing and must withhold tax if the transferor (seller) is a foreign person, unless an exception under FIRPTA applies to the transfer.

Read “What’s That? Changes to the WRA Disclosure Reports? *Tell Me More!*” in the September 2020 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Sep20/Disclosure for further explanation of the changes.