As real estate practice continually changes and evolves, the tools used by REALTORS® also are changing to keep pace with this fast-moving industry. The recent release of the revised and updated WB-11 Residential Offer to Purchase (optional-use date November 1, 2009, mandatory-use date March 1, 2010) necessitates major revisions and updates to many of the addenda typically used in conjunction with a residential offer. The Wisconsin REALTORS® Association Addendum A to the Offer to Purchase and Addendum O to the Offer to Purchase – Occupancy Agreement were revised to reflect the removal of the occupancy provision from the new WB-11 and to more closely match other provisions in the new form.

Some modifications have also been made to the WRA Real Estate Condition Reports (RECR) and seller disclosure reports – revisions resulting from changes in the law and changes in the language of the WB-11. Adjustments to the condition/disclosure reports are necessary to include the new farmland preservation conversion fee effective January 1, 2010 and to match the list of disclosure items to those listed on the new offer to purchase.

In this Legal Update, two WRA forms that have been revised as part of this process are reviewed and discussed in detail: the WRA Addendum A to the Offer to Purchase and Addendum O to the Offer to Purchase – Occupancy Agreement. A sample copy of the revised Addendum A appears on Pages 19-20 of this Update, and a sample copy of the updated Addendum O appears on Pages 21-22.

This is followed by a discussion of the changes made to the condition reports and a series of Legal Hotline questions and answers concerning Addendum A and Addendum O as well as some of the issues they address.

WRA Addendum A to the Offer to Purchase

The prior WRA Addendum A had not been revised since 2002, which is not surprising since the WB-11 Residential Offer to Purchase had not been updated since 1999. As in the past, the bulk of the decision making on the revisions to the Department of Regulation and Licensing-approved offer to purchase has occurred at the meetings of the DRL Real Estate Contractual Forms Advisory Committee (Advisory Committee). The Advisory Committee reviews any proposed changes to DRL-approved forms and reports to the DRL Real Estate Board and to DRL Secretary Celia Jackson. In addition, the WRA 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 Forms Committee 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.

In the course of improving the WB-11, some provisions that had been in addenda used by REALTORS® over the past 10 years are now embodied in the WB-11 itself. On the other hand, as the WB-11 was improved and provisions were added and enhanced, new issues arose that can be addressed in addenda in a way that provides additional explanation and clarification for the parties.

The WRA Addendum A is suitable for use with offers other than residential offers.

CAUTION Regarding Other Testing and Inspection Contingencies (Lines 4-6)

One of the primary purposes for using Addendum A is to create a testing contingency. As is emphasized in the WB-11, there is a difference between inspection and testing. According to lines 399-401 of the WB-11, “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 L.P. 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 WB-11 Inspection Contingency on lines 413-435 pertains to inspections, not testing. Seller authorizations for inspections in no way give any permission or authorization for any testing. For example, the Home Inspection Contingency allowing a Wisconsin-registered home inspector to conduct a home inspection does not signal that the seller has consented to a radon test, a test for lead-based paint (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 provision blank lines or in an addendum.

REALTOR® Practice Tips:

If the buyer wants any testing – the taking of samples for lab analysis – a separate testing contingency must be included in the offer.

While there is a basic testing contingency on lines 9-23 of the WRA Addendum A, there also is a caution following the identifying information on lines 1-3 of Addendum A that reminds REALTORS® and the parties using the form that there are already specific testing contingencies available in other forms for certain components and compounds. These contingencies are tailor-made for the particular testing authorized and will inevitably produce a better result than completing the basic testing contingency on lines 9-23 because these specific contingencies have been written to include the special standards and procedures associated with each compound or component.

Private Wells, Well Water and Septic Systems

For instance, the WRA Addendum B to the Offer to Purchase contains a Well Water Testing Contingency, a Well System Inspection Contingency and a Private Sanitary System (POWTS) Inspection Contingency, which all contain the up-to-date standards from the Wisconsin Department of Natural Resources and the Wisconsin Department of Commerce relative to health and safety concerns and the latest construction and installation industry standards. Using these provisions will be much more effective than trying to create a Well Inspection Contingency based on the Testing Contingency. It makes
no sense to re-invent the wheel. See the May 2008 Legal Update, “Addendum B Revisions: Wells and POWTS,” online at www.wra.org/LU0805, for additional information about these topics and Addendum B.

Lead-Based Paint

Similarly, there are available addenda for LBP designed to be used in residential transactions, like the WRA Addendum S. Federal LBP law dictates, as of December 6, 1996, that no offers on residential housing built prior to 1978 can be accepted without mandatory LBP disclosures. The WRA Addendum S was drafted to meet these regulatory mandates. It is far better to use a form that the licensee knows has the required content than to try to create a substitute LBP disclosure and LBP Inspection And Testing Contingency. See Legal Update 99.08, “Addendum O, Addendum S, & LBP Issues,” online at www.wra.org/LU9908, Legal Update 96.07, “Lead-Based Paint Disclosure Implementation,” online at www.wra.org/LU9607 and Legal Update 96.04, “Lead-Based Paint Disclosures,” online at www.wra.org/LU9604, for further discussion of the LBP law and Addendum S.

Wetlands

A specific addendum has been created for situations where wetlands are suspected. Addendum W – Wetlands was drafted by the WRA in conjunction with the DNR and the Wisconsin Wetlands Association. The addendum provides a summary of the development obstacles involved with wetlands, asks the seller to answer three questions about what the seller has observed on the property as far as wetlands and directs the parties to the DNR Wetlands resources on the DNR Web site. These include the wetlands locator maps, video information (“Waking Up to Wetlands”), brochures, information for contacting appropriate professional assistance and what the DNR refers to as the “Real Estate Addendum,” that is, Addendum W – Wetlands. See Pages 21-23 of the November 2008 Legal Update, “WB-3 Vacant Land Listing and Seller Disclosure Report – 2008 Revisions,” online at www.wra.org/LU0811, and the DNR Web site at http://dnh.wi.gov/wetlands/addendum.html, for further discussion and information.

Lead and Arsenic from Pesticides

There is also a Lead/Arsenic Pesticide Addendum for use by property owners selling properties that were once part of pre-1960 orchard properties. In the past, certain pesticides used in fruit orchards contained lead and arsenic. Although soils naturally contain traces of these compounds, the application of pesticides for agricultural purposes has resulted in some soils containing contamination that could result in health risks. Soil sampling is needed to detect whether hazardous amounts of these compounds remain. For more information about orchards and contamination issues, see www.wra.org/orchards, www.datcp.state.wi.us/arm/agriculture/pest-fert/pesticides/accp/lead_arsenate/factsheets.jsp. All of these addenda are available from the WRA or on ZipForm.

Optional Provisions (Lines 7-8)

The Optional Provisions section provides the same instructions that are given on lines 31-33 of the WB-11 to the parties regarding completion of those provisions that have optional provisions preceded by check boxes. These directions for marking the boxes of the optional provisions that the parties wish to include apply to the Testing Contingency (lines 9-23), Closing (lines 24-25), Association Fee (lines 26-27) Home Warranty Plan (lines 28-32), Survey Map of the Property provision (lines 33-43) and Federal Veteran and Federal Housing Administration Mortgage selections (lines 44-52). As before, the provisions are not part of the offer if the boxes are left blank or marked “N/A.”

Testing Contingency (Lines 9-23)

The provision on lines 9-23 of Addendum A is a Testing Contingency that can be completed to create a testing contingency for various substances or compounds, such as radon, mold, asbestos or other chemicals that concern the buyer. If a specialized contingency is available on another addendum, it is normally best to use that provision because it will be more detailed and precise.

REALTORS® and the parties must also remember that the Inspection Contingency in the WB-11 is not the place to authorize testing.

REALTOR® Practice Tips: Authorization for testing requires a separate testing contingency because the Inspection Contingency does not provide 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 chemicals on the blank lines in the Inspection Contingency – this only serves to create confusion, not a successful testing provision.

Radon Testing Contingency Example

For example, assume that the buyer wanted to have radon testing performed by a contractor selected and paid for by the buyer because the property is located in Crawford County in an area with a high general incidence of radon (see the link to the map at http://dhs.wisconsin.gov/dph_beh/RadonProt/). The cooperating agent would check the box on line 9 of
Addendum A, write in “radon” at lines 12-13 and fill in a deadline on line 13. If the agent forgets to fill in the 14 days suggested by the buyer, the default or safety net measure in the provision is for 21 days.

Most of the “fill-in-the-blanks” and “STRIKE ONE” provisions in the WRA Addendum A have a default provision to furnish a selection in the case of agent oversight. That way there is no confusion trying to figure out what the provision means with an uncompleted blank line. A selection has been made as a back-up measure. It is always better, of course, if the parties make their own decisions and write in their choices.

On line 13 the agent would strike “Seller’s” because the buyer wished to select and pay for this important testing – in other words, be able to control the process to make sure that the testing is conducted objectively. In terms of who should be responsible for conducting the radon testing, the cooperating agent may wish to recommend that the buyer use a contractor from the Wisconsin Department of Health’s Radon Mitigation (Reduction) Contractor Proficiency List, available online at http://dhs.wisconsin.gov/dph_beh/RadonProt/Lists/MitigProf.htm. If a credentialed professional or a contractor listed by an agency regulating the compound or substance is used for the testing, that will help ensure that the “applicable government or industry protocols and standards” required on line 11 will be familiar to this person and properly employed during the testing procedure. For more information regarding testing for radon, see the Environmental Protection Agency’s Home Buyer’s and Seller’s Guide to Radon (January 2009) at www.epa.gov/radon/pubs/hmbvguid.html.

The Testing Contingency is deemed satisfied unless the buyer delivers a notice to the seller and the listing broker, within five days of the latter of the buyer’s receipt of the test results or the deadline on line 13, identifying the defects to which the buyer objects. The notice must also be accompanied by a copy of the test results. The definition of a “defect” is the definition used in the offer. For instance, lines 182-184 of the WB-11 define a “defect” to mean “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.” With radon testing, the primary example of a defect will be if the average reading of two tests is 4 pCi/L or more, per EPA standards.

Just like the Inspection Contingency in the WB-11, the Testing Contingency in Addendum A contains a Right to Cure provision. The agent completing the addendum should indicate at line 18 whether or not the seller will have the right to cure. The default is for the seller to have the right to cure. Like in the WB-11 Inspection Contingency, the seller has 10 days from the buyer’s delivery of the notice of defects to decide whether to satisfy the contingency by curing the defects, allow the offer to become null and void or propose some other solution by proposing an amendment back to the buyer. The 10 days gives the seller time to investigate the problems listed in the buyer’s notice of defects, obtain estimates for having the work done and ultimately decide whether the seller wants to undertake the requested work.

Since the seller has the right to cure, the seller may choose whether to cure the listed defects, let the offer become null and void, or propose an alternate solution. Giving the seller a notice of defects puts the power to decide the fate of the offer in the seller’s hands. The seller could propose an amendment to the offer. The seller could deliver a written notice to the buyer stating the seller’s election to cure the defects identified in the buyer’s notice of defects in a good and workmanlike manner. The seller could also deliver a written notice to the buyer advising the buyer that the seller will not cure, or the seller could let the remaining 10 days lapse. These last two actions (notice to not cure and letting the time run out) would have the result of making the offer null and void.

Luckily for the buyer in this radon testing contingency example, the seller responds by proposing an amendment whereby the seller would address the detected high radon levels by having a specifically named radon mitigation contractor install a sub-slab depressurization system with a vent pipe(s) and fan(s) used to prevent radon gas from entering the home from below the concrete floor and from outside the foundation.

Closing (Lines 24-25)

The Closing provision on lines 115-116 of the WB-11 provides that the closing place will be selected by the seller, which is quite different from the provision in the 1999 offer that indicated that the place of closing was to be selected by the buyer’s mortgagee or another party named on the blank line in that form.

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.

The Closing provision in the WB-11 states 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 or practice preference may provide otherwise on lines 24-25 of the WRA Addendum A. Addendum A offers some other choices in a format that asks the drafter to strike and complete lines 24-25 of Addendum A as is applicable. The choices offered are to have the closing at (1) the place selected by the buyer’s lender, (2) the place selected by the buyer or (3) another place written into the blank line included on line 25 of Addendum A. Using this provision restores some of the options that were available in the 1999 version of the offer and gives the parties a full range of alternatives and the chance to choose a place that is suitable given local customs, party and lender preferences, and the available closing locations.

**REALTOR® Practice Tips:**
Use lines 24-25 of Addendum A to modify the place of closing provision if a location selected by the seller is not appropriate for local, customary practice.

**Association Fee (Line 26)**
In many instances there will be a community, neighborhood or subdivision association. The property owner often will be subject to recorded restrictive covenants or bylaws for this association or organization, and must pay fees to the community association on an annual, semi-annual or other basis.

Line 26 of Addendum A allows the parties to address any association fee requirement associated with ownership of the property and specify the amount and frequency of any fees.

Note that this provision is not intended for condominium association fees. Those are properly addressed in the WB-14 Residential Condominium Offer to Purchase and the associated condominium disclosure materials.

**Home Warranty Plan (Lines 28-32)**
A home warranty is a combination of a warranty and protection program offered to homebuyers by builders and sellers. A home warranty provides coverage for the breakdown of a home’s major appliances and systems under circumstances not usually covered under a homeowner’s insurance policy. The typical home warranty is a one-year service contract that protects a homeowner against the cost of unexpected repairs or replacement of major systems and appliances that break down due to normal usage. A home warranty entails a service agreement for the properties’ vital mechanical systems and appliances, typically including the heating system, water heater, plumbing, electrical, garage door opener, washer, dryer, oven, refrigerator, garbage disposal, central air conditioning or evaporative cooler, and even the doorbell. Warranty information from the Office of the Commissioner of Insurance is available online at [http://oci.wi.gov/pub_list/pi-069.pdf](http://oci.wi.gov/pub_list/pi-069.pdf).

The WRA Addendum A contains a home warranty provision at lines 27-32. The parties fill in the maximum cost of the home warranty and indicate whether the cost will be paid by the seller or the buyer and whether the listing broker or the cooperative broker will actually provide the warranty plan. The buyer is advised that a home inspection may detect conditions not covered by the warranty plan.

The buyer would need to ask the seller to provide the home warranty in the offer to purchase because the offer determines the agreement between the buyer and seller. The listing contract or the MLS sheet only expresses what the seller is willing to include in the offer – the information there is not automatically included in the sale.

The Addendum A provision does not reference any possible fees that the listing or cooperating agent might be paid by home warranty companies. A recent informal Department of Housing and Urban Development advisory opinion has questioned whether marketing and administrative service agreements entered into by real estate agents and real estate brokers with home warranty companies to market their products would violate Section 8 of the Real Estate Settlement Procedures Act (RESPA). Such agreements may not include compensable services and the fees are often paid only when the buyer purchases the home warranty. NAR has indicated that it believes such agreements will comply with RESPA so long as the broker or agent performs services that are actual, necessary and distinct from the broker’s or agent’s primary real estate duties and the home warranty company pays the broker or agent no more than fair market value compensation in return for the services performed.

If an agent has a marketing and administrative service agreement with a home warranty company or some similar arrangement whereby the agent will be compensated by a third party other than the agent’s client, then a provision obtaining the consent of the buyer and the seller will need to be inserted into the Additional Provisions lines in the offer, in another addendum or in some other document. Wis. Admin. Code § RL 24.05(1) DUAL COMPENSATION provides, “A licencsee acting as an agent in a real estate or business opportunity transaction may not accept any fee or compensation related to the transaction from any person, other than the licensee’s client, without prior written consent from all parties to the transaction.” Brokers should carefully analyze any such provisions for fees with outside legal counsel to ensure that the services provided merit additional compensation and do not violate RESPA.
Survey Map of the Property (Lines 33-43)

This provision on lines 33-43 of Addendum A may sound familiar because it is similar to the map contingency provision and definitions from the WB-13 Vacant Land Offer. If a significant encroachment or material inconsistency with prior representations is revealed, the buyer may give the seller notice that will cause the contingency to not be satisfied and cause the offer to become unenforceable against the buyer.

The buyer can make the offer contingent on the buyer obtaining or the seller providing a map of the property, within a certain number of days from acceptance, at either the seller’s or the buyer’s cost. The Survey Map of the Property provision indicates that the map must be prepared by a Wisconsin-licensed land surveyor. The provision states that the map should identify the legal description of the property, the property boundaries and boundary line dimensions, visible encroachments and the location of improvements, although these features may be stricken if not desired by the parties. The parties may also specify additional requirements for the map by writing in additional items in the blank line on line 36 of the WRA Addendum A. Additional requirements might include the staking of the property corners, a current map, street identification, length of street frontage, legal access, length of water frontage, total acreage or square footage, utilities, easements or rights-of-way. The parties are cautioned to consider the cost and need for specific map features before adding them to the list of map requirements.

The contingency is met if the selected map shows no significant encroachments or other information that is materially inconsistent with the seller’s, the broker’s or any other prior representations to the buyer. The contingency shall be deemed satisfied unless the buyer, within five days of the earlier of the buyer’s receipt of the map or the deadline for the provision of the map, delivers to the seller and the listing broker a copy of the map and a written notice that identifies the significant encroachments or other information materially inconsistent with prior representations.

Federal VA and FHA Mortgage Provisions (Lines 44-52)

Lines 44-52 contain various provisions and limitations needed for federal and state VA mortgages and for FHA financing.

Reading/Understanding (Lines 53-54)

Lines 53-54 of Addendum A provide that by initialing and dating the addendum on line 55, each party is acknowledging they have received and carefully read both pages of Addendum A. This initialing does not mean that a party has accepted and agreed to every provision in Addendum A; it just means that they have received the document and read it. If a party does not agree with a provision in Addendum A, they should counter the provision to change or delete it.

Buyer Responsibility to Ascertain Condition of Property (Lines 57-66)

The disclaimer provision on the top of the second page of the WRA Addendum A puts the responsibility on the buyer to make sure that the property is acceptable to the buyer. The provision squarely puts the onus on the buyer to conduct all inspections, investigations, evaluations, tests and inquiries that the buyer finds necessary so that the buyer is satisfied with the property being purchased. Such inspections and inquiries should relate not only to the property but also to existing and proposed conditions and services in the surrounding area that may impact the use of the property. The provision limits the buyer’s reliance on information provided by the seller or the agents in the transaction to written information such as in the seller’s RECR, representations made in the offer and other information provided in writing. The buyer acknowledges that

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no representations about the property or the transaction have been made by the seller or the agents other than what has been expressed to the buyer in writing. The buyer also indicates that the buyer has not asked the seller and the agents have not volunteered to verify the accuracy of statements made by the seller or any third party unless stated in the offer.

Accordingly, the buyer should take advantage of every inspection, testing and investigation contingency and provision that has relevance to the property or transaction. The buyer is proclaiming that all seller and agent representations have been in writing – anything verbal is essentially disclaimed in this provision. The buyer assumes responsibility for verifying the accuracy of statements and representations, which is as it should be. Real estate licensees are not required to investigate and verify information – it is not part of their function or legal duties.

REALTOR® Practice Tips:
Agents working in transactions where this provision is used – and in all real estate transactions, for that matter – should be very careful to provide all material adverse facts, material information and all general information in writing. Verbal representations should be avoided unless they can be followed up with a written representation from a third-party source that is cited to the buyer.

REALTOR® Practice Tips:
Keeping everything in writing is the best way to avoid liability!

Hazardous Substances
(Lines 67-76)
It seems that there is no end to the hazardous chemicals and substances that can potentially create problems for property owners. The provisions on lines 67-76 of Addendum A list some of the possible concerns. The parties are warned that potential dangers and health hazards can be associated with asbestos, LBP, lead in drinking water, unsafe levels of mold, radium, radon and other substances found in the soil, water, or a structure. Water problems such as past flooding and water leaks may create a situation where excessive mold growth is present. Other concerns may be present if synthetic stucco or wood composite siding or Chinese dry-wall have been used in the construction of the property structure. In this section of the WRA Addendum A, the seller represents to the best of the seller’s knowledge that these concerns are not contained or present in the property. This is a fairly broad assertion for a seller to make.

REALTOR® Practice Tips:
Listing brokers and agents should be sure to point this provision out to the seller before the seller signs the offer and thus makes these representations. Many sellers may sign this Addendum A, or similar addenda with similar provisions, without ever knowing they are making such a sweeping representation – be sure the sellers know what they are signing or this could become a liability trap!

REALTOR® Practice Tips:
If any of these topics are a concern with the property, the seller should disclose the information – in a counter-offer, if need be. If the information has already been disclosed, the seller would be prudent to counter the offer and refer to the previously disclosed information as an exception to this broad seller representation. Buyers who do not wish to have their offers countered may consider lining out substances listed in this provision if the seller has already disclosed information regarding a listed subject.

This Addendum A provision recommends that appropriate testing, inspection, evaluation or investigation contingencies be drafted upon buyer request to check into whatever such environmental issues may potentially be present in association with the property or specific concerns of the buyer.

To find out more about these problematic chemicals and substances and the appropriate testing procedures, visit:
- Asbestos: For more information regarding asbestos, see the Wisconsin Asbestos page at http://dhs.wisconsin.gov/asbes-
**Inspections, Tests and Opinions (Lines 77-83)**

The provision for Inspections, Tests and Opinions on lines 77-83 of Addendum A again emphasizes the importance of buyers having all the tests and inspections done that are needed to satisfy them as to the condition of the property. Lines 77-78 warn: “It is recommended that Buyer have the Property and specific Property components of concern inspected by a Wisconsin registered home inspector and qualified independent experts.”

This emphasis harks back to the new flexibility of the updated Inspection Contingency in the 2010 WB-11 that gives the buyer the opportunity for three types of inspections: a home inspection, component inspections by qualified independent experts and follow-up inspections. 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. See Pages 17-19 of the November 2009 Legal Update, “WB-11 Residential Offer to Purchase – 2010 edition” at www.wra.org/LU0911, for further discussion of the WB-11 Inspection Contingency. Testing opportunities, on the other hand, are found in the separate forms listed on lines 4-6 of Addendum A and with the Testing Contingency on lines 9-23.

The Inspections, Test and Opinions provision indicates that licensees may provide lists of competent contractors who can perform the inspections and tests in which the buyer is interested.

**REALTOR® Practice Tips:**

When helping parties find professional inspectors and contractors (such as contractors for inspections and repairs), REALTORS® should carefully follow these steps:

- **Prepare a list of professional inspectors and contractors.** Do not recommend or endorse one particular contractor because a recommendation that does not present the party with options may result in liability. Instead, maintain a list with the names of at least three professionals in each field, and include any available references from past users. Any contractor included on a list should be certified in his or her field, if at all possible, and at minimum should hold applicable credentials for the type of work being performed. Any company or agent affiliations with any of the listed contractors should be stated on the list or disclosed when the list is distributed. Put the list on a sheet of company letterhead and include a disclaimer that the company’s agents cannot personally endorse these professionals.

- **Avoid referral fees.** It is wise to not ask for or accept a referral fee from any name on the referral list. Earning a fee just for referring business (except to other real estate brokers) violates RESPA if the contractor or company is a RESPA settlement service provider, like a home inspection company.

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inspector, appraiser or title company. The best policy is to not take referral fees unless actual goods or services are provided.

- **Let inspectors and contractors do their jobs.** Licensees may wish to avoid accompanying an inspector through the house because this may imply that the licensee is supervising the inspector. Reinforce that the party hired the inspector and let the party deal directly with the inspector. Similarly, do not volunteer to inspect work performed on the house unless you wish to be considered the contractors’ supervisor. Instead, suggest that the buyer engage an appropriate expert to inspect this work if the buyer wants a professional evaluation.

Even though the Inspections, Test and Opinions provision indicates that no representation is being made as to the competency of any listed contractors, REALTORS® would be wise to make sure that they are listing professionals with proper credentials and competency. The disclaimer in the provision is not a reason to risk the legal consequences of referring a party to an incompetent contractor, and REALTORS® build good customer relationships by satisfying their clients and customers. Links to lists of certified contractors in different fields, including licensed home inspectors, can be found on the WRA REALTOR® Resource pages: [www.wra.org/Resources/resource_pages/default.htm](http://www.wra.org/Resources/resource_pages/default.htm)

The provision indicates that the party selecting an inspector or tester is responsible for determining that person’s qualifications. It also disclaims broker liability if the broker is put in the position of ordering inspections or tests on behalf of a party. Again, this is not an occasion for REALTORS® to test the strength of this disclaimer by becoming a test case in court. REALTORS® instead should follow proper procedures to the greatest extent possible. General legal principles dictate that the one who contracts with an independent contractor is not liable to others for the negligence of the independent contractor. However, this principle does not apply when the person hiring the independent contractor is negligent in selecting, instructing or supervising the contractor. The hiring party also may remain liable if that party retains supervision rights such that the independent contractor is not entirely free to do the work in his or her own way.

**Key Point:** A REALTOR® who acts as a liaison between a party and a contractor risks liability if he or she actually hires, or is perceived to have hired, any contractors who work on a party’s property or provide services for the real estate transaction. A REALTOR® may be held liable for damages resulting from a negligent performance by the retained contractor if the REALTOR® is found to have been negligent in hiring, instructing or supervising the contractor or his or her work. Therefore, REALTORS® should always avoid hiring contractors for parties.

**REALTOR® Practice Tips:** Real estate agents should recognize that it is not part of their duties to hire contractors for clients or customers. The better practice is to give parties a list of local certified contractors, then leave them to determine which contractor best meets their needs and to hire the contractor. If an agent finds it necessary to hire contractors in a particular situation, the agent should have the parties give specific written authorization to hire contractors and sign a release from liability for any damages caused by the contractor. Real estate agents should use a written engagement letter or work order memo if forced to retain a contractor for a party, specify that the party is responsible for the bill and require the contractor to follow all safe work practices required by applicable law.

See the model forms for this process on Pages 12 and 13 of the May 2004 *Legal Update,* “Avoiding Liability When Signing and Making Referrals,” online at [www.wra.org/LU0405](http://www.wra.org/LU0405).

### Underground Petroleum Product Storage Tanks and Basement Fuel Oil Tanks (Lines 84-92)

This section has been revised to reflect the revamped Wis. Admin. Code ch. Comm. 10 covering underground storage tanks (USTs) and aboveground storage tanks (ASTs). While most of the resulting changes apply to commercial tanks, there also have been revisions to the provisions applicable to residential and farm tank systems. Because of these changes, REALTORS® should proceed cautiously when using old materials from the WRA or DComm Web sites because they may not be entirely accurate until updated by DComm.

The seller represents that the seller has no knowledge of any petroleum contamination on the property in the Addendum A provision. The seller is not required to test tanks for leakage or to guarantee that any tanks are not leaking. The UST/AST provision also addresses (1) abandoned USTs, (2) in-use USTs and (3) closures of basement heating oil tanks.

**Abandoned USTs.** With regard to abandoned USTs, the seller agrees to have the UST properly closed and removed by a certified tank remover who shall provide the seller with the proper closure documentation. The seller, in turn, will provide the buyer with a copy of this paperwork at least five days before closing.

A list of certified tank removers and cleaners can be found at [http://apps.commerce.wi.gov/SB_Credential/SB_CredentialApp/SearchByCredType](http://apps.commerce.wi.gov/SB_Credential/SB_CredentialApp/SearchByCredType). The certified
UST remover can give estimates for the work needed to be done to comply with all applicable federal, state and local UST regulations, handle the notifications and paperwork required, remove and properly dispose of the UST and generally see that the job is done properly. If the UST is removed without complying with the UST regulations, licensees will generally be obligated to disclose this fact to all parties pursuant to § RL 24.07(2), and the buyer’s financing may be jeopardized.

REALTOR® Practice Tips:
All USTs must be closed by a certified remover and removed from the premises. As the UST provision in Addendum A reminds, REALTORS® should be aware that real estate transactions may trigger the requirement to close and remove any USTs previously filled with water or inert solids and closed in place using current standards.

In-Use USTs. In-use USTs and ASTs are required to have various overfill protection, corrosion protection, leak detection and spill prevention devices and measures in place. The Addendum A provision indicates that the seller shall provide the buyer with documentation, at least five days before closing, confirming that any in-use UST is registered and meets current operating standards. A certified tank tightness tester (see http://apps-commerce.wi.gov/SP_Credential/SP_CredentialApp/SearchByCredType for a list of contractors) may be able to provide assistance in this regard, or contact Commerce UST staff.

For a list of Commerce tank staff by county, visit http://commerce.wi.gov/ER/ER-BST-StaffStateMap.html and click on your county for the contact information appropriate to the property location. AST/UST tank specialist districts and contact information may also be viewed at http://commerce.wi.gov/ER/pdf/bst/Forms_FM/ER-BST-Fm-9687TankerMap.pdf. The buyer is required under the UST/AST provision in Addendum A to notify DComm of the change in ownership of any in-use UST within 15 days of closing.

Closures of Basement Heating Oil Tanks. Certified persons are not required to clean and remove heating fuel tanks at one- and two-family dwellings that are located aboveground or in the basement. All closed ASTs not immediately removed from the site shall have the word “CLOSED” and the date of final closure permanently marked on the exterior tank wall.

REALTOR® Practice Tips:
Closures of basement heating oil tanks and residential heating oil ASTs do not require a certified remover and the tank need not be removed from the site.

For additional UST/AST information, DComm has a Real Estate Agent’s Web page regarding USTs and ASTs at www.commerce.state.wi.us/ER/ER-BST-RealEstatePage.html.

Municipal Report/Code Compliance (Lines 93-96)
In the Municipal Report/Code Compliance provision, the seller agrees to obtain a written statement from the municipality where the property is located. This statement, if available, should verify that the real estate taxes have been paid and indicate any current and planned special assessments and any unpaid municipal charges applicable to the property. This statement shall be furnished to the buyer prior to closing. The seller must also provide a Certificate of Code Compliance, an Occupancy Permit or any other similar government documentation or permit required under local laws and ordinances at or before closing. All such documentation is furnished at seller’s cost.

Zoning and Building Restrictions, Comprehensive Plans and Non-Conforming Structures (Lines 97-104)
The Zoning and Building Restrictions, Comprehensive Plans and Non-Conforming Structures provision in the WRA Addendum A explains to the buyer that the municipality in which the property is located may have zoning and building restrictions that may affect the use of the property. The municipality may also have a comprehensive plan that may affect the future use or value of the property by influencing future development. The buyer is also advised that some properties may not conform to current zoning if municipal zoning regulations have changed since the structure was built. These non-conforming properties (grandfathered properties) may be subject to restrictions that limit the property owner’s ability to build, rebuild, remodel, replace or enlarge a structure on the property, or to change the nature of the owner’s use of the property. The buyer is encouraged to consult with local municipal zoning officials concerning applicable zoning, building and use restrictions and any comprehensive plan that may affect the property.

Insurance Issues (Lines 105-110)
This new provision in the WRA Addendum A points outs certain factors and variables that may influence the buyer’s ability to get homeowner’s insurance at reasonable rates, such as past insurance claims on the property, the buyer’s credit score, the type of electrical system, the buyer’s pets and other lifestyle factors, and the presence of environmental and other hazards. Consequently, the buyer agrees to apply for insurance early on, the seller agrees to allow representatives of the buyer’s insurer to have access to the property for required insurance inspections and both
parties agree to refer their insurance questions to their insurance agents.


Flood Plains/Wetlands/Shoreland (Lines 111-112)

The final provision of the WRA’s revised Addendum A cautions the buyer that flood plain maps and wetlands maps may be difficult to read and interpret. Accordingly, the Flood Plains/Wetlands/Shoreland provision encourages the buyer to consult with appropriate government officials for assistance in reading and interpreting these maps (see http://dnr.wi.gov/wetlands/delineation.html for resources and assistance) if this information is material to the buyer’s decision to purchase the property. The buyer also agrees to pay the cost of any flood insurance that may be required by the buyer’s lender.

Homeowner’s insurance policies do not cover property or possessions in case of flooding. Flood insurance available under the National Flood Insurance Program can cover losses resulting from floods, flood-related erosion, severe rainstorms, flash floods and mudslides. More information about insurance and flood insurance coverage is available from the Wisconsin Office of the Commissioner of Insurance (oci.wi.gov/pressrel/0308flood.htm) and in the Consumer’s Guide to Homeowner’s Insurance (oci.wi.gov/pub_list/pi-015.htm).

Additional links and information:

- WRA Floodplain Resource Page at www.wra.org/floodplains

Addendum O to the Offer to Purchase – Occupancy Agreement

The WRA’s new 2009 version of the Addendum O to the Offer to Purchase – Occupancy Agreement (Addendum O) has been revised to make it easier for members to use. Because there is no longer a Pre/Post Closing Occupancy provision in the WB-11 Residential Offer to Purchase (mandatory-use date March 1, 2010) as there was at lines 293-297 of the 1999 version of the WB-11, there may be more reason and occasion to use the Addendum O. As before, the WRA Addendum O is flexible enough to be used if the buyer occupies the property before closing or if the seller occupies the property after closing. But instead of having to mark each separate provision on the Addendum O to indicate whether the buyer or seller is occupying the property, as was the case with some prior versions of Addendum O, this designation is made only once on lines 8-12 of the form.

Addendum O raises numerous considerations relevant to a non-owner’s occupancy of the property.

Optional Provisions (Lines 4-5)

The Optional Provisions section provides the same instructions that are given on lines 31-33 of the WB-11 to the parties regarding completion of those provisions that have optional provisions preceded by check boxes. These directions for marking the boxes of the optional provisions that the parties wish to include apply to Occupancy Charge (Lines 13-16), Security Deposit (Lines 17-25), Utilities (Lines 26-28), Maintenance (Lines 29-35), Keys (Lines 36-38), Property Taxes (Lines 39-42), Termination (Lines 43-48) and Other (Lines 49-52). As before, the provisions are not a part of the offer if the boxes are left blank or marked “N/A.”

Premises Occupied (Lines 6-7)

While in many instances the occupancy agreement will relate to the “Property,” as that term is defined in the offer to purchase, sometimes the parties may want to have a pre-closing or post-closing occupancy with respect to only one portion of the property. For example, the buyer may wish to use the basement or garage to store some of his or her belongings for two weeks before closing or may want to have access to a part of the property in order to make repairs or improvements, a circumstance that may be treated as a partial early occupancy. For example, if the buyer wanted to store boxes in the garage, the person preparing the occupancy agreement would strike “(the Property)” and write in “the garage” in the blank on lines 6-7. If no selection is made, the default provision gears the agreement to the entire “Property.”

Occupancy Period (Lines 8-12)

By marking the box at the beginning of either line 9 or line 11, the person preparing Addendum O will be defining most of the crucial terms used throughout the addendum. Marking one of boxes sets the definition of the Owner, Occupant, Occupancy Date and Occupancy Period.

- If the box on line 9 is selected, then the Owner is the buyer and the Occupant is the seller. Post-closing occupancy of the property begins at closing and lasts through the end point specified by filling in the blanks on line 10, which is the Occupancy Date. The time span so described is the Occupancy Period.
• If the box on line 11 is selected, then the Owner is the seller and the Occupant is the buyer and a pre-closing occupancy begins at the point filled in on the blanks on line 12 (the Occupancy Date) and ends at closing. The time span so described is the Occupancy Period.

For the balance of the form, references are to Owner and Occupant (or to Parties when referring to both collectively), and Occupancy Date and Occupancy Period.

**Occupancy Charge (Lines 13-16)**

If there will be an occupancy charge, the box at the beginning of line 13 should be marked and the Occupancy Charge provision in the WRA Addendum O should be completed by filling in the daily rate for the prepaid occupancy charge, indicating who will hold these funds by identifying that person or entity on the blank at line 14 and by indicating (by striking) whether any unearned portion of the occupancy charge will be refunded based upon actual occupancy. If a choice is not made, it is stated that any unearned portion of the occupancy charge will be refundable.

**Security Deposit (Lines 17-25)**

The optional Security Deposit provision on lines 17-25 calls for the amount of the security deposit to be filled in the blank line at line 17 and, like the Occupancy Charge provision, requires that the party holding the security deposit be named on line 18. The security deposit is paid at the beginning of the Occupancy Period and refunded at the conclusion of the Occupancy Period.

Under this provision, the owner may deduct for damage, waste or neglect, but not ordinary wear and tear. This is similar to the way that security deposit deductions are handled under landlord-tenant law. However, there is one exception: in the case of a pre-closing occupancy by the buyer, the entire security deposit is returned to the buyer upon closing. Unless otherwise agreed, the disbursement is made upon the written direction of the owner. The Parties agree to hold the person or entity holding the funds harmless for any good faith disbursements pursuant to the terms of Addendum O or under applicable law.

Can the broker hold this security deposit in the broker’s trust account? Wis. Admin. Code § RL 18.07(2) provides that a broker may hold a post-closing occupancy escrow if the closing statement shows that the broker is holding the funds. In addition, the Security Deposit provisions may also be viewed as a mini escrow agreement drafted by an attorney (since Addendum O is drafted by an attorney), which may suffice to satisfy the requirements of § RL 18.07(1).

Most problems with the security deposit will likely occur when sellers occupy the premises after closing and the buyer wishes to withhold part of the deposit. In those cases, a broker may disburse based upon the written instructions of the owner, as is stated in the Security Deposit provision. The language of the Security Deposit provision may be viewed as an authorization granted within the contract, under Wis. Admin. Code § RL 18.09 (1)(f) – in this case, an authorization to follow the written directive of the owner. However, if the broker has knowledge that one of the parties disagrees with the disbursement, the broker must first give all parties a written notice of the disbursement at least 30 days in advance of the disbursement, by certified mail, as required by § RL 18.09(2).

The same can also be said for a disbursement under the Security Deposit provision indicating that the entire deposit is refunded to the buyer at closing if there has been a pre-closing occupancy by the buyer.

If at any time there is a dispute regarding the Security Deposit provision language, application of the Wis. Admin. Code ch. RL 18 rules or the parties’ legal rights, an attorney should be consulted as directed in Addendum O.

**No Insurance Provision**

The former Insurance provision in the prior version of the WRA Addendum O has been deleted because so many REALTORS® were reporting that the parties could not get the described insurance coverage. Their insurance agents repeatedly indicated that insurance would not be available for these occupancies, at least if the exact relationship was accurately reported to and understood by the insurance agent.

**Utilities (Lines 26-28)**

In the Utilities provision, the occupant agrees to pay for all utility service during the Occupancy Period. The occupant must have the bills for all utility service issued in his or her name to the greatest extent possible. If the utility bills cannot be switched to the occupant’s name, then the parties agree that the utility bills will be prorated based upon the Occupancy Date.

**Maintenance (Lines 29-35)**

The Maintenance provision at lines 29-32 assigns responsibility for routine repairs and normal maintenance of the property, including any personal property included in the sales price, to the occupant. The Parties are asked to state a dollar amount that serves as the dividing line between routine repairs and normal maintenance of the property, and major repairs and major maintenance, the latter being the responsibility of the owner. Disputes over the costs of major repairs and maintenance are to be resolved by obtaining an estimate from a qualified third-party contractor (as defined in Wis. Stat. § 452.23(2)) who is mutually agreed upon by the parties.
Keys (Lines 36-38)
On Lines 36 and 37, the parties specify how many keys each party shall have to the property. The parties also indicate how many hours of advance notice the owner must provide to have access to the premises and under what circumstances the owner will be permitted access to the property. The provision indicates the owner may have access at reasonable times and upon advance to inspect the property and provides a blank at line 38 where other purposes for owner access may be indicated.

Property Taxes (Lines 39-42)
If the Property Taxes provision is selected, the parties may indicate (by striking) whether property taxes will be prorated through the day prior to closing or through the Occupancy Date. If the buyer is occupying pre-closing, then it is likely that the parties will want the taxes to be prorated as of the day prior to closing, as is the case on the WB-11 Residential Offer to Purchase (2010) – see Line 121 of the WB-11. Because the buyer will close and thus end the buyer’s Occupancy Period, there ordinarily would not be any reason to choose this optional provision under those circumstances.

If the seller is occupying the property after closing, then the Occupancy Date – the end of the seller’s Occupancy Period – would mark the logical date to use when computing the tax prorations. Occupancy Date is the default if the Parties select the Property Taxes provision but neglect to strike out one of the two given options. The Note in bold type at lines 40-42 of the WRA Addendum O indicates that if tax prorations are to be calculated as of the Occupancy Date, then the Closing Prorations provisions in the offer are amended to provide that “Net general real estate taxes shall accrue to Seller, and be prorated at closing, through the Occupancy Date.” Although this provision is intended to be automatic and self-executing, it will not hurt for the licensee drafting the offer to note this adjustment in Additional Provisions in the offer to ensure that this change is clear to everyone. If this is forgotten, however, this Addendum O provision will cover the adjustment.

Termination (Lines 43-48)
If the seller occupies the property after closing and the seller fails to give the buyer possession on the Occupancy Date, the buyer may initiate an eviction action in small claims court. The buyer may seek not only possession of the property but also all charges imposed in Addendum O, the loss of use charge specified at Line 45, and any other damages, costs and reasonable attorney’s fees. The Parties are permitted to set the amount of the daily charge for the owner’s loss of use of the premises, but they should be careful to not set an exorbitant amount. This daily charge is a type of liquidated damages and may be voided by the courts if the amount is unreasonably large.

The Termination provision provides that a buyer occupying pre-closing must vacate the property upon notice from the seller. This notice must be given within the number of days specified on Line 47 if the sale does not close. The days are counted from the scheduled closing date. Although not specified in the provision, any Occupant who fails to leave as agreed in Addendum O may be evicted and sued for all related damages.

See the Basic Guide to Wisconsin Small Claims Actions, online at www.wicourts.gov/about/pubs/circuit/docs/smallclaims.pdf, for a description of the stages of small claims lawsuits and the resources available from the Wisconsin State Law Library at http://wilawlibrary.gov/topics/justice/civil/smallclaims.php. There also is an excellent Self-Help Small Claims Web site at https://prosesmallclaims.wicourts.gov/pages/index.html that offers a wealth of valuable information including forms and county-customized guidance for handling different small claims cases including cases for eviction.

Blank Lines (Lines 49-52)
Blank lines are provided for the Parties to use for whatever other agreements may be appropriate. In general, Addendum O offers the parties a wide range of choices on numerous occupancy issues, and hopefully will permit them to reach the agreement that best meets their respective needs. For instance, if the Parties are in a situation where one or both can obtain insurance coverage for the occupant during the Occupancy Period, that could be written in here.

Initial Lines (Lines 53-55)
On line 54 the parties should initial and date Addendum O to confirm that they have received and read a copy of the Addendum O – Occupancy Agreement.

Use of Premises (Lines 56-60)
The occupant is entitled to quiet enjoyment of the premises during the Occupancy Period as long as he or she performs the obligations of the Addendum O – Occupancy Agreement. This provision also prohibits structural changes, alterations or improvements by the occupant without the prior written consent of the owner. The occupant cannot assign or sublet his or her interest under the Occupancy Agreement, and must use and occupy the premises in accordance with all applicable laws and regulations.

Hold Harmless (Lines 61-62)
The occupant agrees to hold the other owner harmless for all liabilities, claims or expenses resulting from the occupant’s use, possession and occupancy of the property.
Not Landlord-Tenant
(Lines 63-65)

This provision confirms that, pursuant to Wis. Stat. § 704.01(5), a person occupying a property under an offer to purchase is not considered a tenant. Thus, Addendum O does not create a landlord-tenant relationship and is not subject to Wis. Stat. ch. 704 and Wis. Admin. Code ch. ATCP 134.

Although the Addendum O – Occupancy Agreement provides for both pre-closing occupancies by buyers and post-closing occupancies by sellers, REALTORS® may wish to caution sellers that serious risks can be involved in permitting buyers to occupy a property before closing. Despite all of the preventive provisions in Addendum O, the fact remains that if the buyer is allowed to occupy the property and then does not close, it may be a struggle to get the buyer out. The seller may be forced to commence eviction proceedings. Additionally, there is the risk that buyers in such circumstances may damage the property, perhaps forcing the seller to go to court to seek damages. Certainly most buyers do not behave in this manner, but the risk is always present.

REALTOR® Practice Tips: While the provisions of Addendum O are designed to regulate a buyer’s occupancy before closing and a seller’s occupancy after closing, these provisions should be used with a great deal of caution. The parties are well advised to confer with their attorneys before agreeing to these occupancies.

The WRA Addendum A to the Offer to Purchase (WRAADA) and the Addendum O to the Offer to Purchase – Occupancy Agreement (WRAADO) are available on ZipForm and from the WRA. Visit the Forms Update Resource page at [www.wra.org/Legal/forms_update.htm](http://www.wra.org/Legal/forms_update.htm) for additional information and to order printed copies of the forms.

Updated RECRs and Seller Disclosure Reports

Revisions have been made to the following WRA Real Estate Condition Reports and Sellers Disclosure Reports:

- **Condition Report (two pages) (WRACR):** Wis. Stat. ch. 709 Real Estate Condition Report (RECR) containing the mandatory content required by statute. This form also contains some supplementary information (appearing in italics).

- **Seller’s Real Estate Condition Report (three pages) (WRASCR):** Wis. Stat. ch. 709 RECR containing the mandatory content required by statute. This form also contains substantial supplementary information including many examples and prompts (appearing in italics).

- **Real Estate Condition Report – Farm (WRAF):** A Wis. Stat. ch. 709 RECR containing the mandatory content required by statute, based upon the assumption that a farm house is on the property. This form contains some supplementary information (appearing in italics), as with the WRACR, but also contains additional supplementary information including pertaining to agricultural and vacant lands (appearing in italics).

- **Seller Disclosure Report – Commercial (WRARCC):** Not a Wis. Stat. ch. 709 RECR because it is designed for commercial, not residential property. It shares many items with the other reports, but also contains some items that are distinctively commercial.

- **Seller Disclosure Report – Vacant Land (WRARY):** Not a Wis. Stat. ch. 709 RECR because it is designed for vacant property where no development has been undertaken. It shares many items with the other reports but also contains some items that are concerns that persons looking to build or develop vacant land would have.

The two main reasons for the additional revisions to these forms – all just updated near the end of 2008 – are to implement a provision warning of potential Farmland Preservation conversion charges and to try to make the list of disclosure items as uniform as possible with regard to the WB-11 and the various WRA RECRs and seller disclosure reports.

Farmland Preservation Conversion Fees

The farmland preservation laws in ch. 91 of the Wisconsin Statutes were repealed and completely recreated, effective July 1, 2009. See the detailed discussion of these new laws in the September 2009 Legal Update, “Wisconsin Farmland Initiatives,” at [www.wra.org/LU0909](http://www.wra.org/LU0909) and in the February 2010 edition of the Wisconsin Real Estate Magazine.

New farmland preservation conversion fees apply under the new legislation when a farmland preservation agreement is terminated early, land is released from a farmland preservation agreement or land is rezoned out of a farmland preservation zoning district. These farmland preservation conversion fees are in addition to any use-value conversion fees (penalties) that may also apply, for example, when rural land is taken out of agricultural use and developed for commercial purposes.

REALTOR® Practice Tips: The farmland preservation conversion fee will be triggered when a farmland preservation agreement is terminated early, land is released from a farmland preservation agreement or land is rezoned out of a farmland preservation zoning district. The amount of the conversion fee is significant, and developers considering the purchase of farmland preservation lands should factor in these conversion fees, as well as any...
use-value conversion fees, when projecting development costs.

Farmland preservation conversion fees could impact a buyer’s decision to purchase property or the amount the buyer is willing to pay. Rather than risking any potential liability on the part of a seller or a REALTOR® working in a transaction where all or part of the property is in a farmland preservation zoning district or subject to a farmland preservation agreement, the WRA has modified the WRA Condition Report (two pages), the WRA Seller’s Real Estate Condition Report (three pages), the WRA Real Estate Condition Report – Farm, the WRA Seller Disclosure Report – Commercial and the WRA Seller Disclosure Report – Vacant Land (hereinafter the “5 disclosure forms”) to alert buyers of rural properties to the possibility of farmland preservation conversion fees. The following information was added to each of these disclosure forms after the information concerning use-value assessments and near the end of the disclosure items in the respective form:

The property is in a certified farmland preservation zoning district or subject to a farmland preservation agreement.

Notice: Rezoning a property zoned farmland preservation to another use or the early termination of a farmland preservation agreement or removal of land from such an agreement can trigger payment of a conversion fee equal to 3 times the class 1 “use value” of the land. Call 608-224-4500 or visit www.datcp.state.wi.us/workinglands/index.jsp for more information.

Conditions Affecting the Property or Transaction
(Lines 66-113 of the WB-11)

In the 1999 offer to purchase, there is a list of disclosure items in the definition of “conditions affecting the Property or transaction” that are similar to, but not identical to, the list of disclosure items found in the 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 same disclosures had already been covered in the RECR. Often they may not have taken the time to review the definition of “conditions affecting the Property or transaction” in the 2010 WB-11 and the items listed in the RECR. The following disclosure items are found in the 2010 WB-11, but not in the RECR content appearing in Wis. Stat. § 709.03 (hereinafter referred to as the “six missing disclosure topics”):

- Underground or aboveground fuel storage tanks previously located on the property.
- Current or previous animal or insect infestations.
- Any land division involving the Property for which required state or local permits had not been obtained.
- High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property.

In an effort to bring more consistency to the transaction, the definition of “conditions affecting the Property or transaction” in the 2010 WB-11 consists primarily of the items listed in the RECR. Making the list of RECR disclosure items the same as the list of items included in the definition of “conditions affecting the Property or transaction” has the following effects:

- Creates a contractual obligation for the seller to make the RECR disclosures, which reinforces the seller’s statutory obligation under § 709.01 to make those disclosures.
- Reveals to the buyer the disclosures the buyer has not yet received in cases where the buyer has not received an RECR before drafting the offer to purchase.
- Essentially forces a seller into making the RECR 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 uniquely 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 WB-11 and the items listed in the RECR. The following disclosure items are found in the 2010 WB-11, but not in the RECR content appearing in Wis. Stat. § 709.03 (hereinafter referred to as the “six missing disclosure topics”):

- Essentially forces a seller into making the RECR disclosures or explaining why they are not doing so (for example, an “as is” sale).
2009, so that the seller is asked to address the same disclosure items in the RECRs and in the 2010 WB-11.

Consistency is important. If there are disclosure items in the 2010 WB-11 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 completed.

The following specific changes were made to each disclosure report.

- **Condition Report (two pages) (WRACR):** any of the six missing disclosure topics not already on the form were added, as well as the farmland preservation notice.

- **Seller’s Real Estate Condition Report (three pages) (WRASCR):** any of the six missing disclosure topics not already on the form were added, as well as the farmland preservation notice. Additional examples of special purpose districts (lake districts, sanitary districts and sewer districts) were added to item C.24.m.

- **Real Estate Condition Report – Farm (WRAF):** any of the six missing disclosure topics not already on the form were added, as well as the farmland preservation notice. Additional examples of special purpose districts (lake districts, sanitary districts and sewer districts) were added to item C.24.m.

- **Seller Disclosure Report – Vacant Land (WRARV):** the farmland preservation notice was added. Additional examples of special purpose districts (lake districts, sanitary districts and sewer districts) were added to item 19. Item 17 was changed to read, “Lack of vehicular access to the Property from public roads,” so that explanations are needed only when there is no legal access. The content of the former item 20 from the 2008 version of the form was added into item 1 and the old item 20 was deleted.

The WRA Condition Report (two pages) (WRACR), Seller’s Real Estate Condition Report (three pages) (WRASCR), Real Estate Condition Report – Farm (WRAF), Seller Disclosure Report – Commercial (WRARCC) and Seller Disclosure Report – Vacant Land (WRARV) are available on ZipForm and from the WRA. Visit the Forms Update Resource page at [www.wra.org/Legal/forms_update.htm](http://www.wra.org/Legal/forms_update.htm) for additional information and to order printed copies of the forms.

**Legal Hotline Questions and Answers: Addenda A and O**

An agent has an offer that was countered. The offer included an Addendum A and Addendum B. The seller initialed the offer and did a counter-offer. The attorney for the buyer is saying the seller needs to sign and initial the addenda along with the counter-offer. Please advise.

Addenda that are properly referenced in the offer become part of the contract and would not have to be separately signed by the parties. However, it is always good policy to have such addenda signed or initialed if possible.

**In the Testing Contingency on lines 6-13 on the 2002 Addendum A, can one fill in the blank with “as recommended by inspector,” or must there be a specific test listed? Are there any written rules as to what is and is not acceptable language here?**

Per lines 97-110 of the 1999 WB-11 Residential Offer to Purchase, an inspection is defined as an observation of the property and does not include testing (other than testing for leaking carbon monoxide or leaking LP gas or natural gas used as a fuel source). This section goes on to state that if the buyer requires testing, testing contingencies must be specifically provided in the offer or in an addendum thereto. Only those tests that are specifically included in the contract are authorized and can be considered conditions of the buyer’s offer to purchase. It is in the best interest of the parties to draft with specificity.

The language used here may be objected to by many sellers who do not wish to agree to unknown tests that might cover a wide range of substances: the level of physical intrusion and even damage to the property or liability issues cannot be predicted. The use of the language suggested herein may subject the parties to unnecessary costs to obtain legal opinions regarding the enforceability of the contract. The buyer may consult with the home inspector prior to drafting an offer regarding what tests are appropriate for the transaction. The broker may then draft the offer accordingly.

A property data sheet indicates that the seller will provide a home warranty. The buyer wrote her offer to purchase with the expectation that she would receive the home warranty. However, the home warranty was not addressed in the offer. At closing, however, the seller refused to provide any home warranty because the buyer did not ask for it in the offer. Is this correct?

When a seller offers a home warranty in the listing, it is similar to when
the seller offers a freestanding stove or other personal property: it is not included in the transaction unless it is included in the offer. The seller has no independent obligation to provide the home warranty for the buyer unless the contract obligates the seller to do so.

A question was raised by an agent. If a client asks for suggestions about banks, title companies, etc., do you always have to give out at least three names for each, or can you just suggest one or two?

The following is an excerpt from the May 2004 Legal Update, “Avoiding Liability When Signing and Making Referrals”:

Agent Not Responsible for Actions of Recommended Pest Control Company

The Court of Appeals of Kentucky ruled that a real estate agent did not guarantee the competency of a pest control company when the agent recommended the pest control company to a buyer. The Court considered whether the buyer’s broker could be liable to the buyers for recommending the pest control company to them when the lender required a termite inspection. The buyers asked their buyer’s agent for a list of pest control companies, and he gave the buyers a list of three companies. The buyers selected and hired a pest control company to perform the inspection. The Court considered whether the buyer’s broker breached its fiduciary duty to the buyers by recommending a pest control company that allegedly did not perform its required duties in a satisfactory manner. The Court ruled that making a recommendation does not guarantee performance when the buyer’s broker also had given the buyers the names of two other pest control companies.

REALTOR® Practice Tips:

- Prepare a list of professional inspectors and contractors. Do not recommend or endorse one particular contractor because a recommendation that does not present the party with options may result in liability. Instead, maintain a list with the names of at least three professionals in each field, and include any available references from past users. Any contractor included on a list of contractors should be certified in his or her field, if at all possible, and at minimum should hold all applicable credentials for the type of work being performed. Any company or agent affiliations with any of the listed contractors should be stated on the list or disclosed when the list is distributed. Put the list on a sheet of company letterhead, and include a disclaimer that the company’s agents cannot personally endorse these professionals.

The entire article is available online at www.wra.org/LU0405.

There is no rule requiring three, but that appears to be safe because it worked in this case. Giving just one name will look like a recommendation and can lead to potential liability.

A buyer’s agent submitted an offer with a testing addendum allowing for an asbestos test. The test found asbestos. Because the buyers intended to remodel, they felt it better to have the asbestos removed because of the possibility of future disturbance. The buyer’s agent did not submit a notice of defects because the buyers did not want to lose the property. Instead, the agent drafted, and both parties signed, an amendment giving the sellers extra time to remove the asbestos beyond the original deadline set forth in the testing addendum. The sellers removed the asbestos. Should the buyer’s agent be concerned because the seller does not have an asbestos removal certification or license?

First, there is no statutory or regulatory requirement that a residential property owner conducting residential asbestos removal be privately certified or licensed. The amendment should have clearly identified the credentials the person removing the asbestos must have. Of course, given the seriousness of a potential asbestos contamination, one would want to ensure that any remover would have a minimum level of expertise to ensure the removal is done properly. The parties should be advised to contact their respective attorneys to receive advice on how to proceed.

The agent is working with buyers who have an accepted offer on a home. The radon testing called for in Addendum A showed radon levels above the safety level. The buyers would like the seller to remedy this and planned to give a notice to the seller to that effect. The radon Testing Contingency says if the seller chooses not to remedy, the offer is null and void. The listing broker says there is another buyer waiting in the wings. The buyers have looked at many homes and do not want to lose this one. The buyers want the seller to mitigate, but do not want the offer declared null and void if the seller refuses to repair. Is there a way to solve this dilemma?

Prior to submitting a written notice of defects, the buyers may submit an amendment to the seller requesting that the seller remedy the radon levels. This proposed amendment would allow the parties the opportunity to negotiate without giving the seller the ability to decide not to cure, making the offer null and void. It may be prudent to have the response deadline in the amendment be before the deadline for a notice of defects in the Testing Contingency (and also delete the mail delivery option). This will allow the buyers to issue the notice of defects if the seller does not accept the buyers’ amendment and the buyers decide they do not want the property unless repairs are made.
The buyer used the Testing Contingency in the WRA Addendum A rather than the septic inspection contingency in the WRA Addendum B. The septic report states it is in working order but does not meet current code. Is this an out for the buyer considering they did not use Addendum B?

The terms of the Testing Contingency apply as stated in Addendum A. It should be noted that failure to comply with current code (while addressed in many septic and well contingencies) is not included within the definition of defects in the Testing Contingency in Addendum A. The buyer may need to try to demonstrate that a lack of code compliance falls within the definition of defects, e.g., it has a significant effect on the value of the property. Obviously it would have been much better and easier for all concerned if the buyer had used Addendum B and the contingency specifically designed for septic issues.

A buyer wants to move some personal belongings and vehicles onto the property he intends to purchase before closing. How should this be documented to protect all parties, including the agents?

An amendment should be prepared and signed by all parties giving the buyer the right to pre-closing occupancy for the vehicles and belongings, addressing whether or not there will be an “occupancy charge” and providing what should happen if the transaction does not close. The parties may wish to use a WRA Addendum O to the Offer to Purchase – Occupancy Agreement for this purpose.

The seller let the buyers move in one day before the property was supposed to close because there were well issues. The closing had been rescheduled three times. It turns out the property needs a new well, which the sellers are putting in, but the buyers have decided they no longer want the home. The listing agent served the buyers a three-day notice and they should have been out of the property by midnight on November 2. They just moved out on November 5, so they owe $50/day per Addendum O. On October 11, all utilities were switched to the buyers’ name. When the buyers got the three-day notice, they called the utility company and told them that they had never moved into the property so the seller is now stuck with the bill for almost one month. The buyers had eight people living in the home. The agent still is holding the earnest money. Can the seller withhold the money that the buyers owe for occupancy charges from the earnest money and return the rest to the buyers? The buyers signed the cancellation agreement and mutual release (CAMR), which stated that the earnest money would be returned to the buyers.

While it is natural to want to help the side that “deserves” it, the disbursement of trust funds, including earnest money, from a real estate trust account is controlled by rules that do not concern themselves with who is right or wrong, but establish a procedure that gives everyone a fair chance to make a claim on them. The rules, found in Wis. Admin. Code § RL 18.09 (1) and (2). § 18.09 (1), state the bases upon which a broker may disburse the funds. These include agreement of the parties either in the form of a CAMR (WB-45) or the provisions dealing with earnest money in an accepted offer. § 18.09 (2) establishes procedures for notice before disbursement if the matter is in dispute. The rules are fairly mechanical and do not give the broker the right to decide who deserves to receive funds. In part this is based on the need for the broker to have a way to get out of the middle of a fight without being drawn into it. Also it is based on the fact that disbursement of the funds, unless accompanied by a mutual release, does not affect the rights of the parties against one another under the offer. By learning and using the rules a broker can avoid liability for disbursing earnest money when a deal falls apart.

If both the seller and the buyer have signed a CAMR, the earnest money should be disbursed per that agreement.

The insurance provision on lines 17-19 of the 2002 version of Addendum O is difficult to complete due to problems with the availability and adequacy of insurance. How should REALTORS® address this concern?

The WRA Addendum O has been prepared to assist buyers and sellers who are contemplating an occupancy agreement. Because of the changing insurance market, it is difficult to know what insurance may be available in any given situation. Before agreeing to the terms and conditions of the addendum, the buyers and sellers should consult with insurance providers to determine if the coverage is available per Addendum O. The parties may, upon advice of their insurance carriers, modify the addendum to best meet their needs in the transaction.
ADDENDUM A TO THE OFFER TO PURCHASE

1. This Addendum is made part of the Offer to Purchase dated ______________ made by __________________________ (Buyer), with respect to the Property at __________________________.

2. CAUTION: BUYER MUST INCLUDE CONTINGENCIES IN THIS OFFER FOR ANY TESTS OR INSPECTIONS BUYER CHOOSES TO CONDUCT.

3. SPECIFIC ADDENDA ARE AVAILABLE FOR TESTING OR EVALUATION OF PRIVATE WELLS, WELL WATER, SEPTIC SYSTEMS, LEAD-BASED PAINT, WETLANDS AND LEAD/ARSENIC PESTICIDES.

4. OPTIONAL PROVISIONS: Terms proceed by an open box (☐) are part of this addendum only if marked, such as with an “x.” They are not part of this Addendum if marked “n/a” or are left blank.

5. TESTING CONTINGENCY (includes lines 9-23): This Offer is contingent upon (Buyer obtaining)(Seller providing) [STRIKE ONE] (“Buyer obtaining” if neither stricken) a current written report from a qualified independent expert documenting the results of the following test(s) conducted pursuant to applicable government or industry protocols and standards (indicate substances or compounds to be tested, e.g., radon, asbestos, mold, etc.); ____________ within ____________ days of acceptance (“21” if blank), at (Buyer’s)(Seller’s) expense (“Buyer’s” if neither stricken). This testing contingency shall be deemed satisfied unless Buyer, within five days of the earlier of 1) Buyer’s receipt of the testing report(s) or 2) the deadline for delivery of said report(s), delivers to Seller, and to listing broker if Property is listed, a copy of the testing report(s) and a written notice identifying the Defect(s) to which Buyer objects (Notice of Defects). For purposes of this Testing Contingency, Defects (as defined in the Offer) do not include structural, mechanical or other conditions the nature and extent of which Buyer had actual knowledge or written notice before signing the Offer.

6. Right To Cure: Seller (shall) (shall not) [STRIKE ONE] have the right to cure (“Shall” if neither stricken). If Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering to Buyer, within 10 days of Buyer’s delivery of the Notice of Defects to Seller, a written notice stating Seller’s election to cure, (2) curing the Defects in a good and workmanlike manner and (3) delivering to Buyer a 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 testing report(s) and (1) Seller does not have the right to cure or (2) Seller has a right to cure but (a) Seller delivers written notice to Buyer stating that Seller will not cure or (b) Seller does not timely deliver written notice of Seller’s election to cure.

7. CLOSING: The Parties agree that the closing shall be held at (the place selected by Buyer’s lender) (the place selected by Buyer) ____________________________.

8. ASSOCIATION FEE: Buyer acknowledges the (monthly)(quarterly)(annual) STRIKE TWO association fee of $ ____________.

9. NOTE: Buyer has been informed of the availability of a limited home warranty plan.

10. HOME WARRANTY PLAN: A limited home warranty plan for a term of one year shall be included, effective on the date of closing, provided the Property qualifies for the warranty plan. The cost of the home warranty shall not exceed $ ____________ and will be paid by (Seller) (Buyer) STRIKE ONE (“Seller” if neither is stricken) at closing. The warranty plan will be provided by the (listing) (cooperating) STRIKE ONE broker (“listing” if neither stricken). Buyer is advised that a home inspection may detect pre-existing conditions which may not be covered under the warranty plan.

11. SURVEY MAP OF THE PROPERTY: This Offer is contingent upon (Buyer obtaining) (Seller providing) [STRIKE ONE] (“Seller providing” if neither stricken) a map of the Property prepared by a Wisconsin licensed land surveyor, within ____________ days of acceptance, at (Buyer’s) (Seller’s) [STRIKE ONE] (“Seller’s” if neither stricken) expense. The map shall identify the legal description of the Property, Property boundaries and boundary line dimensions, visible encroachments, the location of improvements and:

12. STRIKE AND COMPLETE AS APPLICABLE: (Additional map specifications and features may include, but are not limited to: staking all Property corners; specifying how current the map must be; identifying streets, length of street frontage, legal access, length of water frontage, total acreage or square footage, utilities, easements and/or rights-of-way. CAUTION: Consider the cost and the need for map features before selecting them.) The map shall show no significant encroachment(s) or any information materially inconsistent with any prior representations to Buyer. This contingency shall be deemed satisfied unless Buyer, within 5 days of the earlier of: 1) Buyer’s receipt of the map, or 2) the deadline for provision of said map, delivers to Seller, and to listing broker if Property is listed, a copy of the map and a written notice which identifies the significant encroachment or the information materially inconsistent with prior representations.

13. Federal VA and FHA Mortgage: If this Offer is contingent upon Buyer obtaining a FHA or Federal VA loan, it is also contingent upon the Parties executing an FHA or Federal VA amendment to the contract which shall give Buyer the right to terminate the Offer if the Property fails to appraise for the purchase price. Seller also agrees to pay lender at time of closing, a tax service fee not to exceed $100.00.

14. Federal VA Mortgage: Buyer(Seller) [STRIKE ONE] (“Seller” if neither is stricken) agrees to pay the entire funding fee not to exceed __________% (0% if not filled in) of the mortgage amount. NOTE: Funding fee may not be divided between the parties. Buyer agrees to pay all other costs of securing financing.

15. State VA Mortgage: Buyer(Seller) [STRIKE ONE] (“Seller” if neither is stricken) agrees to pay the loan origination fee not to exceed __________% (0% if not filled in) of the mortgage amount. Buyer agrees to pay all other costs of securing financing.

16. Seller’s Contribution: Seller shall give Buyer a loan cost credit at closing in the amount of $ ____________ (Zero if left blank) to assist Buyer in purchasing the Property. This is exclusive of any loan fees indicated on the offer to purchase.

17. READING/UNDERSTANDING: By initialing and dating below, each Party acknowledges they have received and carefully read both pages of this addendum. (Initialing below by Seller does not signify acceptance or agreement with the terms of this Addendum.)

(X) __________________________ (X) __________________________ (X) __________________________ (X) __________________________

Buyer’s Initials ▲ Date ▲ Buyer’s Initials ▲ Date ▲ Seller’s Initials ▲ Date ▲ Seller’s Initials ▲ Date ▲
BUYER'S RESPONSIBILITY TO ASCERTAIN CONDITION OF THE PROPERTY: Buyer acknowledges that it is Buyer's responsibility to make certain that the Property is in a condition that Buyer finds acceptable. Buyer acknowledges that Buyer has made such inspections, tests, evaluations and independent inquiries as Buyer deemed necessary concerning the Property and existing and proposed conditions and services in the surrounding area. Buyer acknowledges that in purchasing this Property, Buyer has relied on Buyer's independent inspection and analysis of the Property and upon the statements, disclosures and representations contained in this Offer, Seller's property condition report (if any) and any other written statements provided to Buyer. Buyer further acknowledges that neither Seller nor any real estate agents involved in this transaction have made any representations concerning the Property or the transaction other than those stated in, or incorporated by reference into, this Offer, or otherwise provided to the Buyer in writing. Buyer agrees that Buyer has not requested Seller nor has any real estate agent offered to verify the accuracy of any of Seller's or any other third party's statements, disclosures or representations contained in this Offer unless the request is specifically stated in this Offer.

HAZARDOUS SUBSTANCES: The Parties are aware that news media and other public information sources indicate that asbestos, lead-based paint, lead in drinking water, unsafe levels of mold, radium, radon gas and other toxic substances and chemicals within a structure or in soils or water supplies can cause serious health hazards. Past flooding, water intrusion or leaking or excessive dampness may result in mold growth that may present health risks. Synthetic stucco and wood composite exterior house siding have been associated with moisture and mold related problems. Chinese drywall may emit sulfur odors and cause corrosion. Seller represents that, to the best of Seller's knowledge, the Property does not contain asbestos, lead-based paint, excessive moisture or water intrusions, abnormal or unsafe concentrations of mold, radon gas, lead, radium, Chinese drywall or other toxic or harmful substances or chemicals, and that there has been no past flooding, water intrusion, leaking or excessive moisture in the Property. It is recommended that Buyer (a) direct the real estate agents in this transaction to draft appropriate testing or investigation contingencies and (b) retain appropriate independent experts to test and evaluate the Property with respect to these substances and situations. See the caution at lines 4-6 and the Testing Contingency at lines 9-23 of this Addendum.

INSPECTIONS, TESTS AND OPINIONS: It is recommended that Buyer have the Property and specific Property components of concern inspected by a Wisconsin registered home inspector and qualified independent inspectors/experts. Real estate agents in this transaction may furnish a list of qualified, independent inspectors and testers to the Parties. Unless provided in writing, no representation has been made as to the competency of these inspectors/testers. The Party responsible for obtaining an inspection or test shall be solely responsible for determining the qualifications of the inspector and tester. If a broker orders any inspection or test on behalf of a Party in this transaction, the Parties agree to hold the broker harmless for any damages or liability resulting from the inspection or test, other than that caused by the broker's negligence or intentional wrongdoing.

UNDERGROUND PETROLEUM PRODUCT STORAGE TANKS AND BASEMENT FUEL OIL TANKS: Seller has no knowledge of any petroleum product contamination on the Property. If there is an abandoned underground storage tank (UST) on the Property, Seller shall, prior to closing, have a certified remover close the UST and remove it from the Property in conformance with current federal, state and local UST regulations, and provide Buyer with documentation, including the certified remover's report, confirming such UST closure at least 5 days prior to closing. Buyer's purchase of the Property may trigger the requirement to remove any USTs previously filled with water or inert solids and closed in place. Seller shall provide Buyer at least 5 days prior to closing with documentation confirming that any in-use UST is registered, and meets all current state overfill and spill prevention, corrosion prevention and operating standards. Buyer shall notify the Department of Commerce of the change of ownership of any in-use UST within 15 days of closing. Closures of basement heating oil tanks do not require a certified remover and the tank need not be removed from the site. Find local Commerce tank staff contact information: http://commerce.wi.gov/ER/ER-BST-StaffStateMap.html

MUNICIPAL REPORT/ CODE COMPLIANCE: Seller agrees to provide Buyer with written verification of paid real estate taxes, current or planned special assessments and any unpaid municipal charges affecting the Property, if such a statement is available from the municipality in which the Property is located. This statement shall be provided prior to closing, at Seller's expense. Seller also shall provide, at Seller's cost, any Certificate of Code Compliance, Occupancy Permit or similar government documentation as may be required under applicable municipal code at or before closing.

ZONING AND BUILDING RESTRICTIONS, COMPREHENSIVE PLANS AND NON-CONFORMING STRUCTURES: Municipal zoning and building restrictions currently affect the use of the Property, and comprehensive plans, while strictly advisory, may affect the future use or value of the Property by influencing future development (residential, commercial, transit systems, etc.) in the municipality. Buyer is informed that some buildings are considered legal non-conforming structures because they no longer conform to current dimensional zoning standards due to zoning standards and ordinances enacted after the building was constructed. Significant restrictions may limit Buyer's ability to remodel, repair, replace or enlarge an existing non-conforming structure (consider special hazard insurance if Property is non-conforming). Buyer is encouraged to contact the appropriate municipal authorities regarding zoning and building restrictions and comprehensive plans if these issues are material to Buyer's decision to purchase.

INSURANCE ISSUES: The claims history of the Property, Buyer's credit history (credit score), Buyer's insurance claims history, Buyer's lifestyle (e.g., large dogs, trampoline, etc.) and the condition of the Property, including the type of electrical service (tube or aluminum wiring, fuses, less than 100 amps) and the hazards described at lines 67-76, may substantially increase Buyer's homeowner's insurance premiums or make the Property difficult to insure. Seller agrees to allow representatives of Buyer's insurance company reasonable access to the Property upon advance notice for inspections required for Buyer's homeowner's insurance application or policy. Buyer agrees to apply for insurance promptly to ensure insurance coverage will be in place upon closing. The Parties are advised to contact their insurance agents with questions regarding insurability conditions and costs.

FLOOD PLAINS/WETLANDS/SHORELAND: Professional assistance may be required to interpret flood plain, wetlands and shoreland maps. If Buyer's lender requires flood plain insurance, Buyer agrees to pay the cost of the flood plain insurance.

BUYER AND SELLER ARE ADVISED THAT THIS ADDENDUM CONTAINS PROVISIONS THAT MAY NOT BE APPROPRIATE IN ALL TRANSACTIONS. NO REPRESENTATION IS MADE THAT THE PROVISIONS OF THIS ADDENDUM ARE APPROPRIATE, ADEQUATE OR LEGALLY SUFFICIENT FOR ANY SPECIFIC TRANSACTION. BUYER AND SELLER ARE ENCOURAGED TO CONSULT WITH THEIR OWN LEGAL COUNSEL REGARDING THE PROVISIONS OF THE OFFER AND THIS ADDENDUM.
ADDENDUM O TO THE OFFER TO PURCHASE - OCCUPANCY AGREEMENT

(For use if Buyer occupies the Property before closing or if Seller occupies the Property after closing).

1. Addendum attached to and made a part of the Offer to Purchase dated _________ made by Buyer
2. ________________ with respect to the Property at ________________, Wisconsin.

4. THE TERMS OF THIS ADDENDUM PROCEEDED BY AN OPEN BOX ( ) ARE A PART OF THIS ADDENDUM ONLY IF THE
5. BOX IS MARKED, SUCH AS WITH AN "X." THEY ARE NOT PART OF THE ADDENDUM IF MARKED "N/A" OR LEFT BLANK.
6. □ PREMISES OCCUPIED: This Agreement relates to the following Premises: (the Property) (______________)
7. (the Property if neither is stricken) (hereinafter referred to as the Premises).
8. □ OCCUPANCY PERIOD: (Check one box and complete)
9. □ Buyer (Owner) grants to Seller (Occupant) post-closing occupancy of the Premises beginning at ________________
10. and ending on ________________ at ________________ a.m./p.m. (Occupancy Date).
11. □ Seller (Owner) grants to Buyer (Occupant) pre-closing occupancy of the Premises beginning on
12. ________________ at ________________ a.m./p.m. (Occupancy Date) and ending at closing.
13. □ OCCUPANCY CHARGE: Occupant shall prepay $_________ per day or partial day of occupancy which shall be
14. held by ________________. Payment is due at the beginning of the Occupancy Period. Any unearned portion of the Occupancy Charge is refundable based upon actual occupancy (is refundable if neither is stricken).
15. □ SECURITY DEPOSIT: Occupant shall prepay a Security Deposit of $_________, which shall be held by
16. ________________. Payment is due at the beginning of the Occupancy Period. In a pre-closing occupancy, the entire amount of the Security Deposit shall be refunded to Buyer upon the closing of this Offer. In all other cases the Security Deposit shall be refunded at the end of the Occupancy Period except that the Owner may withhold for Occupant damage, waste or neglect, not including normal wear and tear.
17. □ UTILITIES: Occupant shall have all utility services rendered in Occupant's name and shall pay all bills for utility services during the Occupancy Period, as they become due. To the extent that this cannot or is not done, utilities shall be prorated based upon the Occupancy Date.
18. □ MAINTENANCE: Occupant will be responsible for all routine repairs and normal maintenance of the Premises and
19. personal property included in the Offer during the Occupancy Period. Occupant shall maintain the Premises, including
20. any heating, sewer, plumbing and electrical systems; any built-in appliances and equipment; the exterior and grounds;
21. and included personal property in reasonable repair and normal working order during the Occupancy Period. Major
22. repairs and major maintenance items costing more than $___________ shall be the responsibility of Owner. Disputes
23. regarding major repair or maintenance costs shall be resolved based on an estimate provided by an independent,
24. qualified party [as defined in Wis. Stat. § 452.23(2)(b)] mutually selected by Owner and Occupant.
25. □ KEYS: During the Occupancy Period, the Occupant shall have ______ keys to the Premises and the Owner shall
26. have ______ keys to the Premises. Owner shall be admitted to the Premises at reasonable times upon ________ hours
27. advance notice for the following purposes: inspect the Property, ________.
28. □ PROPERTY TAXES: Real estate taxes for the Premises shall be prorated through the (day prior to closing)
29. (Occupancy Date) STRIKE ONE (Occupancy Date if neither is stricken). NOTE: If tax prorations are to be as of
30. the Occupancy Date, the Closing Prorations provisions in the Offer are hereby amended to provide that: "Net
31. general real estate taxes shall accrue to Seller, and be prorated at closing, through the Occupancy Date."
32. □ TERMINATION: In a post-closing occupancy, if Seller fails to give possession of the Premises to Buyer on the
33. Occupancy Date, the Buyer may initiate legal action to recover possession of the Premises, all charges imposed in this
34. Addendum, for the loss of use of the Premises in the amount of $_________ per day, any other damages and all
35. reasonable costs and reasonable attorney’s fees. If Buyer is occupying the Premises pre-closing and the transaction
36. does not close by the date set in the Offer, Buyer will surrender possession of the Premises to Seller within ________
37. days of the scheduled closing date unless otherwise agreed in writing.
38. □ OTHER:

53. By initialing and dating below, each Party acknowledges that they have received and read a copy of this Addendum.

55. (Buyer(s)’ Initials) _______________ (Date) _______________ (Seller(s)’ Initials) _______________ (Date) _______________
USE OF PREMISES: Provided that Occupant performs the obligations of this Addendum, Occupant shall be entitled to peacefully and quietly have, hold and enjoy the Premises during the Occupancy Period. Occupant will make no changes, alterations, or improvements to the Premises without the prior written consent of Owner. There shall be no assignment or subleasing of these occupancy rights. All laws and governmental regulations with respect to the use or occupancy of the Premises shall be observed.

HOLD HARMLESS: Occupant will hold Owner harmless for all liabilities, claims or expenses resulting from Occupant’s use, possession and occupancy of the Premises as described in this Addendum.

NOT LANDLORD-TENANT: Pursuant to Wis. Stat. § 704.01(5), a person holding possession of real property under a contract of purchase is not a tenant under the statute. Therefore, this Addendum does not create a landlord/tenant relationship and thus is not subject to the provisions of Wis. Stat. Ch. 704 or Wis. Admin. Code Ch. ATCP 134.

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