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# Contents

<table>
<thead>
<tr>
<th>-1- Agency Relationships</th>
<th>-4- Disclosure Obligations</th>
<th>-7- Real Property Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Nature of the Agency</td>
<td>Disclosure Obligations</td>
<td>Real Property Ownership</td>
</tr>
<tr>
<td>Agency Terminology</td>
<td>Disclosure</td>
<td>Commonwealth of Wisconsin</td>
</tr>
<tr>
<td>The Agent’s Duties</td>
<td>Liability</td>
<td>State Real Property</td>
</tr>
<tr>
<td>Agency Disclosure</td>
<td>Advertising</td>
<td>Definitions</td>
</tr>
<tr>
<td>Obligations</td>
<td>Disclosure Obligations</td>
<td>of Wisconsin</td>
</tr>
<tr>
<td>and Interests</td>
<td>Disclosure by Owners of</td>
<td>Real Estate</td>
</tr>
<tr>
<td></td>
<td>“As is” Sales</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Licensee Disclosure</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Condominium Disclosure</td>
<td></td>
</tr>
<tr>
<td>Real Estate Office</td>
<td>Environmental Concerns</td>
<td></td>
</tr>
<tr>
<td>Exam</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>-2- Agency Issues</th>
<th>-5- Fair Housing</th>
<th>-8- Title of Real Estate</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Creation of Agency</td>
<td>Fair Housing Law</td>
<td>Transfer of Title</td>
</tr>
<tr>
<td>Types of Agency Contracts</td>
<td>The Americans with Disabilities Act</td>
<td>Deeds</td>
</tr>
<tr>
<td>Termination of Agency</td>
<td>(ADA)</td>
<td>Wisconsin Transfer Fee</td>
</tr>
<tr>
<td>Remedies for Breach of an Agency Agreement</td>
<td>Disclosures and Competence</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>-3- Agency Agreements</th>
<th>-6- Valuation</th>
<th>-9- Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency Agreements</td>
<td>Market Value Versus</td>
<td>Wisconsin Zoning Law</td>
</tr>
<tr>
<td></td>
<td>Appraised Value</td>
<td>Basics</td>
</tr>
<tr>
<td>WB-1 Residential Listing</td>
<td>Principles of Value</td>
<td>Zoning</td>
</tr>
<tr>
<td>Contract</td>
<td>The Market Data Approach</td>
<td>Water Rights</td>
</tr>
<tr>
<td>WB-4 Residential</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Condominium Listing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contract</td>
<td></td>
<td></td>
</tr>
<tr>
<td>WB-36 Buyer Agency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Representation Agreement</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exam</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# Contents

## -10- Offers to Purchase
- Preparing Contracts...........................................63
- Acceptance and Binding.....................................63
- Acceptance......................................................63
- Equitable Title..................................................63
- Working with Offers: Confidentiality Issues...............63
- Drafting and Submission of Offers.............................64
- Cooperating with Other Brokers...............................64
- Presentation of Offers.........................................64
- Guaranteed Sales..............................................65
- WB-11 Residential Offer to Purchase........................65
- WB-14 Residential Condominium Offer to Purchase.......65
- WB-13 Vacant Land Offer to Purchase........................70
- Exam..................................................................72

## -11- Financing
- Mortgage Law.....................................................75
- Foreclosure.......................................................75
- Some Facts About Mortgages.................................76
- Other Types of Loans...........................................76
- Sources of Financing............................................77
- The Primary Market Versus the Secondary Market........78
- Calculating a Buyer’s Mortgage Payment....................79
- Financing Legislation..........................................79
- Exam..................................................................80

## -12- Other Approved Forms
- WB-44 Counter-Offer...........................................81
- WB-46 Multiple Counter-Proposal............................81
- WB-42 Amendment to Listing Contract.......................81
- WB-40 Amendment to Offer to Purchase.....................81
- WB-41 Notice Relating to Offer to Purchase................82
- WB-45 Cancellation Agreement and Mutual Release........82
- WB-24 Option to Purchase.....................................82
- WB-25 Bill of Sale..............................................82
- Exam..................................................................83

## -13- Contract Law
- Rules of Contract Construction.................................85
- Broker’s Obligation to Furnish Copies and Maintain Records..................................................85
- Approved Forms and Legal Advice...........................85
- Validity of Contracts............................................86
- Conveyance of Real Property..................................86
- Status of Contracts.............................................87
- Creation and Termination of Contracts.......................87
- Exam..................................................................88

## -14- Trust Accounts
- REEB 18 Trust Accounts.......................................89
- Trust Funds: Client Funds and Real Estate Funds........89
- IBRETA...............................................................89
- Depositing Funds................................................89
- Exam..................................................................90
THE NATURE OF THE AGENCY

Agency is the foundation upon which real estate brokerage is practiced. Agency describes a legal and ethical relationship between a real estate licensee and a party to a transaction that may include a buyer, a seller, a rental property owner, or a tenant.

AGENCY TERMINOLOGY

Licensee: Licensee is the term the Wisconsin Department of Safety and Professional Services (DSPS) uses to describe any person licensed or registered under state law to practice real estate. A licensee is anyone holding a broker license, salesperson license, or is registered as a time-share salesperson.

Broker: The definition of broker is expansive and encompasses the many different services a Wisconsin real estate broker can provide in a real estate transaction. The definition of broker is from Real Estate Practice, which is Chapter 452 of the Wisconsin State Statutes. To access real estate related rules and statutes, go to wra.org, click on the Legal tab, then click on Code Book.

A broker is a person that, for another person, and for commission, money or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase or rental of, or the granting or acceptance of an option to sell, exchange, purchase or rent, an interest or estate in real estate, a time-share, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property.

A broker is also a person who wholly or in part, is in the business of selling or exchanging interests or estates in real estate or business, including businesses’ goodwill, inventory or fixtures whether or not the business includes real property, to the extent that a pattern of sales or exchanges is established, whether or not the person owns the real estate. Five sales or exchanges in one year or ten sales or exchanges in five years is presumptive evidence of a pattern of sales or exchanges.

A party is negotiating when:

1. Acting as an intermediary by facilitating or participating in communications between parties related to the parties’ interests in a transaction;
2. Completing, when requested by a party, appropriate department-approved forms or other writings to document the party’s proposal consistent with the party’s intent; or
3. Presenting to a party the proposals of other parties to the transaction and giving the party a general explanation of the provisions of the proposal.

1. **Exchange**: An exchange is a tax planning tool for a property owner to exchange one property for another and defer payment of the tax on income earned on the transfer. The exchange must involve a transfer of the same kind or class of property such as real estate for real estate. To be eligible for an exchange, the property must be held for productive use in a trade, a business, or as an investment.

2. **Option to Purchase**: An option to purchase is an agreement to keep open, for a period of time, an offer to sell or lease real property. An option gives a buyer time to resolve questions of financing, title, or zoning before committing to purchase the property. A buyer pays the seller an option fee for the right to prevent the seller from selling the property to any other buyer during the term of the option. The option fee is usually not refundable.
3. **Business Sale:** A business sale is any type of business that is for sale including the goodwill of an existing business and all the assets. A business sale does not necessarily include the building in which the business is located.

**Exceptions: Who Does Not Need a Broker License?**

1. Receivers, trustees, personal representatives, guardians, or other persons appointed by or acting under the judgment or order of the court.
2. Public officers while performing official duties.
3. Any custodian, janitor, employee or agent of the owner or manager of a residential building who shows a residential unit to prospective tenants, accepts applications for leases and furnishes prospective tenants with information about the rental of the unit, lease terms and conditions, or other similar information. This exemption covers property managers who show units and provide information. If a property manager can sign leases on behalf of a rental property owner or can negotiate lease terms on behalf of the rental property owner, the property manager must have a license.
4. Attorneys licensed to practice in the state of Wisconsin while acting within the scope of an attorney's license. An attorney drafting a contract for a client in a real estate transaction is acting within the scope of the attorney's license and does not need a broker license but if the attorney wants to act in a transaction and receive a commission from listing a property or acting as a buyer's agent, the attorney needs to have a real estate license.

**Salesperson:** A salesperson is any person other than a broker or time-share salesperson who is employed by a broker. A salesperson holds a real estate license and practices under the supervision of the broker. A salesperson is a legal extension of the broker and acts as an agent of the broker in real estate transactions. A salesperson must be employed by a broker to practice real estate. An employing broker can limit the transactions in which the salesperson participates. If a salesperson's employing broker loses the broker's license, temporarily or permanently, the salesperson cannot engage in any real estate transactions until employed by a new broker. There is not a grace period and the salesperson must not participate in any more transactions until employed by a licensed broker. A salesperson can only work for one broker-employer at a time.

**Agent:** An agent acts on behalf of a principal and carries out the directions of the principal.

**Client:** A client is a party to a transaction who has an agency agreement, such as a listing contract or a buyer agency agreement, with a broker for brokerage services. The client is the party who hires the agent to represent the client’s interests. When a seller signs a listing contract, the seller is the client and the broker is the seller’s agent. A buyer who signs a buyer agency agreement is a client and the broker is the buyer’s agent.

**Principal Broker:** A principal broker is a broker who engages a subagent to provide brokerage services in a transaction. In many transactions, the principal broker is the listing broker. A subagent is the agent of the principal broker.

**Subagent:** A subagent is an agent who works under another agent. A subagent is a broker engaged by another broker to provide brokerage services in a transaction, but is not the other broker's employee. A subagent may write an offer for a buyer-customer on a property listed with another broker. A client must consent to the client’s broker using an employee of another broker as a subagent to provide services in a transaction. A client gives or withholds consent in the agency agreement.

**Customer:** A customer is a party to a transaction who receives brokerage services, such as drafting an offer to purchase, from a broker but who is not the broker’s client. A customer does not enter into an agency agreement. The customer receives services given on behalf of and for the benefit of another. The terms client and customer are not interchangeable.
Agency Models

Clients choose one of three agency models that will structure the agency relationship with the broker.

**Single Agency**: Single agency is when a broker represents either the buyer or the seller as a client, but never both in the same transaction.

**Multiple Representation**: A multiple representation relationship is when a broker represents two or more clients in the same transaction. If a buyer and seller are both clients of the same broker and they are participating in the same transaction, the broker is representing multiple parties in the transaction and it is a multiple representation relationship. The broker is the agent of both the seller and the buyer in the transaction. Both parties must consent in writing to the relationship and the broker must provide full disclosure to the parties of the broker’s multiple representation relationship. Both the listing and buyer agency agreements contain the mandatory disclosure and provide clients the opportunity to consent to a multiple representation relationship. A client can withdraw consent to multiple representation relationships at any time.

**Multiple Representation without Designated Agency**: In a multiple representation relationship without designated agency, a broker provides services as agreed to in the clients’ agency agreements, but the broker must take a neutral position in the transaction negotiations. If clients choose multiple representation without designated agency, a broker and the broker’s salespeople cannot place the interests of one client ahead of the interests of another client in the transaction.

**Multiple Representation with Designated Agency**: When two of a broker’s clients are in the same transaction and the clients choose multiple representation with designated agency, the broker is representing multiple parties in the transaction but the broker designates an agent to each client and the designated agent does not have to remain neutral in the transaction. Each client receives full negotiation services from their designated agent, both of whom are employees of the same broker, even if the negotiation services place the interests of one of the broker’s clients ahead of the other. Because the agents may place their client’s interest ahead of the other, a broker must designate separate agents for each client in the transaction.

**Fiduciary**: A fiduciary is a person who is responsible for the property of another.

**Cooperating Broker**: Cooperating brokers are brokers who cooperate with the listing broker in one transaction. A selling broker or a buyer’s broker can be a cooperating broker.

**Listing Broker**: The listing broker is the broker the seller hires with the listing contract. The seller is the client of the listing broker and the listing broker is an agent of and represents the seller.

**Listing Agent**: The employee of the listing broker who actually secured the listing and executes the listing contract is the listing agent. The listing agent is the agent of the listing broker and also represents the seller.

**Selling Broker**: The selling broker is the broker that procures the buyer and writes the offer. A selling broker is a subagent of the listing broker.

**Selling Agent**: The employee of the selling broker who procures the buyer and writes the offer is the selling agent. The selling agent is the agent of the selling broker.

**Buyer’s Broker**: The buyer’s broker is a broker that signs a buyer agency agreement with a buyer. The buyer is a client of the buyer’s broker and the buyer’s broker is an agent of the buyer.

**Buyer’s Agent**: The employee of the buyer’s broker who drafts the offer for the buyer-client is the buyer’s agent. The buyer’s agent is an agent of the buyer’s broker.
THE AGENT’S DUTIES

Pre-agency Stage: A broker can provide some brokerage services before a consumer decides whether to be a client or a customer. This is pre-agency. The broker may not provide any party in the transaction advice or opinions relating to the transaction that are contrary to the interests of any other party unless required by law. The broker remains neutral and provides information to the consumer without taking an agency or advocacy role for either party. A broker showing a listing to a buyer during the pre-agency stage cannot provide advice or opinions contrary to the seller’s interests. The licensee is not acting as an agent for either party, but is simply providing information to the consumer.

Duties to All Persons in a Transaction: Licensees owe certain legal duties to all parties in a transaction, regardless of whom they represent.

1. Safeguard trust funds and other property held by the broker as required by the state.
2. Provide brokerage services to all parties honestly and fairly.
3. When negotiating on behalf of a party, licensees have the duty to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.
4. Keep confidential any information given to the broker, or any information obtained by the broker that he knows a reasonable party would want to be kept confidential, unless the information must be disclosed by law or the person whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular information. A broker shall continue to keep the information confidential after the transaction is complete and after the broker is no longer providing brokerage services to the party.
5. Provide accurate information about market conditions that affect a person’s transaction to any party who requests the information, within a reasonable time of the person’s request.
6. Provide brokerage services with reasonable skill and care.
7. Disclose to each party all material adverse facts that the broker knows and that the party does not know or cannot discover through reasonably vigilant observation in a timely manner, unless the disclosure is prohibited by law.

A material adverse fact is defined as an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance, that it affects or would affect the party’s decision to enter into a contract or agreement concerning a transaction or affects or would affect the party’s decision about the terms of such a contract or agreement. This portion of the law requires that a licensee disclose all information that is important to a party, such as structural defects, as well as information that a party stated as important. Licensees have an obligation to disclose material adverse facts if they are aware of them, there is not an obligation to investigate for material adverse facts.

Additional Duties Owed to a Client: In addition to the duties owed to all persons, agents owe additional duties to their clients. The duties owed to all persons supersede the duties owed to a client if the two are ever in conflict with each other.

1. Negotiate on behalf of the client unless released from this duty. The duty of negotiation may be waived by a client in part or full, if an express written waiver of negotiation duties is made by the client.
2. Fulfill any obligation required by the agency agreement (listing contract/buyer agency agreement) and any order of the client that is within the scope of the agency agreement and is consistent with other duties.
3. Loyally represent the client’s interests by placing the client’s interests ahead of the broker’s interest. The broker may not, unless required by law, give information or advice to other parties who are not the broker’s clients, if giving the information or advice is contrary to the client’s interests.
4. Provide, when requested by the client, **information** and advice to the client on matters that are material to the client’s transaction and that are within the scope of the knowledge, skills and training.

5. **Disclose** all material facts affecting the transaction, not just adverse facts.

**Duties for Subagents:** A subagent is a broker engaged by a principal broker to provide brokerage services in a transaction, but who is not the principal broker’s employee. A broker engaged to provide brokerage services in a transaction as a subagent owes the duties to all persons as well as the duty of loyalty to the seller. A subagent may negotiate on behalf of a person who is not the broker’s client if the principal broker engages the subagent with the client’s consent. A subagent is required to provide the party a disclosure form stating the broker’s duties.

**AGENCY DISCLOSURE OBLIGATIONS**

**Customer Agency Disclosure Obligations:** A broker, either directly or by a licensee working for the broker, may not negotiate on behalf of a customer unless the broker provides the customer with the state-mandated disclosure statements. The agency disclosure statement also contains a plain-language summary of the broker’s duties to a customer. The Forms Appendix of this book contains the WRA Broker Disclosure to Customer form that a broker can used to provide disclosure to customers.

**Client Agency Disclosure Obligations:** A broker, either directly or by a licensee working for the broker must provide the state-mandated written disclosure statements to a client no later than the time the broker enters into an agency agreement with the client.

**Providing Agency Disclosure:** A licensee must provide agency disclosure in all transactions. This includes commercial, agricultural, business, vacant land, and property management transactions if the property manager is negotiating lease terms or signing leases on behalf of the rental property owners.

**Acknowledgement of Agency Disclosure:** Licensees must ask a party to acknowledge receipt of the agency disclosure in residential transactions involving one-to-four dwelling units. A customer acknowledges receipt by signing a customer agency disclosure form. A client acknowledges by signing the agency agreement.

**Clients**

Most of the state-approved agency agreements contain agency disclosure and licensees do not need supplemental disclosure documents. The WB-6 Business Listing Contract and the WB-8 Time Sharing Listing Contract do not contain agency disclosure and a licensee must use a separate broker disclosure to client form before executing the listing agreement.

**Customers**

Licensees must provide customers agency disclosure before negotiations. A broker’s disclosure to a customer does not create any contractual or legal obligation for a buyer or a seller. The purpose of the agency disclosure form is to meet the licensee’s state-mandated disclosure of agency. Licensees must ask for a party’s acknowledgment of receipt of the broker’s agency disclosure in residential transactions for properties with one-to-four dwelling units. A party does not have to sign the acknowledgment but a broker must ask for it. If a party will not sign a document acknowledging that the licensee provided agency disclosure, the licensee should document that in the party’s file.

**Additional Disclosure Obligation by Buyer’s Broker:** A licensee representing a buyer of real estate intended to be used principally for one-to-four family residential purposes, who is negotiating directly with the seller or listing broker, must notify the seller or listing broker of the buyer agency relationship at the earlier of the following:

1. The first contact with the seller or the listing broker where information regarding the seller or transaction is being exchanged;
2. A showing of the property; or
3. Any other negotiations with the seller or listing broker.
DISCLOSURE OF COMPENSATION AND INTERESTS

Agency law prohibits an agent from competing with a principal because a licensee cannot perform services on behalf the licensee’s client with undivided loyalty if the licensee also has an interest in the transaction. Licensees can participate in transactions where the licensee also has an interest in limited situations where there is written disclosure of the licensee’s interest and written consent from the parties to the transaction.

The following situations require licensee disclosure:

1. A licensee acting in a real estate transaction may not accept compensation related to the transaction from anyone other than the licensee’s client, principal broker, or broker-employer without prior written consent from all parties in the transaction. A party can give consent in an agency agreement, an offer to purchase, or another written document.

2. Licensees acting as agents in a transaction cannot act on the licensee’s own behalf and cannot act for a member of the licensee’s immediate family. A licensee also cannot act on behalf of any firm, other organization, or business entity in which the licensee has an interest without the prior written consent of all parties to the transaction. The licensee shall obtain consent in an offer to purchase, option, lease, or other transaction document.

3. Licensees acting as agents in transactions may not receive referral fees from individuals or entities for a referral, unless prior to or at the time of referral, the licensee discloses to the party in writing that the licensee might receive compensation for the referral or that the licensee has an interest in the person or entity providing services. Licensees do not need to disclose referral fees for real estate services between licensees.

4. A listing broker cannot pay compensation or an incentive to a licensee who is acting as a buyer in a transaction without prior written consent from the seller. When acting as principals in transactions rather than as agents, licensees cannot earn commissions. To address this, when purchasing property, licensees may include incentives in an offer to purchase requesting that the listing broker or the seller pay the licensee what the licensee would have earned if the licensee could earn a commission on the transaction.

5. A licensee acting as a principal in a real estate transaction shall disclose in writing the licensed status and intent to act in the transaction as a principal at the earliest of:
   a) The first contact with the other party or an agent representing the other party where information regarding the other party or the transaction is being exchanged;
   b) A showing of the property; or
   c) Any other negotiation with the seller or the listing broker.

6. Licensees cannot enter into tie-in arrangements including:
   a) Selling real estate the licensee owns or controls to a buyer only if the buyer agrees to purchase another parcel of real estate;
   b) Selling real estate the licensee owns or controls only if the buyer agrees to list a piece of property with the licensee; or
   c) Selling vacant land the licensee owns or controls only if the buyer agrees to use one or more specific builders to develop it unless:
      i) The builder owns a bona fide interest in the real estate and there is full disclosure; or
      ii) The licensee is the builder or the builder owns the real estate, personally or by a commonly controlled corporation and whose business is selling improved property and not vacant land and there is full disclosure; or
      iii) The agreement to sell if the buyer uses one or more specific builders is a bona fide effort to maintain development quality or architectural uniformity and the licensee does not receive compensation from the contractor for the agreement.
Licensed individuals, either brokers or salespersons, can participate in licensed real estate activities such as conducting open houses, negotiating on behalf of parties, and showing property to buyers. Unlicensed employees who do not hold real estate licenses can provide administrative support to licensed individuals such as managing transaction paperwork, creating marketing or advertising materials, or filling in a contract at the direction of a licensed individual. An unlicensed employee cannot assist at an open house unless a licensee is there to provide direct on-site supervision and cannot provide any other licensed service. A person who engages in real estate practice without a license can be fined not more than $1000 or imprisoned not more than 6 months or both.

A licensed broker who works for another broker is a broker-employee. Broker-employees can provide brokerage services outside of the scope of their employment if the broker-employer gives written permission and the broker-employee avoids conflicts of interest.

Broker Supervision

A broker-employer shall supervise the activities of any licensee employed by the broker. Supervision includes, but is not limited to, the reasonable review of all listing contracts, offers to purchase, trust account records and other documents and records related to transactions as well as providing all licensees reasonable access to a supervising broker for purposes of consultation regarding real estate practice issues. Broker-employers shall provide all licensed employees with a written statement of procedures under which the office and employees shall operate with respect to handling documents relating to the real estate transaction. A broker-employer can delegate supervision to another broker as long as the delegation is in writing, identifies the duty the broker delegated, and the delegated supervising broker signs it. Broker-employers must also ensure that all licensed employees are properly licensed. This refers to both original licenses and biennial renewals of licenses.

Personal Assistants

Unlicensed Personal Assistant: A unlicensed personal assistant does not have a real estate license or holds a real estate license but does not provide services that require a real estate license. Either a broker-employer or any other real estate licensee in the office can employ unlicensed personal assistants. Unlicensed personal assistants cannot receive payment based on production, such as a commission and they must be paid either hourly or salary wages.

Licensed Personal Assistant: A broker-employer must employ a licensed personal assistant directly because the personal assistant has the ability to practice real estate. The broker can pay a licensed personal assistant based on production, hourly, or with a salary.

Notifying the Department of Safety and Professional Services (DSPS)

Licensees must notify the DSPS if there are changes to their practice or changes affecting their license.

1. A licensee who wants to engage in real estate practice as an employee of a broker-employer shall notify the DSPS of the name of the broker-employer on forms provided by the DSPS.
2. All licensees must notify the DSPS of their licensed status and any changes to their license.
3. A licensee must notify the DSPS of the licensee’s employment before the licensee provides real estate services.
4. If the licensee transfers to another broker-employer, the licensee must notify the DSPS and pay a fee before the licensee provides real estate services under the new broker employer.
5. A licensee who terminates employment must notify the DSPS in writing within 10 days of terminating employment.
6. If a licensee is convicted of a crime, the licensee must send a copy of the complaint and the judgement to the Real Estate Examining Board within 48 hours of conviction.
Answer the following questions. If you need to, refer to the previous summary or WB forms.

1. A seller signs a listing contract with a broker. Who is the agent and who is the principal? ____________________________

2. If you are the listing broker and a buyer asks you to write an offer on one of your listings but the buyer does not sign a buyer agency agreement with you, how do you describe the buyer? ____________________________________________

3. What kind of agency is a broker practicing if the broker represents just one party in the transaction? ____________________________________________

4. When can a broker engage in multiple representation? ____________________________________________

5. When must a broker provide agency disclosure to a client? ____________________________________________

6. In what kind of transactions must a broker provide agency disclosure? ____________________________________________

7. If you are a buyer’s broker, when must you disclose your agency agreement to the seller or the listing broker? ____________________________________________

8. What are a listing broker’s agency disclosure obligations when working with a customer who wants to write an offer on a duplex? What if the buyer wants to write an offer on a commercial warehouse? ____________________________________________

9. When does a property manager need to have a real estate license? ____________________________________________

10. If a licensee is representing a family member who is writing an offer on a property, what are the licensee’s disclosure obligations? ____________________________________________
11. What are a licensee’s disclosure obligations if the licensee is going to receive a fee for referring a lawn maintenance company? What if the licensee is a listing agent who is referring a client to a buyer’s agent?

__________________________________________________________________

12. When must a licensee disclose that the licensee holds a real estate license when selling the licensee’s own home? What if the licensee is selling commercial property owned by the licensee?

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13. What tie-in arrangements are not illegal?

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14. Who can employ an unlicensed personal assistant? Who can employ a licensed personal assistant?

__________________________________________________________________

15. When can an agent agree to write an offer on a property only if the buyer agrees to list the buyer’s current property with the agent?

__________________________________________________________________

16. Which agency duty survives the transaction?

__________________________________________________________________

17. What duties does a broker owe to all parties in a transaction?

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
18. What are the additional duties owed to a client?
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________

19. When a broker has a multiple representation relationship with designated agency, to whom will each salesperson provide information, opinions, and advice?
__________________________________________________________________

20. How should a client withdraw consent to a multiple representation relationship?
__________________________________________________________________
__________________________________________________________________

21. How should a client waive a broker’s duty of negotiation?
__________________________________________________________________
__________________________________________________________________
THE CREATION OF AGENCY

A principal and an agent can create agency through a formal agreement or through the actions of the parties. Agency through formal agreement is express agency. Parties create implied agency when they do not have a formal agency agreement but develop an agency relationship through the actions of one or both parties. Implied agency relationships are usually unintentional and arise through the accidental actions of a party that leads the other party to believe they have an agency relationship.

In Wisconsin, parties must execute express, written real estate agency agreements. A court will not enforce a verbal real estate agency agreement.

An agency agreement is an employment agreement for personal services based on a fiduciary relationship of trust and confidence in the broker. A seller uses a listing contract to hire a broker to market property and pay the broker a commission if a ready, willing, and able buyer is procured according to the contract terms. A ready, willing, and able buyer is not under duress, is financially qualified, and of legal age. A buyer uses a buyer agency agreement to hire a broker to negotiate an ownership interest in a property. A tenant uses a tenant representation agreement to hire a broker to negotiate a lease interest.

Agency agreements are contracts between a client and a broker-employer, not the broker's employees. A salesperson or broker-employee does not have the authority to terminate, shorten the term, or reduce the commission amount of an agency agreement without the supervising broker's written permission.

<table>
<thead>
<tr>
<th>Agency agreements must contain all of the following elements to be valid:</th>
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<tbody>
<tr>
<td>1. Description of the real estate;</td>
</tr>
<tr>
<td>2. Statement of the price;</td>
</tr>
<tr>
<td>3. Statement of the commission;</td>
</tr>
<tr>
<td>4. Statement of the term;</td>
</tr>
<tr>
<td>5. In writing; and</td>
</tr>
<tr>
<td>6. Signed by the person who will pay the commission.</td>
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TYPES OF AGENCY CONTRACTS

A special agency relationship gives an agent the authority to represent a principal in a single transaction. The principal does not authorize the agent to act in any other transaction. A listing agreement usually creates a special agency relationship. An agency agreement can give a broker a broader authority to represent a client. A general agency relationship gives an agent the authority to represent a principal in a range of matters.

**Listing Contracts**

*Exclusive Right to Sell Listing Contract:* The seller hires one broker to represent the seller in the sale of a property. If anyone procures a buyer for the seller’s property, the broker earns a commission. If there is any change in ownership or control of a property listed with an exclusive right to sell listing contract, the listing broker earns a commission. The exclusive right to sell listing contract is the state-approved form that a licensee must use when listing a seller’s property.
Sellers and licensees can modify the state-approved form to create other types of listing contracts.

**Exclusive Agency Listing Contract:** A seller hires a broker to represent the seller in the sale of a home. A listing broker earns a commission unless the seller procures the buyer.

**Open Listing Contract:** A seller can list a property with several brokers and will only owe a commission to the broker who finds a buyer. If the seller finds a buyer, the seller does not owe a commission to any of the brokers. Open listing contracts are not very common.

**One-Party Listing Contract:** A seller can change the state-approved exclusive right to sell to a one-party listing contract by restricting the broker’s ability to earn a commission only in the case that a specific buyer purchases the property.

**Net Listing Contract:** A net listing contract sets the broker’s commission at any dollar amount over a minimum sales price. Net listings are illegal in Wisconsin.

**Buyer Agency Agreements**

A buyer agency agreement is an agency agreement a buyer or a tenant uses to hire a broker. The state-approved buyer agency agreement is the WB-36 Buyer Agency/Tenant Representation Agreement. Both buyers and tenants can use it to hire a broker to look for properties to purchase or lease. A buyer hires a broker to act as the buyer’s agent with regard to properties that the buyer includes in the agreement. While uncommon, a buyer can modify a buyer agency agreement to limit or expand a broker’s authority under the agreement.

**Exclusive Right to Locate:** If a buyer needs a buyer’s agent to locate a property and the buyer or the buyer’s attorney will negotiate the purchase or lease terms, the parties may create an exclusive right to locate agreement.

**Exclusive Right to Negotiate:** If a buyer needs a buyer’s agent to negotiate for property but the buyer wants to locate the property, the buyer could create an exclusive right to negotiate agency agreement.

**Exclusive Right to Locate and Negotiate:** The buyer’s agent is the only person who can locate or negotiate an interest for the buyer.

**TERMINATION OF AGENCY**

Agency may be terminated in the following ways.

1. **Death or Incapacity of a Party.**
   The seller/buyer client dies or the listing broker/buyer broker is incapacitated or dissolved.

2. **Destruction or Condemnation of the Property by Eminent Domain.**
   Eminent domain is the right the government has to take private land for public use.

3. **Expiration of the Term of the Contract.**

4. **Mutual Agreement.**

5. **Breach.**
   A party violates a material term of the agency agreement.

6. **Operation of law.**
   A term describing the rights that belong to a person by the application of established rules of law.

7. **Completion.**
REMEDIES FOR BREACH OF AN AGENCY AGREEMENT

Real estate agency agreements are personal service contracts where a client hires a broker to provide a service. Specific performance is a remedy a court can grant to a party where the court orders the breaching-party to perform according to the terms of the contract. Either a broker or a client could choose to terminate the agency contract early, but the terminating party could be liable for damages resulting from the early termination.

If party breaches an agency agreement, remedies include:
1. Rescission;
2. Forfeiture of Commission; or
3. Sue for Damages

COMMISSION

Commission is a seller’s closing cost. A seller pays a broker’s commission in addition other closing costs out of the proceeds from the sale. Parties usually use the purchase price to determine the amount of a broker’s commission. Parties can always negotiate commission amounts and structures and there is not a standard commission that brokers charge. Leading the public to believe that there is a standardized rate can constitute price fixing, which is a violation of the antitrust laws.

Antitrust Laws

For an antitrust violation to occur, there must be proof of a conspiracy to restrain trade. A conspiracy exists when two competing companies act according to a joint agreement. A conspiracy does not occur if the action is taken independently by one broker as a result of an internal office decision. A restraint of trade occurs when the agreement between the companies has a limiting effect on competition within the real estate market in which the companies work.

Group boycotts exist when a group of brokers agree to refuse cooperation or offer to work with limited guidelines with another specific broker or a type of broker that offers a certain kind of business model. Price fixing is an agreement among competing companies to set a fixed commission or fee to charge or pay. There is no such thing as an innocent agreement among competing companies to fix commissions or fees they charge or pay. These agreements are “per se” violations, which means there is no justification, excuse, or defense for the violation.

Other Commission Issues

Only a person holding a real estate license can receive commissions. The payment of a real estate commission by a real estate licensee to a non-licensee is fee-splitting, which is illegal under Wisconsin law. Wisconsin law states that no licensed broker or corporation may pay a fee or a commission or any part thereof for performing any brokerage activity or for a referral or as a finder’s fee to any person who is not licensed or registered to practice real estate. Wisconsin allows licensees to offer incentives to buyers and sellers. The incentives must be documented properly before to closing. Parties must have a clear, thorough, and advance understanding of all the terms and conditions of the incentives. A broker can offer incentives in any amount to induce buyers to buy and sellers to sell.

Wisconsin requires that compensation received by the employee of a broker be paid by the broker-employer. Compensation includes referral fees, commissions, and other things of value.

Division of the Commission

A listing broker will divide a commission according to which broker played what role in a transaction. Usually, a seller pays the listing broker the commission at closing and commission is a seller’s closing cost. The listing broker then divides the commission with other parties that participated in the transaction. There is not a standard formula that all brokers use to determine how the broker shares a commission and the division will depend on agreements between brokers and the individual details of a transaction.
REAL ESTATE SALES

Commission in a Co-brokerage Sale
When a transaction involves a cooperating broker, the transaction has a listing side and a selling side. The listing broker will share a portion of the commission with the selling broker. A seller pays the whole commission amount to the listing broker, who then pays a share to the selling broker, who is subagent of the listing broker. Brokers then pay the individual agents according to company policy.

Commission in an In-house Sale
When the same broker lists the property and finds the buyer, the sale is in-house because there is no outside broker in the transaction. A broker may have different ways for dividing commissions on in-house sales. In this diagram, the same agent who took the listing on behalf of the broker also found the buyer.

CALCULATING COMMISSIONS

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<tr>
<th>partial number</th>
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<tr>
<td>whole number x rate %</td>
<td>W x %</td>
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<tr>
<td>commission</td>
<td>or</td>
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<td>sales price x percentage amount</td>
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PAYMENT OF A LISTING BROKER
The listing broker earns commission at the procurement of a buyer. The seller pays the broker’s commission at closing or the date set for closing in the offer to purchase. A listing broker earns commission when a buyer’s offer has no more contingencies to be met or a buyer writes a mirror image offer. A mirror image offer is a full price, contingency-free, cash offer. Even if the seller rejects a mirror image offer, the listing broker may be able to successfully make a claim for compensation. In the listing contract, the broker does not promise that the transaction will close, just as the seller does not promise to accept an offer. Rather the broker promises to procure a buyer and at which time the seller promises to pay a commission. If the transaction does not close and the broker obtains a binding contract that the seller can enforce against the buyer in court, then commission is owed.

PAYMENT OF A BUYER’S BROKER
A buyer pays a buyer’s broker according to the terms of the WB-36 Buyer Agency/Tenant Representation Agreement. Depending on the terms of the WB-36, the buyer’s broker may have earned a commission if the buyer is introduced to the property through a selling broker, buyer’s broker or the seller directly. If the buyer procures an interest in a property described in the buyer agency agreement, the buyer’s broker earns a success fee. If the buyer procures an interest in a property described in the buyer agency agreement, the buyer’s broker earns a success fee. A buyer’s broker’s commission can be based on any of the following:

1. Paid by the listing broker
2. Percent of sale price
3. Flat fee
4. Retainer fee
5. Hourly rate
6. Paid by seller
1. Which type of agency relationship is created with words?

2. What type of agency relationship gives an agent the authority to represent a principal in more than one transaction?

3. What are the seven different ways to terminate an agency relationship?

4. Which agency contract(s) does (do) not require the seller to pay a commission to the listing broker when the buyer is procured?

5. What type of listing contract is illegal in Wisconsin?

6. What are the six requirements to create a valid agency agreement?

7. In an unmodified WB-36 Buyer Agency/Tenant Representation Agreement, does a buyer’s broker have to be directly involved in negotiations in order to earn his commission?
8. What are the three remedies if an agent breaches an agency agreement?

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________

9. A seller sold his home for $180,000 and paid a 6% commission. What is the listing broker’s commission after giving 40% to the selling broker?

10. The seller of a property nets $90,000 on the sale of a parcel of land after paying the listing broker a 10% commission. What was the sales price of the property?

11. The listing agent earned an $8,000 commission. The seller agreed to pay the listing broker 8%. A cooperating broker was not involved. The listing broker and listing agent have agreed to a 50/50 split. What was the selling price of the home?
AGENCY AGREEMENTS

When buyers or sellers have valid agency agreements with licensees, property negotiations should usually be conducted with the licensee, not the buyer or seller directly. If a seller has a valid listing contract, other brokers should address all property negotiations to the listing broker unless the listing broker consents to direct contact with the seller, the listing broker is unavailable, or other similar circumstances compel direct negotiation with the seller. When buyers have a buyer agency agreement, negotiations can go through the buyer’s agent but buyers can also negotiate without the agent’s assistance. The WB-36 Buyer Agency/Tenant Representation Agreement is exclusive because it prohibits a buyer from entering into another buyer agency agreement with another broker for the same properties but it does not prohibit a buyer from seeking out and negotiating independently for properties. When buyers have a buyer agency agreement, negotiations can go through the buyer’s agent but buyers can also negotiate without the agent’s assistance. The WB-36 Buyer Agency/Tenant Representation Agreement is exclusive because it prohibits a buyer from entering into another buyer agency agreement with another broker for the same properties but it does not prohibit a buyer from seeking out and negotiating independently for properties.

WB-1 RESIDENTIAL LISTING CONTRACT - EXCLUSIVE RIGHT TO SELL

With an exclusive right to sell listing contract, the listing broker earns a commission regardless of who procures the buyer for the listed property. A seller can modify an exclusive right to sell to create other kinds of listing contracts such as exclusive agency, open listing, and one-party listings. The WB-1 Residential Listing Contract is the state-approved listing contract.

**Lines 2-4 Property Description:** A street address is usually a sufficient description and a legal description is not necessary unless the street address does not adequately describe the property.

**Line 5 List Price:** A licensee includes the specific price at which the seller wants to list the property. The list price is written out in words first and then a licensee places the numerical depiction in the parenthesis.

**Lines 6-9 Included in List Price Terms of Listing:** In this section, the licensee lists what a seller wants to include in the purchase price of the property. The list price includes the Property and the personal property items that a seller includes on lines 7-9.

**Lines 10-14 Not Included in List Price:** This is where a seller lists fixtures the seller wants to remove from the property. The terms that a buyer includes in the offer to purchase dictate the final details of the property that is included or excluded. A fixture is an item of property that, under certain circumstances may be treated as personal property but that has become so attached to the land or buildings, or is used in such close association with the land or buildings, that it is treated as a part of the land. “Fixture” is defined on lines 199-210. The CAUTION reminds seller to list fixtures that are rented by seller and are accordingly owned by someone else.

**Lines 15-22 Marketing:** The seller authorizes the broker to use reasonable efforts to find a buyer for the property and to market any personal property included in the list price. On lines 19-20, the broker lists any special financing or incentives that a seller wants to include as part of the broker’s marketing strategy.

**Lines 23-25 Occupancy:** This language in this section is the same as the occupancy language used in the offer to purchase. Sellers need to prepare a property for closing by removing all debris and personal property and broom sweeping the premises. A seller must turn over occupancy of a property at closing unless the parties agree to a different occupancy schedule.
REAL ESTATE SALES

**Lines 26-33  Cooperation, Access to Property or Offer Presentation:** A broker agrees to cooperate and work with other agents, including subagents and buyer’s brokers, unless cooperation would be contrary to the seller’s instructions included on lines 31-32. Line 33 of this section cautions a seller that limiting a broker’s ability to cooperate may reduce the marketability of the property.

**Lines 34-39  Exclusions:** A broker agrees to cooperate and work with other agents, including subagents and buyer’s brokers, unless cooperation would be contrary to the seller’s instructions included on lines 31-32. The discussion of protected buyers is created by three different provisions of the form: the Exclusions lines 34-36; the Extension of Listing lines 61-65, and the definition of “Protected Buyer” lines 220-229.

If a seller listed a property with one broker and then later listed it with another broker, the first broker may have “protected buyers.” Buyers who a broker can protect are listed in the definition of “Protected Buyer” on lines 220-229. If a protected buyer purchases the property, the seller owes a commission to the previous listing broker rather than the current one. The seller should give the new broker a list of the previous broker’s protected buyers within seven days of the new listing. The second group of exclusions are seller exclusions. These are buyers that may have already negotiated with the seller, seller’s family members, neighbors, or other potential buyers. Licensees want to make sure that a seller puts an expiration date for seller exclusions on line 37 so that the exclusion does not run for the duration of the listing contract.

**Lines 40-58  Commission:** This section describes the different ways in which a broker can earn a commission and how to calculate the amount of the commission. Brokers establish their own commission rates and policies though commissions are always negotiable with the seller. Commonly, brokers base commissions on a percentage of the purchase price and there is not a specific maximum or minimum commission amount.

The listing broker earns a commission (lines 42-49) if any of the five occur during the term of the listing: 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property; 2) Seller grants an option to purchase all or any party of the Property which is subsequently exercised; 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property; 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property; or 5) A buyer is procured for the Property by Broker, by Seller, or by any other person, at no less than the price and on substantially the same terms set forth in this Listing and in the standard provisions of the current WB-11 Residential Offer to Purchase, even if Seller does not accept this buyer’s offer.

**Lines 59-60  Compensation to Others:** As a matter of consumer protection, the Department of Safety and Professional Services wants sellers to know how much compensation a listing broker offers to cooperating brokers. A listing broker discloses compensation agreements with other brokers on lines 59-60 and if there are exceptions to the listing broker’s compensation agreements, the broker includes those on second part of line 60.

**Lines 61-65  Extension of Listing:** The extension of a broker’s listing as to protected buyers is not state law but is a contractual right created by the preprinted listing contract. Sellers and brokers can negotiate this provision and change the terms by shortening the extension period, limiting who a broker can name as a protected buyer, or other provisions. This protects the listing broker’s right to a commission as to certain buyers for a period up to one year after the listing expired or terminated.

“Protected Buyers” lines 220-229 include buyers who during the term of the listing:

1. Delivers to seller or broker a written offer to purchase, exchange or option on the property during the term of this listing;
2. Negotiates directly with seller by discussing with seller the potential terms upon which buyer might acquire an interest in the property;
3. Attends an individual showing of the property or discusses with broker or cooperating brokers the potential terms upon which buyer might acquire an interest in the property. Buyers under 3) are only protected if the broker delivers the buyer’s name to seller, in writing, no later than three days after the expiration of the listing.
The requirement of 3), to deliver the buyer’s name to seller in writing, may be fulfilled as follows: a) If the listing is effective only as to certain individuals who are identified in the listing, by the identification of the individuals in the listing (one-party listing); or, b) if a buyer has requested that the buyer’s identity remain confidential, by delivery of a written notice identifying the broker with whom the buyer negotiated and the date(s) of any showings or other negotiations. If the buyer is protected during the term of the listing, the previous listing broker has one year from the date of expiration or termination of the listing that the buyer is protected.

**Lines 66-73 Termination of Listing:** Lines 67-68 state that the parties to the listing are the seller and the broker and that a broker’s agents do not have the authority to enter into a mutual agreement to terminate the listing, amend the commission amount or shorten the term of the listing, without the written consent of the agent’s supervising broker (lines 68-70). Line 71 requires that a party who wants to terminate early do so in writing and deliver the notice of termination to the other party according to the delivery provisions found at lines 193-198. Termination is not effective until delivery. Lines 66-67 states that neither party to the listing contract has the legal right to unilaterally (one-sided) terminate the listing without a material breach by the other party. Sellers and brokers have the power to revoke a listing contract at any time, however there are ramifications to canceling the contract early unless there is a material breach by the other party. In the event the seller cancels early, the broker may demand compensation for damages sustained as a result.

**Lines 81-85 Leased Property:** The seller’s rights under the leases are assigned and all security deposits and prepaid rents are transferred to the buyer at closing, but the seller remains liable under the leases unless released by the tenants.

**Lines 86-163 Broker Disclosure to Clients:** This is the mandatory agency disclosure language as that a broker must provide to clients. This section lists the duties owed to all parties, the additional duties owed to a client, the mandatory confidentiality notice, an explanation of multiple representation relationships and the portion on lines 129-131 for the client to indicate the agency model for the broker’s participation.

**Lines 164-168 Real Estate Condition Report:** Relates to Chapter 709, that establishes seller disclosure obligations relating to real estate that is discussed in Chapter 4.

**Lines 169-173 Seller Representations Regarding Defects:** Seller representations regarding defects is discussed in Chapter 4.

**Lines 174-182 Open House and Showing Responsibilities:** A seller is responsible for preparing a property for an individual showing or open house to minimize the likelihood of personal injury, property damage, or theft. This includes securing valuables, prescription drugs, and eliminating safety hazards. Brokers are liable for their own acts of negligence or intentional wrongdoing. Line 181 informs the seller that buyers have the right to photograph or videotape property unless otherwise provided for in the additional provisions or in an addendum to the listing contract. This also permits buyers or licensees to be present at all inspections and testing of the property.

**Lines 230-233 Fair Housing:** Lists the protected classes under fair housing on lines 230-233. Fair housing is addressed in Chapter 5. The seller must understand that the broker will not discriminate in advertising or in the treatment of potential buyers and will terminate the listing should the seller discriminate.

**Lines 234-241 Earnest Money:** If the broker is holding the earnest money, the seller authorizes the broker to disburse earnest money held in the trust account “as directed in a written earnest money disbursement agreement signed by or on behalf of all parties having an interest in the trust funds.” The existing offer lists different means allowed under Wis. Admin. Code § REEB 18.09. If a broker disburses earnest money to a seller, lines 237-241 of the listing contract give the broker the right to first receive reimbursement for cash advances made on behalf of the seller and one-half of the remaining earnest money balance not to exceed the amount of commission the broker would have received if the transaction closed. Payment of the money to the broker does not terminate the listing.
**REAL ESTATE SALES**

**Lines 255-257 Notice About Sex Offender Registry:** This notice permits licensees to satisfy disclosure obligations regarding sex offenders by providing the Department of Corrections’ telephone number and internet address in writing when asked about the presence of sex offenders. Chapter 4 covers this and other disclosure obligations.

**Lines 258-259 Term of the Contract:** The term of the listing contract is the exact period during which the property is listed for sale with the listing broker.

**Lines 260-263 Reading/Receipt:** Informs the seller that signing the contract acknowledges receipt of a copy of the contract and a review of all five pages and any other documents attached to the listing contract that are property incorporated.

**Lines 263-279 Signatures and Contact Information:** Provides lines for the seller’s signature and contact information. The agent for the broker signs on the broker’s behalf. The addresses and fax numbers provided authorizes delivery. Even though there is a blank line for the seller’s e-mail address, completion of that line does not authorize e-mail delivery for the documents that are required to be in writing under the law. If the seller and listing broker wish to have e-mail as a form of delivery in the listing contract an addendum agreeing to add e-mail as a delivery method must be attached and the seller must consent electronically via e-mail.

**WB-4 RESIDENTIAL CONDOMINIUM LISTING CONTRACT**

**Lines 2-9 Property Description:** On lines 4-5, the listing broker inserts the unit number or identifying information, the building in which the unit is located, and the name of the condominium. Lines 5-9 clarifies that in addition to the unit, the property also includes the seller’s interest in the common elements appurtenant to the Unit, together with and subject to the rights, interests, obligations and limitations as set forth in the declaration and condominium plat.

**Lines 11-19 Property Included in List Price:** A definition of fixtures is on lines 266-277. A seller lists personal property the seller wants to include in the list price on lines 13-14 and items the seller does not want to include on lines 16-19. Items the seller does not want to include are usually fixtures that a seller wants to remove from the property. The list price also includes the seller’s interest in any common surplus and reserves of the condominium allocated to the unit and all fixtures not excluded on lines 16-19. The common surplus and reserves are often association property and used to offset common expenses or improvements.

**Line 20 Storage Unit:** Seller indicates if a separate storage unit is included.

**Line 21-22 Limited Common Elements:** The seller lists any fixtures outside of the unit that the seller is including in the sale. The condominium declaration will contain a complete list of the limited common elements.

**Line 23 Parking:** Some condominiums require owners to purchase parking spaces separately or lease them from the association where others include them as part of the unit or a limited common element. In the first blank space on line 23, a seller indicates whether there is parking and identifies the space. In the second blank space on line 23, the seller indicates what the fee for parking is, if there is one. The parking fee may be a one time fee paid when the seller purchases the condominium unit or it may be a recurring fee like condominium association fees.

**Line 24 Association Fee:** Condominium associations levy assessments or set the amount that each owner owes for the payment of the condominium’s common expenses.

**Line 25-26 Right of First Refusal:** If an association holds a right of first refusal, the association will have the first right to buy the unit on the terms and conditions that a third-party buyer submits. Often, the association will have to match the price, terms, and conditions of the third-party buyer’s offer. When an association has a right of first refusal, the seller must disclose this to potential buyers in writing before the buyer submits an offer. If a seller does not know if the association holds this right, the seller can review the condominium declaration and contact the association to see if they hold a right of first refusal.
Lines 88-106 Seller Cooperation with Marketing Efforts: On lines 90-99, the seller agrees to give the listing broker copies of documents in addition to the condominium disclosure materials that the seller gives to a buyer..

Lines 107-136 Condominium Disclosure Materials: Sellers must provide a copy of the condominium disclosure materials within 10 days of accepting an offer and no later than 15 days prior to closing. Chapter 4 covers condominium disclosure obligations and documents. This section provides a list of all the required disclosure documents.

Lines 222-233 Real Estate Condition Report: Lines 228-230 add, “When the Property is a condominium unit, the property to which the real estate condition report applies is the condominium unit, the common elements and any limited common elements that may be used only by the owner of the condominium unit being transferred.”

WB-36 BUYER AGENCY/TENANT REPRESENTATION AGREEMENT

Lines 1-5 Broker the Sole Authority to Act for Buyer as a Buyer’s Agent: A buyer gives a broker the exclusive right as the buyer’s agent to locate and negotiate the procurement of an interest in property. No other party can act as the buyer’s agent for properties covered by a WB-36 Buyer Agency agreement. Therefore the buyer may have another buyer’s agent when that agreement involves a property excluded from the first WB-36.

The WB-36 may be modified to create different agency models:

1. Exclusive Right-to-Locate-and-Negotiate: Strike the phrase “to act as buyer’s agent” on line 2 of the WB-36.
2. Exclusive Right-to-Locate: the buyer’s agent may line out “and to negotiate the procurement of an interest in property” in lines 2-3.
3. Exclusive Right-to-Negotiate: the phrase “to locate an interest in property and” may be lined out on line 2.

Lines 6-9 Note: This note informs a buyer that the buyer will owe the broker’s success fee if the buyer acquires an interest in a property covered by the agreement even if the buyer works with other agents or without an agent.

Line 10 Purchase Price: This information may be stated as a range.

Lines 11-20 Excluded Properties: When a buyer uses a WB-36 to hire a broker to look for property, the buyer usually does not describe a property for which the broker should act for the buyer. Usually, a buyer use a WB-36 Buyer Agency agreement to apply to all properties, except those excluded by the buyer in the Excluded Properties section. If a buyer acquires a property listed in the Excluded Properties section, the buyer does not owe the broker a success fee.

If a buyer’s agent is aware that a buyer has seen a property prior to entering into the buyer agency agreement, the broker may consider excluding these properties from the agency agreement to avoid disputes. If buyer-client has an option negotiated with another agent or is in the middle of the implementation stage of an accepted offer to purchase, it would be wise for the buyer to also exclude those properties. First the agent should create some absolute general limits for the overall buyer agency agreement and then use separate search parameters to focus on those specifics that may change over time. Specific search parameters could be incorporated into the WB-36 as an addendum, with the understanding that the WB-36 will need to be amended to change them. If the buyer wanted the WB-36 to be limited to only one specific property, the agreement may be completed to indicate that all properties except the specific one identified in the Excluded Properties section are excluded from the agreement.
As an alternative, it may be stated in the additional provisions that the agreement pertains only to the identified property and that the broker cannot earn any fees or compensation under the agreement if buyer purchases any other property during term of the agreement. To list specific properties excluded from the WB-36, it is best to use a property address or a legal description. First address the blank line on line 11 regarding the date. The date marks the end of the time period for which the properties are excluded.

**Lines 21-34 Compensation:** The parties use a buyer agency agreement to determine the fees a buyer will pay to a broker for successful performance under the agreement. A broker should help the buyer understand compensation amounts and collection strategies before writing an offer for the buyer. A buyer can use the WB-36 to give permission to the buyer’s broker to accept compensation from the owner or the owner’s agent on line 32. By giving this permission, a buyer is allowing the seller or the listing broker to pay the buyer’s broker’s success fee for the buyer. If a buyer’s broker is accepting compensation from someone other than the buyer, then the amount the buyer has agreed to pay as a success fee is reduced by the amount that the broker will receive from the owner or the owner’s agent. When a listing broker is going to pay a buyer’s broker’s fee, the brokers will have an compensation agreement. The compensation agreement may be an offer of cooperation and compensation for brokers participating in the MLS or it could be separate policy letter between the brokers. Payment is dependent upon the broker meeting the standard of performance.

**Lines 35-42 Broker’s Duties:** The broker’s duties set the standards for performance by the buyer’s broker such as using professional knowledge, skill, and reasonable effort to locate an interest in property for the buyer and negotiating the procurement of the interest in property desired by the buyer.

**Lines 123-130 Waiver of Confidentiality:** A buyer can give a broker permission to disclose information that would otherwise be confidential. A buyer can remain confidential throughout the transaction and have another party sign documents on the buyer’s behalf until the time of conveyance, at which point the deed will contain the buyer’s name.

**Lines 131-134 Non-Exclusive Relationship:** A buyer acknowledges that the broker may be acting for other buyers in the same or other transactions. The buyer’s broker cannot disclose information about one buyer to another.

**Lines 141-145 Property Dimensions:** A buyer should recognize that property dimensions are approximate due to rounding or different calculation formulas. If dimensions of a property or total square footage are material to the buyer, the buyer should purchase a survey or use some other method to verify measurements.

**Lines 193-196 Term of the Agreement:** A buyer and a broker can decide whether the buyer agency agreement terminates when the buyer finds a property or whether it continues by striking “shall” or “shall not” on line 195.

**Lines 205-210 Extension of Agreement Term:** A broker can protect properties for which the buyer or buyer’s broker submits an offer to purchase on a property. A broker can also protect properties for which the buyer did not submit an offer if the broker, the buyer, or someone acting on behalf of the buyer located or negotiated for the properties during the term of the agency agreement. To protect these properties, the broker must submit written descriptions of the properties to the buyer within three days after the expiration of the agency agreement. The buyer’s broker must deliver the list by one of the methods listed in the delivery section of the WB-36. E-mail is not a pre-printed method of delivery. If a buyer acquires an interest in a “protected property” during the one-year extension period, the buyer’s broker would represent the buyer during the transaction and would earn the success fee that the parties included in the buyer agency agreement. The WB-36 does not contain pre-printed provisions automatically excluding a previous broker’s protected properties. If a buyer’s agent is executing an agency agreement with previously represented buyer, the broker can ask the buyer for information on the former broker’s protected properties. If the buyer does not have that information, the new broker can contact the former broker and get an accurate list.
Answer the following questions. If you need to, refer to the previous summary or WB forms.

1. On what line of the WB-1 Residential Listing Contract does the broker address the marketing plan?
   __________________________________________________________________________

2. Who are the parties to the listing contract?
   __________________________________________________________________________

3. How long is the listing period extended for protected buyers in the WB-1 Residential Listing Contract Extension of Listing provision?
   __________________________________________________________________________

4. How many days does a broker have to deliver to the seller the list of protected buyers?
   __________________________________________________________________________

5. The seller accepts the responsibility for preparing the property to minimize the likelihood of injury, damage and/or loss of personal property. When will a broker be held responsible?
   __________________________________________________________________________

6. On what lines of the WB-4 Residential Condominium Listing Contract is the right of first refusal of the condominium association addressed?
   __________________________________________________________________________

7. On what line of the WB-36 Buyer Agency/Tenant Representation Agreement does the buyer designate whether the broker may accept compensation from the seller or listing broker?
   __________________________________________________________________________

8. Once a buyer’s broker earns compensation, when is it due and payable?
   __________________________________________________________________________

9. Where in the WB-1 Residential Listing Contract does the seller address the incentives they wish to offer?
   __________________________________________________________________________

10. How many days does the seller have to provide the new listing broker with the previous listing broker’s protected buyer list?
    __________________________________________________________________________
11. Where in the WB-1 Residential Listing Contract does the client indicate the agency model the client wants to structure the relationship with the broker?

________________________________________________________________________

12. On what line of the WB-1 Residential Listing Contract does it state that the buyer may accompany inspectors?

________________________________________________________________________

13. Where in the WB-36 Buyer Agency/Tenant Representation Agreement does the client indicate the agency model the client wants to structure the relationship with the broker?

________________________________________________________________________

14. Where in the WB-36 Buyer Agency/Tenant Representation Agreement do the parties indicate if the agreement terminates upon the purchase of the property?

________________________________________________________________________
Disclosure Obligations

DISCLOSURE

Licensees must not misrepresent facts or information material to a transaction. Licensees may find it difficult to determine the difference between emphasizing the benefits of a property, which is also known as “puffing,” and misrepresenting facts about a property, which could create civil liability or other sanctions for the licensee.

LIABILITY

The supervising broker for a real estate brokerage firm is responsible for the actions of employees, including salespeople and assistants. A listing broker is liable for the misrepresentations of subagents if the listing broker knew, or should have known, of the subagent’s misrepresentations. A licensee should not be held liable for latent defects. In cases of latent defects, where the seller is aware of a defect and does not disclose it to the licensee and the defect is not discoverable by an ordinary inspection, only the seller is liable.

ADVERTISING

Licensees must make accurate statements when advertising or promoting property and advertise in a manner that is false, deceptive, or misleading. A licensee’s advertisements must contain the employing broker’s name unless the licensee is advertising for a tenant in a personally-owned rental property. Licensees must have a seller’s consent for any advertisement of a seller’s property.

DISCLOSURE OBLIGATIONS

All licensees must inspect a property, including vacant land, to detect observable, material adverse facts. A licensee does not have to inspect the property if the licensee cannot gain access to the property. Licensees do not have to operate mechanical systems, move furniture or boxes, climb ladders or crawl to gain access, or observe areas of the property for which entry would present a risk of injury. A licensee must also ask a seller about the condition of the structure, mechanical systems, and other relevant aspects of a property. The licensee must request that the seller respond to this inquiry in writing. Sellers usually respond by completing a real estate condition report.

DISCLOSURE BY OWNERS OF RESIDENTIAL REAL ESTATE

Wisconsin Statute Chapter 709, Disclosure by Owners of Real Estate, establishes seller disclosure obligations relating to real estate. Sellers, whether listing with a broker or selling For Sale By Owner (FSBO), must complete a RECR or risk rescission of the offer to purchase. A RECR is not a warranty but a statement of a seller’s knowledge and awareness of the property’s condition. The disclosure law applies to all transfers of vacant land and property containing one to four dwelling units. A dwelling unit is a structure or a part of a structure that is presently used or is intended to be used in the future as a home, residence, or sleeping place by a person or by two or more persons maintaining a common household.

The seller disclosure law does NOT apply to:

1. Personal representatives, trustees, conservators and other fiduciaries appointed by or subject to supervision by the court, but only if those persons have never occupied the property.
2. Real estate that has NOT been inhabited.
3. Transfers exempt from the Wisconsin real estate transfer fee.

There is not an exemption from the seller disclosure law based solely on the fact that the seller does not live in the property or is not familiar with the condition of the property.
Seller Completion of the RECR: When a seller completes a RECR, the seller is stating whether the seller is aware of defects and conditions affecting the property. A defect is a condition that has 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. Information that indicates that a party to a transaction is not able to or does not intend to meet contractual obligations is also an adverse fact that a licensee must disclose.

Sellers should complete a RECR without assistance from the licensee. Licensees should never address and answer the RECR items for the seller. If a seller needs assistance filling out a RECR, the seller should enlist the help of a family member, friend, attorney, or other person. When sellers have questions about whether an item constitutes a defect, licensees can tell sellers that they may explain the condition on the report but if the seller wants a legal opinion as to whether a condition rises to the level of defect, the seller needs to contact an attorney for a legal opinion.

If the seller obtains information or becomes aware of a condition that changes a response on a completed RECR before the seller accepts an offer, the seller should amend the RECR. The seller does not have a duty to amend a RECR if new information or a condition arises after the seller has accepted an offer. The offer to purchase controls the buyer’s and seller’s obligations for condition issues after a seller accepts an offer.

If a seller refuses to complete a RECR, potential buyers may have rescission rights if the buyers do not receive a RECR according to the terms of the offer. The listing agent, however, must ask the seller about the condition of the structure, mechanical systems and other relevant aspects of the property as applicable and ask that the seller provide a written response. Licensees should not advise sellers that they do not need to complete a RECR, even if a seller expresses an intent to sell a property “as is.” Telling sellers to not complete a RECR is advising the seller contrary to what the law requires. Licensees should refer sellers with questions about whether to note something on a RECR or whether to complete a RECR to an attorney for legal advice.

Buyer Rescission: A buyer may not rescind an offer or option based on a defect disclosed in a seller’s RECR if the buyer was aware, or had written notice of the nature and extent of the defect at the time the buyer submitted the offer. If a buyer receives a seller’s RECR disclosing a defect after the buyer submitted an offer to purchase, the buyer may be able to rescind the contract. A buyer can rescind an offer if the seller does not provide a RECR or provides an incomplete RECR within 10 days of accepting the buyer’s offer. If a buyer wants to rescind an offer, the buyer must do so in writing and deliver the rescission to the seller within two business days after the deadline for the seller to supply the RECR.

“AS IS” SALES
The seller disclosure law does not prohibit a seller from selling or listing a property “as is.” A buyer, however, still has rescission rights if the seller chooses not to furnish a RECR within 10 days of an accepted offer. Generally, an “as is” clause alerts a buyer that the buyer is responsible to determine the condition of the property through inspections, evaluations, or other methods. Selling a property “as is” does not exempt a seller from making disclosures about a property. Even when a seller is selling or listing a property “as is,” a seller must exercise the duty of ordinary care in refraining from any act that may cause foreseeable harm to another, or create an unreasonable risk to others. Sellers of “as is” property may be liable for misrepresentation for actively concealing a defect or preventing a buyer from inspecting a property and discovering a defect. Sellers could also face liability for failing to disclose material conditions that a buyer is in a poor position to discover. An “as is” sale does not diminish or alleviate a licensee’s disclosure obligations. Licensees must still conduct a reasonably competent and diligent property inspection of an “as is” listing and disclose known material adverse facts or information suggesting material adverse facts in writing to all parties. A licensee cannot waive this obligation under any circumstance, including an “as is” listing.
LICENSEE DISCLOSURE OBLIGATIONS

Licensees must disclose all known material adverse facts that a party does not know or cannot discover through a reasonably vigilant observation and all information suggesting material adverse facts. Disclosure must be in writing and in a timely manner.

Licensees are NOT required to disclose the following:

1. Information contained in a written report, prepared by a qualified third-party, that has been given to all parties.
2. That a notorious or stigmatizing event happened at a property unless the event physically affected the property.
3. The presence of certain family homes, community-based residential facilities, and nursing homes.
4. Information about known sex offenders if the licensee provides the party who requested the information with written contact information for the Wisconsin Department of Corrections’ sex offender registry. The contact information must contain the Department’s website and toll-free phone number.

CONDOMINIUM DISCLOSURE REQUIREMENTS

Wisconsin Statute Chapter 703 Condominiums requires condominium-specific disclosure obligations of Wisconsin condominium sellers.

Within 10 days of accepting an offer and no later than 15 days before a transaction closes, a condominium seller must provide the potential buyer with the following documents.

1. A copy of the proposed or existing declaration, bylaws and any rules or regulations, together with an index of the contents.
2. A copy of the proposed or existing articles of incorporation of the association, if it is, or is to be, incorporated.
3. A copy of any proposed or existing management contract, employment contract or other contract affecting the use, maintenance or access of all or part of the condominium to which it is anticipated the unit owners or the association will be a party following closing.
4. A copy of the projected annual operating budget for the condominium including reasonable details concerning the estimated monthly payments by the purchaser for assessments, and monthly charges for the use, rental or lease of any facilities not part of the condominium.
5. A copy of any lease to which it is anticipated the unit owners or the association will be a party following closing.
6. A description of any contemplated expansion of the condominium with a general description of each stage of expansion and the maximum number of units that can be added to the condominium.
7. A copy of the floor plan of the unit, together with the information that is necessary to show the location of the common elements and other facilities to be used by the unit owners and indicating which facilities will be part of the condominium, and which facilities will be owned by other unit owners.
8. An executive summary setting forth the disclosure materials in clear language.
Executive Summary

The executive summary gives a potential buyer an index to the disclosure materials, which often consist of many pages of information. The summary guides potential buyers through the many disclosure documents and provides an overview of material contained in the disclosure documents. There is not a state-approved executive summary form.

<table>
<thead>
<tr>
<th>The executive summary should include:</th>
</tr>
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<tbody>
<tr>
<td>1. Condominium identification - the name of the condominium.</td>
</tr>
<tr>
<td>2. Governance - the name and address of the condominium association, whether the association is self-managed or has delegated management and the name and address of the person who may be contacted for general condominium information.</td>
</tr>
<tr>
<td>3. Parking - a description of parking availability, restrictions and costs.</td>
</tr>
<tr>
<td>5. Unit rentals - whether unit owners may rent their units and any rental restrictions.</td>
</tr>
<tr>
<td>6. Special amenities - a description of special amenities like a golf course or athletic club, and any unit owner obligations to join or pay dues.</td>
</tr>
<tr>
<td>7. Unit repair and maintenance responsibilities - a description of a unit owner's repair and maintenance responsibilities.</td>
</tr>
<tr>
<td>8. Common element and limited common element maintenance, repair, and replacement - identity of person responsible for the maintenance, repair, and replacement of the common elements and the limited common elements, and whether this is paid with unit assessments, reserve funds, or both.</td>
</tr>
<tr>
<td>9. Reserves - whether the association has reserves for common element repairs and replacements and whether the reserves are in a statutory reserve account.</td>
</tr>
<tr>
<td>10. Fees on new units - a description of any provisions exempting the declarant or modifying the declarant’s obligation to pay condo maintenance fees on unsold units during the declarant control. Declarant control refers to that period of time when the declarant exercises the powers and responsibilities of the association while construction is completed and new units are sold (up to 10 years for expandable condominiums, up to three years for other projects).</td>
</tr>
<tr>
<td>11. Expansion plans - description of any condominium expansion plans, the deadline for completion of any expansion, and who is responsible for management during the expansion period.</td>
</tr>
<tr>
<td>12. Unit alterations - description of the rules, restrictions and procedures for unit owners who want to alter their units or enclose limited common elements.</td>
</tr>
<tr>
<td>13. Amendments - an indication that a unit purchaser’s rights and responsibilities may be altered by amendment of the declaration or bylaws, and a description of the amendment process.</td>
</tr>
<tr>
<td>14. Other restrictions or features - optional.</td>
</tr>
</tbody>
</table>

Condominium Addendum to the RECR

Sellers of condominiums must include a condominium addendum with the seller’s RECR. There is not a state-approved condominium addendum to the RECR. The condominium addendum supplements the information a seller provides in a RECR and provides a potential buyer with the unit address and description, contact information for the seller or the listing agent, association management information, and budget and condo maintenance fee information. The condominium addendum to the RECR also instructs the seller to attach a copy of the executive summary to the RECR.
Condominium Documents

When a seller provides condominium disclosure documents, the seller shall provide a cover sheet, an index, and tables of contents as prescribed under state law. The seller includes the executive summary immediately following the index and tables of contents precede the sections to which they apply.

A condominium seller must furnish the buyer with the documents with 10 days of accepting the buyer’s offer and no later than 15 days prior to closing. Any buyer may rescind an offer to purchase a condominium unit, without stating any reason and without liability, within five business days following receipt of the condominium documents. If the buyer receives condominium disclosure documents that are missing one or more of the documents required, the buyer has five business days to either rescind the offer in writing, without stating any reason, or to request that the seller deliver the missing documents. If the buyer neither rescinds nor requests missing documents within the five business days, then the delivered materials are deemed satisfactory and the buyer has no further right to rescind based upon those materials. The seller has five business days following receipt of a buyer’s request for missing documents to deliver the missing documents. The buyer may rescind the sale within five business days following the earlier of the buyer’s receipt of the requested missing documents or the seller’s deadline for delivering the documents.

ENVIRONMENTAL CONCERNS

Lead-Based Paint:

1. Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present on accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency.

2. Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, unless any child who is less than 6 years of age resides or is expected to reside in such housing, or any 0-bedroom dwelling. If there was a building permit obtained or the construction was started prior to January 1, 1978 it is considered target housing.

3. 0-bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. This term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

The following disclosure and acknowledgment elements apply to all target housing. Each contract to sell target housing must include an attachment containing the following specific disclosure and acknowledgment elements:

1. A lead warning statement containing federally-approved language.

2. A statement disclosing the presence of any known lead-based paint and/or lead based paint hazards in the target housing, or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

3. A statement affirming that the purchaser has received the information noted above and a copy of the required lead hazard information pamphlet, “Protect Your Family from Lead in Your Home.”

4. A statement that the purchaser has received a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards (unless the parties have mutually agreed to a different period of time) before becoming obligated under the contract to purchase the housing. A purchaser who chooses to waive the risk assessment or inspection opportunity must indicate so in writing.

5. A statement by any agent involved in the transaction that the agent has informed the seller of the seller’s disclosure obligation and that the agent is aware of his duty to ensure compliance with the requirements of this rule.

6. The signatures of the seller(s), agent(s), and purchaser(s), certifying the accuracy of their statements on the attachment, along with their dates of signature.
HUD and the EPA impose record keeping requirements on brokers and sellers. The seller and any agents in the transaction are required to retain a copy of the completed disclosure and acknowledgment contract attachment for three years from the completion date of the sale. The lessor and any agent are required to retain a copy of the completed lease or attachment for the same time frame.

Sellers must provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of LBP or LBP hazards before becoming obligated under a purchase contract. This means that the disclosure requirements must occur prior to the binding acceptance of a contract. The 10-day opportunity to conduct a risk assessment or inspection can be modified by mutual agreement of the parties.

**Underground Storage Tanks (UST):** USTs store fuel or heating oil for residential or consumptive use. Wisconsin law requires registration with the Department of Safety and Professional Services of all USTs storing a regulated product. All residential underground storage tanks with a capacity of 1,100 gallon or lager must have a tightness test conducted every two years. If the tank does not successfully pass the tightness test, an investigation must be conducted and the property owner must remedy the problem, which could include removal of the tank and remediation of contamination. Tanks that are no longer in use must have closure. Closure usually requires removal of the tank although specific situations may call for a tank to be closed in place. A neutral-third party must supervise closing of a UST and must complete and submit documentation of the closure to the Department of Safety and Professional Services. The Department will only permit an out-of-use tank to remain buried if removal would damage the structural integrity of a building or where removal would cause hardship.

**Asbestos:** A naturally occurring mineral found in soil and rock in some areas of the United States. The EPA recommends leaving it alone with continued monitoring if the asbestos can be maintained in good condition. Asbestos is most dangerous when it is damaged or disturbed, separating the fibers causing them to become friable/airborne.

**Radon:** A cancer-causing, radioactive colorless gas. Radon comes from soil, rock, well water, and building materials. Radon is derived from the radioactive decay of radium. Radon can be found all over the U.S. and it can get into any type of building—homes, offices, and schools where it can build up to high levels. Breathing air that contains radon can increase the risk for lung cancer.
Answer the following questions. If you need to, refer to the previous summary or WB forms.

1. When is a licensee employed by a broker allowed to advertise without mentioning the employing broker’s name in the ad?

__________________________________________________________________

2. The licensee may rely on the results of a third-party inspection providing the licensee takes what action?

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________

3. The purchaser of a condominium must receive the disclosure documents no later than:

__________________________________________________________________

4. A seller of what type of property is subject to the Real Estate Condition Report?

__________________________________________________________________
__________________________________________________________________

5. What exemptions are recognized under the Real Estate Condition Report law?

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________

6. A licensee is showing a property to a buyer and discovers a material adverse fact. The seller did not mention the defect in the Real Estate Condition Report. What should the licensee do?

__________________________________________________________________

7. Wisconsin administrative rules specifically state a licensee is NOT required to disclose what information?

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
8. If a buyer does not receive a Real Estate Condition Report within 10 days of acceptance, how many days does the buyer have to rescind the contract?

__________________________________________________________________

9. A seller becomes aware of a defect after an Offer to Purchase has been accepted. Does the seller have to amend the Real Estate Condition Report and deliver a copy to the buyer?

__________________________________________________________________
__________________________________________________________________

10. A seller of target housing wants to accept an offer without the attached lead-based paint attachment. The licensee tells the seller that is fine. Is this a permissible act by the licensee under the LBP disclosure law?

__________________________________________________________________

11. What situation requires an underground storage tank to be tested every two years?

__________________________________________________________________

12. Asbestos is considered to be most dangerous when it is:
FAIR HOUSING LAW

Fair housing laws serve to protect equal housing opportunities for all people. Licensees are responsible for helping sellers, buyers, and other parties observe fair housing laws and prevent violations that could threaten the public’s right equal and fair housing. Fair housing laws address the actions of a person regardless of the person’s intent and the laws require that all parties be treated equally. Organizations such as Housing and Urban Development (HUD) and the Department of Workforce Development (DWD), may send “testers” to a licensee for a service, such as viewing a property or applying for a rental unit. The testers will include members of a protected class and individuals who are not members of that protected class. HUD or DWD will compare the testers’ experiences to see if a licensee treated one tester differently from another.

Fair housing law applies to dwellings, which include any building or part of a building designed for occupancy as a residence by one or more families. This includes both properties improved with a structure as well as any vacant lands on which a dwelling will be built. In addition to state and federal housing law, Wisconsin has given local levels of government, such as villages, cities, and counties, the right to enact their own fair housing laws that meet or exceed the state fair housing law. Local fair housing laws cannot remove a protected class, but can create more, or stricter, protected classes. A licensee must comply with the law that offers the most protection to individuals, which is often found in local housing law.

Fair Housing Protected Classes:

1. **Race:** A person’s membership in a group possessing characteristics and traits transmitted by descent.
2. **Color:** A person’s skin color.
3. **Religion:** A person’s religious or spiritual beliefs and practices, or his or her denominational affiliations.
4. **National Origin:** The country where a person or their ancestors originated or came from.
5. **Sex:** gender, male or female.
6. **Familial Status:** The presence of children under age 18 in the household. Familial status also protects a person who is pregnant and a person who is in the process of securing sole or joint legal custody, physical placement, or visitation rights of a minor child.
7. **Disability:** A physical or mental impairment that substantially limits one or more major life activities, a record of having such an impairment, or being regarded as having such an impairment.
8. **Ancestry:** A person’s racial and ethnic background.
9. **Age:** Any person at least 18 years of age.
10. **Sexual orientation:** Having a preference for heterosexuality, homosexuality, or bisexuality, having a history of such a preference or being identified with such a preference.
11. **Marital status:** A person is single, married, divorced, separated, or widowed.
12. **Lawful source of income:** The source of a person’s income, provided that it is legal. This may include lawful compensation or remuneration in exchange for goods or services provided, profit from financial investments, and any negotiable draft, coupon, or voucher representing monetary value such as food stamps, Social Security, public assistance, unemployment compensation, or worker’s compensation payments.
13. **Status as a victim of domestic abuse, sexual assault, or stalking:** Is or is believed to be a victim of domestic abuse, sexual assault, or stalking.
Fair Housing Law Prohibitions

1. Refusing to sell, rent, finance or contract to construct housing or by refusing to negotiate or discuss the terms thereof.
2. Refusing to permit inspection or exacting different or more stringent price, terms or conditions for the sale, lease, financing or rental of housing.
3. Refusing to finance or sell an unimproved residential lot or to construct a home or residence upon such a lot.
4. Advertising in a manner that indicates discrimination by a preference or limitation.
5. Redlining, which is when a person in the business of insuring against hazards, refuses to enter into, or exacts different terms, conditions or privileges with respect to, a contract of insurance against hazards to a dwelling.
6. Providing the unequal access to privileges, services or facilities that are available in connection with housing.
7. Steering, which is falsely representing that housing is unavailable for inspection, rental or sale.
8. Denying access to, or membership or participation in, a multiple listing service or other real estate service.
9. Refusing to renew a lease, causing the eviction of a tenant from rental housing or engaging in the harassment of a tenant.
10. Coercing, intimidating, threatening or interfering with a person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, a right granted or protected under this section, or with a person who has aided or encouraged another person in the exercise or enjoyment of a right granted or protected by the Fair Housing law.
11. Using discriminatory factors in the making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing or maintaining housing or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate.
12. Blockbusting, which is inducing or attempting to induce a person to sell or rent housing by representations regarding the present or prospective entry into the neighborhood of a person of a particular economic status or a member of a protected class, or by representations to the effect that such present or prospective entry will or may result in any of the following:
   a) The lowering of real estate values in the area concerned.
   b) Deterioration in the character of the area concerned.
   c) An increase in criminal or antisocial behavior in the area concerned.
   d) A decline in the quality of the schools or other public facilities serving the area.
Permissible Under Fair Housing Law:
1. Discrimination based on age or family status with respect to housing for older persons. Housing may qualify as housing for older persons only if the owner of the housing maintains records containing written verification that at least 80% of the dwelling units are occupied by at least one person 55 years of age or older and policies are published and procedures are adhered to that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
2. Exacting different or more stringent terms or conditions for financing housing based on the age of the individual applicant for financing if the terms or conditions are reasonably related to the individual applicant.
3. The development of housing designed specifically for persons with disabilities in relation to such housing.
4. Refusing to provide housing to an individual whose tenancy would constitute a direct threat to the safety of other tenants or persons employed on the property or whose tenancy would result in substantial physical damage to the property of others, if the risk of direct threat or damage cannot be eliminated or sufficiently reduced through reasonable accommodations.
5. Requiring that a person who seeks to buy or rent housing supply information concerning family, marital, financial and business status but not concerning race, color, disability, sexual orientation, ancestry, national origin or religion. Also, an owner or agent may require that a person who seeks to buy or rent housing for older persons supply information concerning his or her age for the purpose of verifying compliance with that type of housing.
6. Advertising for roommates may indicate the desired gender of the tenant sought in situations where there are shared living areas or where the advertising is for a dormitory at an educational institution. This exception does not apply if the rental is for separate units in a single or multi-family dwelling.
7. Referring to a protected class in an advertisement if advertising is part of an affirmative marketing program designed to attract persons who would not ordinarily be expected to apply for housing.
8. Refusing to rent owner-occupied housing if an owner or an immediate family member occupying the property is allergic to the animal and can demonstrate it with a certificate signed by a physician that states that the owner or family member is allergic to the type of animal the individual possesses.

Advertising:
Advertising means to publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign in connection with the sale, financing or rental of housing. To determine if an advertisement is discriminatory and a violation of fair housing laws, HUD uses the “ordinary reader” standard.

<table>
<thead>
<tr>
<th>HUD Advertising Tips and Guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Real estate advertisements should not state a discriminatory preference or limitation for a protected class.</td>
</tr>
<tr>
<td>2. Advertisements should not contain an explicit preference, limitation or discrimination on account of religion.</td>
</tr>
<tr>
<td>3. Advertisements containing descriptions of properties but that do not state a preference for persons likely to make use of those facilities and are not violations of the act.</td>
</tr>
<tr>
<td>4. The use of secularized terms or symbols relating to religious holidays do not constitute a violation of the act.</td>
</tr>
<tr>
<td>5. Real estate advertisements should not contain explicit exclusions, limitations, or other indications of discrimination based on a person’s physical or mental abilities.</td>
</tr>
<tr>
<td>6. Advertisements containing descriptions of accessibility features are lawful.</td>
</tr>
<tr>
<td>7. Advertisements may not state an explicit preference, limitation or discrimination based on familial status.</td>
</tr>
<tr>
<td>8. Advertisements may not contain limitations on the number or ages of children, or state a preference for adults, couples or singles.</td>
</tr>
<tr>
<td>9. Advertisements describing the properties services and facilities or neighborhoods are not facially discriminatory and do not violate the act.</td>
</tr>
</tbody>
</table>
THE AMERICANS WITH DISABILITIES ACT (ADA)

The Americans with Disabilities Act (ADA) requires places of public accommodation to provide equal access and services to persons with disabilities. A real estate office is a place of public accommodation. This means that real estate offices must remove, where reasonable, architectural and communication barriers and provide auxiliary services. Auxiliary aids and services are required by the ADA to ensure effective communication with individuals with hearing or vision impairments. The ADA does not require the provision of any auxiliary aid that results in an undue burden or in a fundamental alteration in the nature of the goods or services provided by a broker. Asking the questions necessary to determine what auxiliary aids and services are needed by a person with disabilities is setting a situation where all real estate services can be furnished effectively and on an equal basis. Auxiliary aids must be provided to individuals with disabilities who have physical or mental impairments, such as vision, hearing or speech impairments that substantially limit the ability to communicate. The broker is responsible for providing the auxiliary aids.
Answer the following questions. If you need to, refer to the previous summary or WB forms.

1. Fair housing laws do not apply to what type of properties?

2. What are the 13 protected classes under Wisconsin’s fair housing laws?

3. When is it permissible to mention a protected class in an advertisement?

4. Telling existing homeowners that a certain class of people will lower property values in an effort to obtain listings is a form of

5. Under fair housing when is it permissible to refuse to sell a property to someone because of his age?

6. Under fair housing, when can an advertisement contain a gender preference?

7. Who is responsible to provide and pay for auxiliary aids and services?
MARKET VALUE VERSUS APPRAISED VALUE

Market value is an opinion of value for which a property would likely sell to a buyer who is not under duress, is not related to the seller, is well informed about the property, has been found in a reasonable time period, has paid for the property with cash or its equivalent, and the price is not affected by special financing amounts or terms. A licensee typically performs a market analysis to arrive at a probable market value. A market analysis compares similar properties that have recently sold to a subject property.

If a buyer is obtaining a mortgage to finance the transaction, the mortgage lender will want to determine the value of the property and request an appraisal. The appraisal is an estimate or opinion of value based on supportable evidence and approved methods. An appraiser is an independent person trained to provide an unbiased estimate of value for a fee. A lender wants an independent party to give an opinion as to whether a property has enough value to cover the risk to the lender when issuing the loan.

Neither a real estate licensee or an appraiser create value but both develop opinions of value based on the current performance of the real estate market. The biggest difference between the real estate licensee’s market analysis and the appraiser’s appraisal is objectivity. A real estate licensee seeks to establish the maximum value of a property by trying to anticipate what a future buyer will pay for the property. The appraiser’s opinion is based on past events such as what buyers have paid for similar properties in the past.

PRINCIPLES OF VALUE

A number of economic principles affect the value of real estate. Licensees consider these principles of value when conducting a market analysis.

1. **Highest and Best Use**: A property’s most profitable use that is legal, financially feasible, physically possible, and maximally productive.
2. **Conformity**: A building’s value is higher if surrounded by similar structures.
3. **Regression/Progression**: Refers the effect dissimilar properties have on nearby properties.
4. **Increasing and Decreasing Returns**: The effects improvements of land and structures have on property values. Improvements to a property may reach a point where the improvements no longer have a positive effect on property value.
5. **Substitution**: Analyzing a property’s value by measuring the value of other similar properties.
6. **Anticipation**: The effect on a property of anticipated future events. Anticipation can either affect value in a positive or negative manner.
7. **Contribution**: The value that improvements add to a property’s market value.
8. **Supply and Demand**: The effect on property value when demand is high and supply is low or when demand is low and supply is high.
9. **Change**: The effects on value due to natural disasters, economic conditions, or market activity.
10. **Market Price**: What a ready, willing, and able person pays for the property.
11. **Cost**: The current reproduction cost of a building plus the value of the land.
12. **Amenities**: Features that add to the value or desirability of real estate such as a great view or master suite.
THE MARKET DATA (SALES COMPARISON) APPROACH

Most real estate professionals consider the market data approach to be the most reliable approach to value a single-family home. Licensees compare the subject property, the property being appraised, to a recently sold comparable property. Because no two parcels of real estate are exactly alike, a licensee will evaluate each comparable property for differences and similarities between it and the subject property and adjust the price for any dissimilarities.

When trying to determine market value, a licensee first gathers information on the subject property and then finds comparable properties that are similar to the subject property. A market analysis is not always an objective method of determining value because factors like how well a property will show, a seller’s high expectations, and the potential commission can influence a licensee’s opinion.

When gathering information on comparable sold properties, licensees will also gather information on active properties, which are properties that are currently for sale and represent the seller’s current competition. Depending on how competitively a seller prices the property, the other active properties can help a seller generate interest or a seller’s asking price could generate interest in competing properties.

A licensee will also use information about pending properties. A pending property is one where the seller has an accepted offer to purchase with all the contingencies removed. The buyer and seller are just waiting for the closing date. A pending property can help a seller set a realistic list price. If a seller of a similar property was able to obtain an accepted offer at a certain price, the seller of the subject property should be able to expect the same.

Expired properties can also inform a licensee’s analysis of market value. An expired property is a property that was listed but did not sell. These properties were usually priced above market value and may help convince an unrealistic seller to arrive at a more realistic list price.

A market analysis does not indicate the specific price for which a property will sell. The market analysis gives the licensee and the seller a price range in which a property is most likely to attract a buyer.
Answer the following questions. If you need to, refer to the previous summary or WB forms.

1. Describe the process of market analysis and how it establishes market value.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

2. A licensee is trying to determine value for a property. The subject property is surrounded by smaller properties that are not in as good of shape. The surrounding properties are bringing the value of the subject property down. This is an example of:

________________________________________________________________________

3. The primary principal of value used by a licensee when conducting a market analysis is?

________________________________________________________________________

4. Which party tends to be more concerned with the seller’s opinion of value, the appraiser or the licensee?

________________________________________________________________________
REAL PROPERTY OWNERSHIP

Real property ownership refers to the rights, interests, and benefits of ownership of real estate. Ownership of real estate gives a property owner the rights to the physical land at and below the earth’s surface, structures that are permanently attached to it, and the air located above it.

These rights are called the bundle of rights and include the rights of:

1. Disposition - The right to sell, lease, and will property away.
2. Encumber - The right to mortgage or give another party an interest in property.
3. Exclude - The right to have sole use of a property.
4. Possession - The right to occupy the property.
5. Quiet Enjoyment - The right to have uninterrupted use of the property without interference from former owners or tenants.
6. Control - The right to use the property in a lawful manner.

REAL VERSUS PERSONAL PROPERTY

Personal property, also called chattel, is characterized by being moveable or portable. Personal property is not considered part of the real estate and is not automatically sold with the real estate. Fixtures are classified as items that once were personal property which have become permanently attached to the real estate. Fixtures are real property and are automatically sold with the real estate unless a different agreement is reached.

A court applies the following if parties dispute whether an item is a fixture:

1. How is the item attached?
2. How is it adapted?
3. What was the intent?
4. Is there an agreement?

Trade fixtures, used for the purpose of conducting business, are personal property, owned by a tenant, and are attached to a rented space or building with the intent of removing the article at the termination of a lease.

A mobile home is personal property unless it is on a foundation, attached to utilities, and on land owned by the mobile home owner. If the mobile home does not exhibit all three characteristics, it is personal property.

ESTATES IN LAND

Freehold Estate: A real property interest in land that lasts for an unlimited duration. The owner maintains the legal bundle of rights until some action by the owner, including death, grants the property to a new recipient.

A. Fee simple absolute (fee simple) is the maximum ownership or the greatest estate in land. In most transactions, the buyer (grantee) is receiving from the seller (grantor) a fee simple estate. Ownership is forever and the owner has the full bundle of rights until the owner chooses to dispose of the property. An owner’s rights to property held as fee simple absolute are only subject to government powers. Federal, state, and local governments have the power to create laws to protect public health, safety, and welfare. Government powers protect the general welfare of the community and they supersede the rights of individual property owners.
The government powers are:

1. Police Power: State power that the legislature passes to municipalities through enabling acts. Municipalities use police power to preserve order, protect public health and safety, and promote general welfare.

2. Eminent Domain: A government’s right to take private land for public use. A government exercises eminent domain through condemnation. To use eminent domain, a government must show that the taking of the land is in the public interest and must pay the property owner just compensation.

3. Taxation: A government charges taxes on real estate to raise funds to meet public needs such as schools and roads.

4. Escheat: When a property owner dies without a will and without heirs and the state or county becomes the owner of the property. Escheat prevents a property from becoming abandoned and without an owner.

B. Fee simple defeasible estates continue indefinitely as long as the estate holder observes the terms of the estate. Ownership depends on the occurrence or the nonoccurrence of an event. A grantor creates a fee simple defeasible by encumbering a deed with a condition requiring the grantee to observe other condition to maintain ownership of the estate. For example, a grantor grants land to a city as long as the city uses it for a park. If the city uses the land for a parking lot, the city violates the deed condition and the title to the property transfers to a subsequent grantee according to the terms of the deed condition. A licensee should refer transactions involving a fee simple defeasible to an attorney.

C. Life estates are estates in land where parties measure ownership by the life of the life estate holder or some other person. When the life estate terminates on the death of the life estate holder, the property passes to a future owner based on the terms of the life estate. A life estate is not inheritable. An owner of a life estate is a life tenant.

Leasehold Estates: A leasehold estate is a personal property estate in land that transfers from the lessor (landlord/property owner) to the lessee (tenant). Parties use a lease to transfer the estate from the lessor to the lessee. A lease defines the period of time the lessee has to exclusively use and possess the property, the amount of money the lessor is charging for that use, and any other duties or obligations of the property owner and tenant. The tenant holds a less-than-freehold estate in land. A leasehold estate survives the death of the lessor or lessee and it binds heirs of the deceased party. A lease survives transfer of title. A seller shall assign the seller’s rights under a lease and transfer all security deposits and prepaid rents to the buyer at closing. The seller remains liable under a lease unless released by the tenant.

Lessor/Lessee Obligations: Neither a property owner nor a tenant is required to make improvements to property unless specifically stated in the terms of the lease. A property owner must keep property in habitable condition, and tenants must return premises in the same condition as when the tenant received it. A property owner must provide a standardized information check-in sheet to a new tenant. The sheet must contain an itemized description of the condition of the premises at the time of check-in. The tenant shall be given 7 days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The property owner is not required to provide the information check-in sheet to a tenant upon renewal of a rental agreement. Before a property owner accepts a security deposit, the owner must notify a tenant that the tenant has 7 days to inspect the dwelling at the beginning of the tenancy and that the tenant has 7 days to request a list of physical damages or defects, if any, charged to the previous tenant’s security deposit.

A property owner must return the full amount of the security deposit, less any amounts properly withheld within 21 days after any of the following:

1. If the tenant vacates on the date the rental agreement terminates, the date on which the rental agreement terminates;
2. If the tenant vacates the premises before the termination date of the rental agreement, the date on which the tenant’s rental agreement terminates or, if the property owner re-rents the premises before the tenant’s rental agreement terminates, the date on which the new tenant’s tenancy begins;
3. If the tenant vacates the premises after the termination date of the rental agreement, the date on which the landlord learns that the tenant has vacated the premises; or
4. If the tenant is evicted, the date on which a writ of restitution is executed or the date on which the landlord learns that the tenant has vacated the premises, whichever occurs first.

A property owner must make the security deposit check payable to all tenants unless the tenants desire a payee in writing. Most property owners will request that the tenants designate a payee at the time the tenants execute the lease or rental agreement to facilitate the later return of the security deposit.

Security deposits may be withheld for any of the following reasons:

1. Tenant damage, waste or neglect of the premises.
2. Unpaid rent for which a tenant is legally responsible.
3. Payment that a tenant owes under the rental agreement for utility service.
4. Unpaid mobile home parking fees.

Security deposits may not be withheld for normal wear and tear. This means a property owner cannot withhold money from a tenant’s security deposit for routine carpet cleaning.

Prohibited Practices:

1. May not rent or advertise a premises that has been placarded and condemned for human habitation.
2. May not enter a dwelling unit during tenancy except to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers.
3. May not enter a dwelling unit during tenancy except upon advance notice and at reasonable times. Advance notice means at least 12 hours advance notice unless the tenant, upon being notified of the proposed entry consents to a shorter time period.
4. May enter a premises if the tenant, knowing the proposed time of entry, requests or consents in advance to the entry, a health and safety emergency exists, or the tenant is absent and the landlord reasonably believes that entry is necessary to protect the premises from damage.
5. May not enter a dwelling unit during tenancy without first announcing his presence to persons who may be present in the dwelling unit, identifying himself upon request.
6. Cannot enforce an automatic renewal or extension provision unless the tenant was given separate written notice of the pending automatic renewal at least 15 days, but no more than 30 days before its stated effective date.
7. May not seize or hold a tenant’s personal property, or prevent the tenant from taking possession of the tenant’s personal property.
8. Shall not terminate a tenancy or give notice preventing the automatic renewal of a lease, or constructively evict a tenant by any means including the termination or substantial reduction of heat, water or electricity to the dwelling unit in retaliation against a tenant because the tenant has:
   a) Reported a law violation or a building or housing code to any governmental authority, or filed suit alleging such violation;
   b) Joined or attempted to organize a tenant’s union or association; or
   c) Asserted, or attempted to assert any right specifically accorded to tenants under state or local law.
9. Shall not fail to deliver possession of the dwelling unit to the tenant at the time agreed upon in the rental agreement, except where the landlord is unable to deliver possession because of circumstances beyond the landlord’s control.
10. May not exclude, forcibly evict or constructively evict a tenant from a dwelling unit.
11. Late rent fees and penalties.

FORMS OF OWNERSHIP

A licensee cannot give advice on how an owner should hold title.

Severalty: An interest that is severed from all others. The owner holds, exclusively, the bundle of rights. No other party has an interest in the ownership or transfer of title to the property.
Co-ownership: The title to real estate is held by more than one owner.

1. **Tenancy in Common** (No Survivorship Between Owners)

   Tenants in common hold a fractional interest in a property. They have equal rights to possess the property even though they may not own equal shares. Tenants in common hold their individual interests in severalty. Each owner has the ability to control the individual ownership interest. An owner can sell an interest without the consent of the others, unless all parties have an agreement stating otherwise. A tenant in common can will the tenant’s interest upon death; it does not automatically go to the surviving owners.

   The law presumes tenancy in common when more than one person owns a property. If nothing is expressed to the contrary in the deed, the owners hold the property as tenants in common and that each tenant has an equal interest.

2. **Joint Tenancy** (Survivorship Between Owners)

   Co-owners can title property as joint tenants. A joint tenancy can only be created by will or deed. This means either the will of a deceased person dictates that the heirs hold title to the property as joint tenants or a property’s deed will list the owners as joint tenants.

   Total unity exists when all owners have equal rights to possession, hold an equal ownership interest, acquired their interest at the same time, and by the same document. Joint tenants enjoy a right of survivorship. This means that when one joint tenant dies, that deceased joint tenant’s interest automatically vests in the surviving joint tenant or tenants without going through probate. Probate is the formal judicial proceedings that occur to prove or confirm the validity of a will, to collect the assets of a defendant’s estate, to pay debts and taxes, and to determine the persons to whom the remainder of the estate is to pass.

   A joint tenant can sell the joint tenant’s interest without the consent of the other joint tenant. The new owner does not take title as a joint tenant because the new owner did not receive the interest at the same time as the remaining joint tenants. The new owner takes title as a tenant in common. The remaining owners’ interest, as joint tenants, remain the same.

   Under a tenancy in common and a joint tenancy, co-owners can file a partition suit to dissolve the tenancy. A partition suit is a legal remedy used when all of the parties do not voluntarily agree to sell. A court, if unable to divide the property between the remaining owners without destroying its value, will order the sale of the property as a whole and distribute the proceeds to the owners according to their fractional interest in the property.
A, B, and C hold title as joint tenants in equal one-third shares. B sells a one-third interest to D. D is not a joint tenant with A and C because D took title at a different time. A and C are still joint tenants and D is a tenant in common. A, C, and D each own a one-third share. If A dies, A's title would transfer to C, because joint tenants have a right of survivorship. C and D now hold title as tenants in common (no right of survivorship).

WISCONSIN MARITAL PROPERTY

On January 1, 1986 Wisconsin’s Marital Property Act became effective, which means that each spouse owns an undivided one-half interest in the property of the other spouse acquired after their determination date, regardless of which spouse actually acquired the property. A couple’s determination date is the last to occur of the: couple’s date of marriage, the married couple’s establishment of a domicile within Wisconsin, or January 1, 1986. The Marital Property Act provides for classification of property acquired after a married couple’s determination date. Property is classified as marital, individual, mixed, or survivorship. The act also addresses property acquired before a couple’s determination date.

Marital Property Act Classifications:

**Marital Property:** Including, but not limited to all property and salaries of married persons. Each spouse has an undivided one-half interest in each item of marital property without regard to the actual monetary value of a spouse’s contribution to the asset. A spouse can convey his or her one-half interest in a marital property asset, as could a tenant in common and the non-conveying spouse will have an interest in any proceeds from the conveyance. Upon the death of a spouse, one-half of all marital property assets become part of the estate of the deceased spouse and may be distributed pursuant to the will of the deceased spouse.

**Individual Property:** Property one spouse received as a gift or inheritance; property acquired prior to marriage; income from individual property designated as individual property; appreciation of value from individual property; and property declared by decree or marital property agreement as the individual property of the spouse.

**Mixed Property:** Combination of both individual and marital property. It is always treated as marital property. Spouses who want to keep individual property must keep it separate from marital property. Mixing individual property with marital property will change the individual property to marital property. If a non-owner spouse uses substantial labor, effort, inventiveness, physical, or intellectual skill, creativity or managerial activity that results in substantial appreciation of the other spouse’s individual property, the property is treated as marital property unless the spouse that owns the individual property provides reasonable compensation to the non-owner spouse.
REAL ESTATE SALES

**Predetermination Date Property:** Applies to property acquired by married couples before their determination date. This property is reclassified as marital property in the event of divorce or death of one of the spouses.

**Survivorship Marital Property:** Allows a property to pass to the surviving spouse without going through the probate process. If spouses take title as joint tenants, the property will be classified as survivorship marital property. A married couple’s homestead is automatically held as survivorship marital property unless they title it differently in the deed or have a marital property agreement stating otherwise.

A homestead is defined as the home or dwelling of a married person and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, but not less than one-fourth acre, if available, and not exceeding 40 acres. The definition is intended to be broad and covers properties such as a duplex so long as the couple or one of the spouses reside in one of the units.

**MANAGEMENT AND CONTROL**

The rights to management and control of property can determine who has the authority to sell, lease, dispose, or mortgage the real estate. If property owners title property using “or,” either owner may exercise management or control over the property. If property owners title property using “and,” both owners must consent to the management or control decision. If a married couple owns a homestead, both spouses must sign any conveyance regardless of whether the deed lists both spouses as owners.

Mary owns a property. She then meets and marries John and they live in Mary’s house. Mary decides to sell the property, because it is a homestead property, both Mary and John’s signatures are required to transfer title.

**CONDOMINIUM OWNERSHIP**

A condominium is a form of ownership of real property, just like a joint tenancy or a tenancy in common. It is important that a licensee has a basic understanding of the following components of condominium ownership.

**Unit:** The unit owner has exclusive ownership and possession of the unit. The unit owner can use the unit as defined by the condominium declaration and plat.

**Common elements:** Everything else in the condominium that is not a unit. Everything else in the condominium that are not units. In a residential condominium, common elements may include the grounds, a swimming pool, the exterior of the building, the landscaping and outdoor lighting, elevators, and fitness rooms. A unit, together with its undivided interest in common elements, is an interest in real estate.

**Limited common elements:** Elements of the condominium that are identified in the declaration or plat as reserved for the exclusive use of one or more unit owners. The declaration or bylaws may permit unit owners to transfer limited common elements by deed to other unit owners.

Unit owners own an undivided interest in the common elements as a tenants in common. The condominium declaration determines the individual owner’s percentage interest. Condominium declarations may establish percentage interests based on the number, the square footage, the location, or the value or using some other formula.

The percentage interest determines the:
1. Extent of the unit owner’s undivided ownership interest in the common elements;
2. Extent of the unit owner’s responsibilities for common expenses;
3. Unit owner’s voting power; and
4. Amount of a unit owner’s proceeds in the event the condominium is terminated.
COOPERATIVE OWNERSHIP
Cooperative ownership, also called a co-op, permits owners to purchase stock in a corporation that holds title to a building. The corporation grants the stockholder a proprietary lease for a specific unit in the building. The corporation holds title to the land and building and the owners, who are shareholders of the corporation, lease the individual units. The residents are tenants of the corporation's building and owners of the corporation. Leaseholders pay a share of the corporation's expenses such as mortgages and real estate taxes in exchange for occupancy of the unit. A leaseholder's share of the expenses can depend on the size of the unit, the purchase price, or some other formula. A cooperative owner does not own the unit like a condominium owner but rather owns stock in a corporation, which holds the building as the corporation's main asset.

Unlike voting power in a condominium, which is usually based on the size or value of the unit, voting in a cooperative is usually one vote per unit. Cooperatives usually require board of director's approval of any transfers of stock and leases to new owners. Cooperative owners are collectively responsible for the financial status of the corporation, which means if a leaseholder defaults on monthly payments, the other owners must pay the difference so that the corporation is able to pay its expenses such as the building's mortgage, utilities, and taxes. If the corporation cannot pay the mortgage, the lender could foreclose, which could terminate the stockholder's leases even if the individual stockholder has not defaulted. The lender issues the mortgage to the corporation rather than to the group of tenants. The tenants are responsible for their share of the cooperative's expenses.

A Wisconsin real estate license does not permit a licensee to sell stock because it is not real property but if the sale of stock in a cooperative ownership building is incidental to the licensee's real estate practice, the licensee can participate in the transfer. Licensees must be careful because the state approved real estate forms are not for use in the sale of stock.

TIME-SHARE OWNERSHIP
An owner of a time-share has an interest in real property with the right to use the facility for a fixed or variable time period. Owners convey time-shares to new owners by deed. With time-share ownership, owners buy fixed or floating time periods for use of a specific unit within a project. Common expenses are prorated among the owners. Time-shares are common in resort communities.
Answer the following questions. If you need to, refer to the previous summary or WB forms.

1. What are the bundle of legal rights?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

2. What forms of ownership allow title to pass to the surviving owner(s) without probate?

________________________________________________________________________
________________________________________________________________________

3. A condominium unit is generally held under what type of ownership?

________________________________________________________________________

4. Common elements in a condominium typically are held as:

________________________________________________________________________

5. An owner of property receives a proprietary lease under what form of ownership?

________________________________________________________________________

6. Time-share properties are most common in what areas?

________________________________________________________________________

7. Is a time-share a real or personal property interest?

________________________________________________________________________

8. Which type of property is automatically included in the purchase of real estate - personal or real?

________________________________________________________________________
TRANSFER OF TITLE

Transfer of real estate involves transferring a property’s equitable title and legal title. Legal title of real estate refers to the bundle of rights of ownership in land and evidence of ownership. A person can receive title to real estate by will or by deed. A deed is a written instrument by which a grantor transfers ownership of property to a grantee. The deed signals the end of one ownership and the beginning of another. Without a valid deed, a party cannot transfer title to another party. Equitable title is the right to obtain absolute ownership to property when legal title is held in another’s name. Under a purchase agreement or sales contract, a buyer receives equitable title when all contingencies are removed from the offer.

Written instruments such as deeds, mortgages, easements, and land contracts should be recorded in the register of deeds in the county where the property is located. Recording the deed gives constructive notice of a property’s ownership to third parties. Constructive notice gives the public notice or knowledge of the titleholder’s ownership. Constructive notice creates the right of quiet enjoyment by providing notice to third parties of the owner’s rights to a property. Constructive notice protects the owner from any other party challenging the ownership of a property. Recording a deed in the county in which the property is located makes a deed valid against subsequent purchasers; an unrecorded deed is valid only between the parties. Most property owners record deeds but a deed does not need to be recorded for a transfer to be valid.

BASIC TYPES OF DEEDS

Warranty Deed: A warranty deed offers the most comprehensive guarantee of title. A warranty deed assures the grantee that the property is free from liens and encumbrances, except those specifically listed in the deed. The grantor certifies that the title being conveyed is free of defects that may arise either before or during the time the grantor owned the property. The grantor is also defending both the current title as well as the title of previous owners. The warranty deed guarantees the seller’s ownership rights but not the physical condition of the property or structures attached to the property.

Quitclaim Deed: A quitclaim deed operates as a release of whatever interests the grantor has in a property, sometimes called a release deed. A quitclaim deed does not warrant title or possession. It is an instrument that transfers title but makes no defense about the condition of title or the right even of the grantor to transfer title. A quitclaim deed conveys only the grantor’s right, title or interest. A quitclaim deed is not commonly used to convey a fee but is used when parties are releasing or conveying minor interests in real estate for the purpose of clearing title defects.

Personal Representative’s Deeds: A personal representative’s deed is used by a personal representative who is conveying property as the representative of an estate. It does not contain warranties.
REAL ESTATE SALES

WISCONSIN TRANSFER FEE

In Wisconsin, a party transferring real estate must pay a transfer fee when recording the transferred deed. The transfer fee is usually included as a seller’s closing cost. The transfer fee is 30 cents for each $100 of value transferred. It is calculated on the selling price rounded up to the nearest $100. If the transfer is by a land contract, the transfer fee is based on the total principal amount a buyer will pay over the course of the land contract. To calculate the fee, round the selling price up to the nearest $100 of value and multiply by .003 or round the selling price up to the nearest $100 of value, divide by 100, and multiply the result by .3.

<table>
<thead>
<tr>
<th>Selling price is $89,350</th>
</tr>
</thead>
<tbody>
<tr>
<td>Round up to the nearest $100 = $89,400</td>
</tr>
<tr>
<td>Multiply $89,400 by .003 = $268.20 transfer fee</td>
</tr>
</tbody>
</table>

The penalty for falsifying the value on a transfer fee is not more than $1,000 or imprisonment in a county jail for not more than one year, or both.

ENCUMBRANCES TO REAL ESTATE TITLE

An encumbrance is anything that affects the title to real estate. It is a right or interest held by a party who is not the property owner. It may lessen the property’s value or burden, obstruct or impair the use of a property, but not necessarily prevent transfer of title. Encumbrances that may affect title include judgments, mortgages, encroachments, and easements.

**Easements:** An easement is the right to use the property of another. It is a liberty, privilege or advantage in land given to a party and exists separately from the ownership of the soil. An easement may encumber any part of the land including the subsurface, the surface, or the air rights. The easement holder owns a right to use the property but does not own or possess the property. The easement holder has the right to use the land for a specific purpose. An easement owner is usually responsible for repairs of areas subject to the easement. Most easements “run with the land,” which means that they permanently affect the title to the property.

1. **Appurtenant Easement:** Exists between two adjacent parcels. The parcel that owns the easement, the right to use another’s land, is the dominant estate. The dominant estate owns the easement; it does not own the land. The servient estate owns the land.
   a) **Easement by Necessity:** A court may grant an easement by necessity to allow for ingress and egress if a property owner has no way, other than by trespass, to reach a public road by land. Before granting an easement by necessity, a court will require the person seeking the easement to negotiate with neighboring property owners for access. Negotiations will include attempting to purchase the necessary land or purchase an easement across a neighboring parcel. It is legal to sell a landlocked parcel. However, Wisconsin law states that a seller, when subdividing land, must provide the buyer access to the new parcel.
   b) **Easement by Prescription:** A court may grant an easement by prescription to a claimant who has made use of another’s land for a period of time, usually 20 years. The use of the property must be continuous, exclusive, visible, open, notorious, and hostile.
   c) **Party Wall Easement:** A party wall easement is for maintaining a shared wall or fence. Neighbors may share a wall or fence between structures or land to conserve space and maximize use of a parcel of land. Party wall easements also permit agricultural property owners to maintain statutorily required fences. Parties with a party wall easement usually have a written agreement for maintenance and repair.

2. **Easement by Condemnation:** A government can acquire an easement by condemnation. The difference between an easement by condemnation and condemnation through eminent domain is that with condemnation through eminent domain, the government takes ownership of the property and with easement by condemnation, the government owns a right to use the land rather than owning the land.
3. **Easements in Gross:** A property owner can grant an easement in gross to another party, which give a specific party a right to do something rather granting a right attached to a piece of land.
   a) **Personal Easement in Gross:** Exists between a landowner and another person. The person owns an individual interest in the property. Personal easements in gross are not transferable or assignable and terminate upon the easement owner’s death or the title’s transfer, whichever occurs first.
   b) **Commercial Easement in Gross:** exists between a landowner and a company. Commercial easements in gross are transferable and survive the lifetime of the parties.

**Termination of Easements**
1. Merger - the owner of the servient estate and dominant estate become one.
2. Abandonment by the dominant estate. There must be clear abandonment.
3. Dominant estate owner releases his interest.
4. When an easement is created for a specific purpose and the purpose doesn’t exist.
5. Eminent domain or adverse possession.
6. Overburdening - incorrect use of the easement.

**Encroachments:** An encroachment exists when a fixture, such as a wall, fence, or roof illegally intrudes onto the property of another. An encroachment can occur when a structure extends beyond the physical lot lines or the setback lines. A search of the public records will not reveal encroachments so a seller must disclose all known encroachments to a buyer. An undisclosed encroachment may cause a title to be unmarketable. A marketable title is free from undisclosed encumbrances, discloses no serious defects, does not expose the buyer to litigation, would be accepted by a well-informed buyer acting within sound business principles with the belief that the title may be easily conveyed in the future. Title does not have to be perfect but needs to be free from reasonable doubt.

**Liens:** A lien is a charge against property that provides security for a debt and provides a lienholder a way to use another’s property to ensure payment for work performed, services rendered, or debts incurred. To enforce a lien, a lienholder files a court action asking the court to force the sale of the property or transfer title to the lienholder. The lienholder’s claim is paid with the sale proceeds or satisfied by the transfer of title. The existence of a lien does not prevent title from transferring. A lien runs with the land and attaches to the property, not the property owner. A general lien affects both real and personal property. Specific liens are secured by specific property and affect only the property given as collateral.

**TYPES OF LIENS**

**Mortgage Lien:** A mortgage lien is a specific lien. The mortgage lien is given to the lender by the borrower. The borrower receives the money and the lender receives the right to record a lien against the property. The lien is recorded in the county where the property is located.

**Construction Lien:** A construction lien is given as security to a party who performs labor, furnishes materials, or provides professional services in the improvement of real property. A person who furnishes labor, service, or materials improving real property can file a lien to collect payment from a party who received the labor, service, or materials. The lien may be created for work or materials that become a permanent part of the building only, and does not cover specific costs. The lien’s effective date is the date the first visible work commenced rather than when the lien is actually filed in public records. Because a construction lien takes precedence from a date prior to when it is recorded in public records, it may create a hidden lien.

**Judgment Lien:** A judgment lien is unlike the first two liens because it attaches to real and personal property and it is a formal decision by the court determining rights between parties disputing a debt. A money judgment establishes the amount a debtor owes to a creditor. Usually only property located in the county where a court issued the judgment is available to satisfy the judgment. To enforce a judgment, a party asks a court for a writ of execution, which is a court order that directs a sheriff to seize and sell property to pay the judgement and the cost of the sale. To prevent a debtor from conveying property while a court is deciding a case, a creditor can seek a writ of attachment. A writ of attachment is a legal
procedure that places property that is the subject of a debt dispute in the custody of the courts. A party may also file a lis pendens, which is a notice of potential litigation involving a parcel of real estate. If a court orders the sale of property to satisfy a judgment, notice of the sale must be posted in at least three public places for at least three weeks prior to the sale.

**Property Taxes and Special Assessments:** A taxing district levies property taxes against real property. Property taxes are ad valorem taxes because they are based on the value of a property.

Property taxes may be levied on real estate by the following governmental bodies:

1. State government;
2. County government;
3. City, town, and village government;
4. School districts; or
5. Recreational or park districts.

Taxing districts use property taxes for the general operation of the governmental agency imposing the tax. Property owners pay taxes based on the assessed value of the property. County or township appraisers calculate a property’s assessed value using local market values.

### Calculating the Tax Bill

Wisconsin expresses taxes in the form of a mill rate. One mill rate is 1/1000 of a dollar or .001. To determine a tax bill using a mill rate, convert the mill rate to a decimal and then multiply the assessed value by the decimal mill rate.

Determine the tax bill on a property assessed at $100,000 with a mill rate of 30 (mill means thousand in Latin).

\[
\frac{30}{1000} = .03 \text{ mills} \\
$100,000 \times .03 = $3,000 \text{ tax bill}
\]

**Special assessments:** A tax on property owners in the area of an improvement such as new curbs and gutters. Owners of property that will benefit from the public improvement pay the special assessments. For example, if a city plans to upgrade a neighborhood’s sidewalks, the city will charge residents of that neighborhood a special assessment to finance the project.

Property owners can pay special assessments and additional interest charges in installments. A property owner can also decide to pay the entire assessment immediately to avoid interest charges. A property owner may owe special assessments based on overall property value or a municipality may charge property owners per linear foot for projects such as curbs, gutters, streets, and sidewalks.

**Use-value Assessment:** Under the use-value assessment, owners of farmland pay property taxes based on the income that could be generated from the land’s rental for agricultural use. Use value applies only to land that is devoted primarily to agricultural use. When an owner of a property that has been assessed taxes based on the use-value assessment converts the property to a non-agricultural use, the owner pays a conversion charge.

Wisconsin law requires sellers of agricultural land valued under the use-value assessment to notify buyers that the land is taxed under the use-value system, whether the seller has been assessed a conversion charge, and whether the seller has been granted a deferral of the conversion charge. Prudent sellers and agents should also disclose to buyers that the buyer may owe a conversion charge if the buyer converts the use of the land to non-agricultural. The conversion charge is a per-acre fee based on the number of acres taken out of agricultural production. The fee depends on the size of the parcel and the county in which it is located. The conversion charges change annually and do not apply until a property owner actually takes the property out of agricultural production. Current conversion charges can be found at the Wisconsin Department of Revenue’s website at [www.revenue.wi.gov](http://www.revenue.wi.gov).
EVIDENCE OF TITLE

A deed by itself is not sufficient evidence of title. A deed conveys the grantor’s interest but even a warranty deed does not provide proof of the condition of the grantor’s title. The only effective way to establish proof is to conduct a public records search. Searching public records establishes a chain of title. The chain of title is the documentation of events, such as ownership, encumbrances, and liens that affect title to a specific parcel of real property. A chain of title begins with the original source of the title and links each owner to subsequent owners. The chain originates with the earliest recorded owner and documents transfers from each subsequent grantor to the next grantee in the chain. The chain should date back to the earliest record of the property. If the links between subsequent grantors and grantees do not prove a continuous record of ownership, then there is a gap in the chain of title. When there is a gap in the chain, it may be necessary to establish ownership by a court action called a suit to quiet title.

A seller can supply title evidence to a buyer in the form of an abstract of title or a title insurance policy. Evidence of title is proof that title is marketable, which means that the title is clear, salable, and reasonably free from risk of litigation over possible defects. Unmarketable title means that defects in the title may limit or restrict ownership, however a party can still transfer property with an unmarketable title if there is a willing buyer for the property. A title defect, or cloud on title, is any document, claim, unreleased lien or encumbrance that may superficially impair or injure the title to a property or cast doubt on the title’s validity.

FORMS OF TITLE EVIDENCE

Abstract of Title: A history of the documents appearing in the public record that affect a property’s title. An abstractor is a person who prepares the abstract. The abstractor submits the abstract to the buyer’s attorney, who examines it and prepares an attorney’s opinion of title. An attorney’s opinion of title does not protect against defects that cannot be discovered from the public records. It is just a history of a property’s title based on what is in the public record.

Title Insurance Policy: a contract by which a title insurance company agrees, subject to the terms of its policy, to compensate the insured against any losses sustained as a result of a property’s title defects. If a party brings a claim against the insured resulting from a title defect covered by the policy, the title insurance will defend the buyer’s title to the property and compensate the buyer for any losses incurred due to the claim. Title insurance protects the insured from a title defect that occurs before the policy is issued.

Before a title insurance company issues a policy to an applicant, the insurer searches the public record and creates a record of title. After the title insurance company completes the title examination, the company notifies the parties in writing of the condition of title. The written notification is the title commitment. It may also be called a preliminary report or a binder.

Before a lender provides financing for a loan secured by real estate, the lender will require the borrower to provide a title insurance policy on the property the borrower is using for collateral for the loan. The lender’s title insurance policy insures the lender against superior liens that would take priority over the lender’s mortgage lien on the property. The buyer pays for a lender’s policy.

STANDARD TITLE INSURANCE EXCEPTIONS

Gap Endorsements: When a title insurer issues a title insurance commitment with a gap exception, the policy will not cover any title defects which appear after the title commitment’s effective date and before the interest of the buyer or mortgage is recorded. The period between a title commitment’s effective date and the recording of the mortgage or buyer’s interest is the gap period. The way to clear or delete the gap exception and to provide more complete coverage for the buyer is to have the title insurance company provide a gap endorsement. A title insurance company will usually provide a gap endorsement for a fee and the endorsement protects the property owner for title defects during the gap.
**Special Assessments:** Standard title insurance commitments exclude coverage for special taxes or assessments payable with the taxes levied or to be levied for the current and subsequent years. This special assessment exception may be removed by providing special assessment letters. A property owner can ask the title company to order special assessment letters from the municipality where the property is located. Usually the request for the letters accompanies the order for the policy. Municipalities complete the letters but do not typically guarantee their accuracy. Even without a guarantee, title companies rely on these letters and provide coverage for potential title disputes arising from delinquent, outstanding special assessments and contemplated special assessments.

**Construction Lien:** Contractors must file a lien no later than six months after the date the contractor last furnished labor or materials. The effective date of the lien, however, is the date work began on the site. To remove this exception from a policy, an owner can file an affidavit indicating that no work has been done on the subject property over the last six months or that work has been completed by named contractors who furnished lien waivers that the owner provides to the title insurance provider.

**Parties in Possession:** Another standard exception is for rights and claims of parties in possession not shown by the public records. Specifically, a policy with this exception will not cover title disputes resulting from off-record possessory interest, which may be the result of unrecorded land contracts, leases, or some other document creating ownership interest in the property. If the owner provides the insurer with an affidavit stating that there are no other parties in possession, the title insurer will remove this exception from the title policy.

**Boundary Disputes:** This exception is for encroachments, overlaps, boundary-line disputes, and other matters that may be disclosed by an accurate survey and inspection of the premises. A buyer can clear this exception to the title insurance policy by providing the insurance company with a current survey that shows no boundary problems.
Answer the following questions. If you need to, refer to the previous summary or WB forms.

1. Explain how title insurance provides evidence of title.
   
   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________

2. How does an abstract protect a purchaser from gaps in the chain of title?
   
   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________

3. What is the benefit to the purchaser of receiving a gap endorsement?
   
   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________

4. Which type of deed offers the most comprehensive guarantee of title?
   
   ___________________________________________________________

5. What type of lien attaches to both real and personal property?
   
   ___________________________________________________________

6. If a property has a market value of $175,000 and is assessed at 97% of its value, what is the assessed value?
   
   ___________________________________________________________

7. A property is assessed at $280,000. The mill rate in the city where the property is located is 28 mills. What is the annual tax bill?
   
   ___________________________________________________________
8. A property has a market value of $136,000 and is assessed at 90% of value. The mill rate in the community is 20. What is the annual tax bill?

9. The owners of a property paid a tax bill of $10,725. The assessed value of the property is $325,000. What is the mill rate?

10. A seller’s property sold for $150,000. How much was the transfer fee?

11. A buyer just purchased a property for $210,050. What is the transfer fee?
Local units of government control the use of private lands through the government’s “police power.” Police power refers to a government’s capacity to regulate behavior and enforce order within the territory of the government.

In Wisconsin, local governments may regulate and restrict private lands to:
1. Protect the public from natural hazards such as flooding;
2. Protect natural resources such as surface waters, groundwater, and wetlands;
3. Separate uses of land which conflict with one another;
4. Plan for orderly growth; and
5. Protect private property values.

Legislative enabling acts and state statutes grant local governments the power and procedures to enact zoning ordinances that regulate and control the use of land and structures within the territory of the local government. Zoning provides for an area’s orderly development and minimizes conflicts between incompatible land uses. To implement these duties cities, villages, counties, and towns can adopt comprehensive zoning and land use regulations. Comprehensive zoning is reflected in a community’s comprehensive or master plan. A municipality’s planning function is generally implemented with a comprehensive plan and an official map, which provide a backdrop for the municipality’s zoning ordinances. The purpose of the comprehensive plan is to guide and accomplish coordinated, adjusted and harmonious development of the municipality which, in accordance with existing and future needs, best promotes public health, safety, morals, order, convenience, prosperity or the general welfare.

Zoning ordinances are land use planning tools that regulate and restrict the use of private property through a government’s police powers. Zoning ordinances dictate land use, density of development, lot size, height limits for structures, and setbacks.

TYPES OF ZONING

Permitted Use: A zoning ordinance permits certain land uses in each district. A property owner has the right to use the land for any permitted use listed in the applicable zoning ordinance for the district where the land is located. A property owner may still need to obtain a building permit to exercise a permitted use but using property for a permitted use is authorized for all property owners in that district and does not involve a discretionary decision by a zoning board. A building permit is written governmental permission for the construction of a new building or other improvement, the demolition or substantial repair of an existing structure, or the installation of factory built housing. A property owner must review local zoning ordinances to determine permitted uses for local zoning districts. Property owners with questions about permitted uses or zoning districts should consult a city planner or local building inspector.

Spot Zoning: Spot zoning occurs when a single parcel is granted special privileges that are not extended to other land that is similarly situated. While relatively uncommon, it is permissible only when it is in the public interest and not solely for the benefit of the property owner. Under spot zoning one particular parcel is allowed to amend the zoning ordinance to be zoned differently than the surrounding parcels.

Special Use (Conditional Use Permit): A property owner can use land for a conditional use only when special conditions are met and the local zoning body approves the use. Unlike with a permitted
use, granting permission to a property owner to use land for a conditional use is a discretionary decision. To use land for a conditional use, the property owner must show that the use will be compatible with neighboring land uses and that the use is tailored to the limitations of the property. A zoning board may require a property owner to meet additional conditions to use the property for a conditional use.

**Variances:** A property owner may want use property in a way that conflicts with a local zoning ordinance. Land use regulations need to be flexible to adapt to unique circumstances and changing conditions. A zoning board can grant a variance, which is a relaxation of dimensions or other standards, such as setbacks, to protect an individual’s property rights while continuing to protect public interests. A variance is a permanent deviation from the zoning ordinance and is not a favored land use tool because a variance is not in conformity with the area’s overall development plans. Granting a variance cannot conflict with the purpose of the zoning ordinance or result in a use that is detrimental to the neighborhood. A variance will specify exactly how a property owner can use the land.

**Downzoning:** A change from a more active to a less active zoning classification. With most downzoning, the government does not compensate affected property owners even if the owner experiences a loss in value due to the downzoning, because, unlike with eminent domain, the property owners still hold title to the property.

**Nonconforming Use:** If a zoning body enacts a new zoning regulation, the zoning body may permit uses already in existence even though the uses violate the new regulation. These nonconforming uses have a special protected status limited by local ordinances in an attempt to eventually eliminate them. Nonconforming use status is usually transferable from one property owner to another but if a property owner deviates from the nonconforming use, the owner will lose the status and be forced to comply with current zoning regulations.

**Planned Unit Developments (PUD):** A PUD is a zoning district written and negotiated specifically for the subject property. It may allow a developer to cluster buildings and services together in a way that would not be possible or permissible according to a municipality’s regular zoning ordinances. The design of the PUD will depend on the developer’s purpose. As with condominiums, parties considering property in a PUD should consult the adopted documents for a complete description of permitted uses and restrictions.

**WATER RIGHTS**

Wisconsin recognizes the Public Trust Doctrine, which states that the state’s lakes and rivers are owned in common by all state citizens. Wisconsin recognizes all navigable waters as public highways on which the public has the right to travel. People have an unrestricted right to use the water as long as the flow is not interrupted, altered, or contaminated. The Doctrine provides that all Wisconsin citizens have the right to boat, fish, hunt, ice skate, and swim on navigable waters. Wisconsin also recognizes riparian rights, which are distinct rights that belong to waterfront property owners. Riparian rights govern navigable waters such as rivers, streams, and lakes and determine a property owner’s right to use the shoreline as well as the water for domestic, agricultural, and recreational purposes.

Riparian rights include:

1. Reasonable use of waters for domestic, agricultural, and recreational purposes;
2. The right to use the shoreline;
3. The right to access the water;
4. The right to lands formed by accretion (a gradual and natural accumulation of material on the shore);
5. The right to have water flow naturally to the land;
6. The right to create structures to avoid erosion; and
7. The right to construct a pier.
A waterway is navigable if it has a bed and banks and it is possible to float a canoe or other small craft in it at some time during the year. Navigable waterways are open to the public for fishing, swimming, and other recreational pursuits. The DNR has jurisdiction over public, navigable waterways but does not have jurisdiction over artificially created waterways on private land.

A waterfront property owner owns the land to the ordinary high water mark on a lake and land to the center of a river or a stream. The ordinary high water mark is defined as the point on the bank or shore where water is present often enough that it leaves a distinct mark and the uplands look different than the area near the water's edge. Generally, citizens have the right to use the waters below the ordinary high water mark as long as they keep their feet wet.

**Shoreland Zoning:** Lands within 1000 feet of the ordinary high water mark of a navigable lake or within 300 feet of a navigable river or stream are shoreland and are subject to shoreland zoning restrictions. Shoreland zoning serves to protect water quality, habitats, recreation, and Wisconsin's natural beauty. Shoreland zoning controls developments around water and creates a buffer between developed and undeveloped areas. Municipalities adopt zoning to further these purposes.

**PRIVATE LAND USE CONTROLS**

**Deed Restrictions:** Deed restrictions are clauses in a deed limiting the future use of a property. Deed restrictions may impose a variety of limitations and conditions. They may limit the density of buildings, dictate the types of structures that can be erected, prevent buildings from being used for a specific purpose, or describe the color of siding or the type of shingle that must be used on a home. Violating a deed restriction may result in a fine, demolition of improvements, or both.

Deed restrictions give each lot owner the right to apply to a court for an injunction to prevent a neighboring lot owner from violating the recorded restrictions. Residents of a deed-restricted subdivision can permit a property owner to violate recorded restrictions or could agree to amend the restrictions. Permitting a violation or agreeing to amend the conditions usually requires unanimous consent of all the residents. If a resident is violating a deed restriction and other residents do not seek relief through an injunction, fine, or other enforcement mechanism, the inaction may result in the residents losing the right to seek relief.

**Deed Conditions:** Deed conditions are contingencies, qualifications, or occurrences upon which an estate or property right is gained or lost. For example, a deed may require that a property be used only as a nature preserve and if the property is ever used in another way, ownership will revert back to the grantor. This kind of deed condition creates a fee simple defeasible estate.

The penalties for violating a deed condition are stricter than the penalties for violating deed restrictions or covenants. Violating a deed condition may result in loss of title. Deed conditions and restrictions should be listed in a deed recorded in the public records and they run with the land.
Answer the following questions. If you need to, refer to the previous summary or WB forms.

1. What is the purpose of a comprehensive plan?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

2. How does one determine the permitted uses for a particular area?

________________________________________________________________________

3. What type of zoning allows land to be used in a way that was already in existence when a zoning ordinance was enacted but does not comply with current zoning regulations?

________________________________________________________________________

4. A vacant parcel of land was zoned residential has been re-zoned to conservancy. What type of zoning has occurred?

________________________________________________________________________

5. An owner of a property would like to transfer title. Will the existing deed conditions stay in place or are they terminated upon transfer of title?

________________________________________________________________________

6. Describe a planned unit development.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
PREPARING CONTRACTS

An offer to purchase may be the most important contract a licensee will prepare. An accepted offer to purchase dictates the terms of a transaction between a seller and a buyer. The offer is a contract that binds the seller and the buyer and obligates them to perform according to the terms of the offer. An offer to purchase is a contract between a seller and a buyer. A listing or a buyer agency agreement is a contract between a client and a broker. A broker is not a party to an offer to purchase. When preparing an offer for a buyer, a licensee must be specific when including actions and obligations a buyer wants to make a part of the offer and be clear with deadlines for performance of contractual responsibilities. Offers must be clear and understandable to the parties and the resulting contract must be enforceable. An unenforceable contract is one that a court cannot enforce because the contract does not clearly state the parties' obligations under the contract. If a contract contains an ambiguous term, a court will interpret the term more strictly against the drafter.

ACCEPTANCE AND BINDING ACCEPTANCE

Acceptance occurs when all parties have signed one copy of an offer or separate but identical copies of an offer. Binding acceptance occurs when the accepting party delivers the offer back to the party who made the offer. Delivery must occur according to the terms of the offer. Unless otherwise stated in an offer, delivery is by personal delivery, prepaid U.S. Mail, prepaid commercial delivery service, fax, or by e-mail. Upon binding acceptance, an offer becomes a contract for the sale of the property and is a binding purchase agreement between the parties. Until binding acceptance occurs, the party who made the offer has the right to withdraw the offer.

EQUITABLE TITLE

After a buyer and seller have an enforceable contract for sale, a buyer has equitable title to the property. A buyer with equitable title is a property's legal owner even if the buyer does not yet have legal title to the property. A buyer with equitable title to a property could ask a court to order specific performance as a remedy if a seller breaches the enforceable contract for sale. When a court grants specific performance as a remedy, the court orders the parties to act according to the terms of the contract. In the case of a real estate transaction, that could mean that a court orders a seller to sell or a buyer to buy according to the terms of the binding contract for sale.

WORKING WITH OFFERS: CONFIDENTIALITY ISSUES

The terms of an offer to purchase are confidential information. A licensee owes the duty of confidentiality to all parties to a transaction and must not disclose the terms of a prospective buyer's offer to another prospective buyer or to any person with the intent that the information be disclosed to another prospective buyer. A licensee can disclose some terms of a buyer's offer to purchase.

A licensee can disclose that:
- a seller has accepted another offer;
- a buyer has submitted an offer on the property;
- a seller has accepted an offer subject to contingencies; and
- a seller has accepted an offer with a "bump" clause.
A licensee can disclose that an accepted offer is subject to contingencies but cannot disclose details about the contingencies. For example, a licensee could disclose that a seller accepted an offer subject to contingencies but could not disclose that the contingency is a financing or home inspection contingency. A licensee can disclose that the seller has accepted an offer with a “bump” clause. A bump clause is a contingency provision in an offer to purchase that requires the prospective buyer to remove certain contingencies in the buyer's purchase agreement or relinquish the buyer's primary status to a secondary offer. An example of a contingency that includes a bump clause is the “Closing of a Buyer's Property Contingency” found in an offer to purchase. The “Closing of a Buyer's Property Contingency” permits a seller to remove a buyer from primary position if a buyer cannot meet the terms of the contingency.

If a licensee is providing brokerage services in a transaction and the licensee knows that the property is subject to a right of first refusal, a licensee must disclose that in writing and in a timely fashion to all people seeking to acquire an interest in the property. A licensee may deliver a copy of a party's offer, exchange agreement, option contract, or lease proposal to the party holding the right of first refusal.

A right of first refusal is a contractual right given by a property owner to another person that permits that person to purchase the property ahead of all other prospective buyers. A person holding a right of first refusal has the first right to purchase the property if the owner decides to sell it. A right of first refusal is a material adverse fact. After a licensee discloses a right of first refusal in writing to all prospective buyers, a licensee can deliver a copy of a buyer's offer to the party holding the right of first refusal.

DRAFTING AND SUBMISSION OF OFFERS

Licensees cannot refuse to draft or submit any offer to purchase unless to do so is contrary to the seller's instruction. If a seller wants to limit a licensee's ability to draft and submit offers, a seller should include these instructions in the listing contract. A seller might refuse to consider offers below a certain price or that contain certain terms. For example, a seller might include in a listing contract that the listing broker should not draft or submit any offers below 95% of the listing price or that contain a home inspection contingency.

COOPERATING WITH OTHER BROKERS

A listing broker must permit access to a listed property for showing purposes to all buyers and people assisting buyers, without unreasonable delay, unless to do so would be contrary to the seller's written instructions. Brokers cannot refuse to permit other brokers access to a listed property unless the seller has provided written instructions to limit access. If a broker refused access to other brokers without instructions from the seller, the broker may be violating anti-trust laws.

PRESENTATION OF OFFERS

A licensee must promptly present all offers to a seller or a seller's agent for consideration. A licensee should not withhold any offer from a seller pending the seller's action on a previously presented offer and must present offers in an objective and unbiased manner, informing the seller of the advantages and disadvantages of each offer.

A listing broker or the listing broker’s employees cannot submit a personal offer on a property listed with the broker if the broker or the broker’s employee has knowledge of the terms of any pending offer. This rule prevents a listing broker or a listing broker’s employee from having an unfair advantage over other potential buyers due to the licensee’s knowledge of the terms of pending offers that would permit a licensee to draft personal offers on better terms than any other pending offer.

After a seller considers and acts on a buyer's offer, a licensee must promptly inform the prospective buyer whether the seller has accepted, rejected, or countered the offer to purchase and must immediately provide a written statement documenting a seller's decision if a buyer or a licensee working with a buyer requests evidence of a seller's action.
GUARANTEED SALES

A broker can offer a guaranteed sale to a client, which is an agreement between a broker and a seller that the broker will purchase the seller’s property at a predetermined price if the seller is unable to sell the property within a within a specified time. The rule that prohibits a listing broker or a listing broker’s employee from submitting a personal offer listed with the broker does not prohibit guaranteed sales.

WB-11 RESIDENTIAL OFFER TO PURCHASE

**Lines 1-2 Disclosure of Agency:** A licensee drafting an offer to purchase for a buyer must disclose to the parties whether the licensee is acting as an agent of buyer, an agent of selling/listing broker, or an agent of buyer and seller. A licensee strikes the agency descriptions that are not applicable. A licensee acting as a principal in a transaction would strike all three agency descriptions because a licensee writing an offer as a principal is not acting as an agent for anyone. To select the correct agency description, a licensee must understand the difference between which buyers are customers of the licensee and which are clients. If a licensee is an agent of a buyer, the buyer is the licensee’s client. In this case, the licensee may have a buyer agency agreement with the buyer and the seller is either not represented or the seller is represented by a different broker. Alternatively, the buyer and seller could be clients of the same broker but have chosen multiple representation with designated agency so the broker has assigned each client a designated agent to represent that client in the transaction. If the licensee is an agent of the seller or listing broker, then the buyer is a customer of the licensee and the licensee is either the listing agent or is a subagent of the listing broker. If the licensee is an agent of both the buyer and the seller, it means that both the buyer and seller are the licensee’s clients and have consented to multiple representation without designated agency.

**Lines 4-7 Description of Property:** A street address is usually sufficient for describing the property that is the subject of the offer. A licensee places additional descriptions on the lines provided for additional information or by including an addendum to the offer. If a property does not have a street address, a licensee can use a tax key number or legal description.

**Lines 8-9 Purchase Price:** Total amount of consideration is expressed in words and numbers. If a discrepancy occurs, the entry in words takes precedence over the numeric entry.

**Lines 10-12 Earnest Money:** A buyer can submit earnest money with an offer, within a certain period after acceptance, or both. A buyer does not need to include earnest money with an offer. Earnest money is cash or other thing of value that a buyer can include with an offer to purchase.

**Lines 14-22 Items Included/Not Included in Purchase Price:** Lines 14-16 list all personal property the buyer wants included in the purchase price and lines 17-18 list all fixtures not included in the purchase price. Line 19 refers to lines 185-193 for the definition of fixtures. Licensees must know the definition of fixtures. Buyers and licensees should be specific when including personal property and excluding fixtures.

**Lines 23-26 Acceptance:** “Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical copies of the Offer.” The date of acceptance is the date of the last signature.

**Lines 27-30 Binding Acceptance:** Binding acceptance occurs when the accepting party delivers the offer back to the party who made the offer according to the delivery terms of the offer. A seller can continue to market a property and accept secondary offers after binding acceptance. A party can withdraw an offer any time before binding acceptance.

**Lines 34-54 Delivery of Documents and Written Notices:** There are five preprinted methods in the offer that may be used to deliver documents to a party: 1) personal delivery; 2) fax; 3) prepaid commercial delivery; 4) prepaid U.S. Mail; and 5) e-mail. A buyer can designate a recipient for delivery such as a licensee, an attorney, or any other person. Buyers who include commercial delivery or U.S. Mail must include a delivery address. A party achieves personal delivery when the document or written notice is
personally given to either the party or the party’s designated recipient of delivery. A party achieves fax
delivery by transmitting the document. It does not matter when the party receives the document. A party
can choose all or some forms of delivery. A party achieves delivery by U.S. Mail or commercial delivery
service by depositing the notice or document in the mail or with the commercial delivery service and
paying any delivery charges. Delivery by U.S. Mail or commercial delivery service does not depend on
when the other party receives the document. Personal delivery is always a part of the offer unless a
buyer strikes it from the offer. Licensees working with buyers who would like to choose e-mail as a form
of delivery can go to www.wra.org/ecommerce for more information on how to achieve electronic consent
to e-mail transmission of real estate documents.

**Lines 57-60 Occupancy:** Occupancy of the entire property shall be given to buyer at time of closing
unless modified by the parties. This means that the property is broom swept and free of all debris and
personal property at time of closing. If the property is rented, occupancy should reflect any tenants’ rights.

**Lines 62-63 Actual Receipt:** Actual receipt means that a party has the document or written notice physically
in the party’s possession.

**Lines 116-139 Closing and Closing Prorations:** Buyers and sellers can negotiate the place of closing
but absent any modification to the contract, the seller chooses the place of closing. Lines 118-139 discuss
prorating any adjustments.

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**How to Prorate Property Taxes (using lines 124-126)**

A property is closing on June 30. The sellers do not know the current year’s taxes so they prorate taxes based on
last year’s tax bill, which was $5,000.

1. Calculate a daily tax rate for the property.
   - $5,000 / 365 days in a year = $13.6986 per day
   - Extend the number to 4 decimal places.

2. Calculate the number of calendar days prior to closing.
   - There are 180 days from January 1 to June 29.
   - Seller expenses are prorated through the day prior to closing.

3. Multiply the number of days by the daily tax rate to determine the seller’s responsibility.
   - $13.6986 x 180 days = $2,465.75

   The sellers give $2,465.75 to the buyers at closing. At the end of the year, the buyers pay the entire tax bill.

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**Lines 140-143 Leased Property:** If the property is rented, parties need to consider leases, responsi-
bility for property charges, and security deposits. A seller assigns rights under the lease and transfers
all security deposits and prepaid rents under the lease to the buyer at closing.

**Lines 144-147 Rental Weatherization:** Wisconsin has rental weatherization standards for rental prop-
terties. Generally, properties that are not owner-occupied within 60 days of closing are subject to the Rental
Weatherization code. If the property is exempt from complying with this code, the licensee drafting the
offer indicates its exemption on line 144. A party uses line 145 to assign responsibility for compliance
with the standards.

**Lines 148-158 Real Estate Condition Report:** Owners of property that includes 1-4 dwelling units
must provide buyers with a real estate condition report (RECR). Exemptions from this requirement are
1) properties that have never been inhabited; 2) sales exempt from the real estate transfer fee; and 3)
properties sold by certain court-appointed fiduciaries. No later than 10 days after acceptance of an offer, a
seller must provide a completed copy of a condition report. If the seller does not provide it by the deadline, the buyer has two business days to rescind the contract by delivering a written notice of rescission to the owner or the owner's agent. If a seller provides a timely condition report and the report discloses defects, the buyer may have rescission rights and should consult an attorney.

**Lines 159-164 Property Condition Representations:** The seller represents that as of the date of acceptance, the seller does not have any notice or knowledge of any “Conditions Affecting the Property or Transaction” other than those stated in a condition report or those additional conditions written on the blank line.

**Lines 174-181 Deadlines:** This portion of the offer explains the difference between days, business days, and hours. When calculating days to establish a deadline for a contingency or term of the offer, a party excludes the day the event occurred and counts subsequent calendar days. Business days exclude Saturdays, Sundays, legal holidays under state or federal law, and days when the post office does not receive registered mail or make regular deliveries. Deadlines expressed in hours are calculated from the exact time of the event and by counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as closing, expire at midnight of that day.

**Lines 202-205 Buyer’s Pre-closing Walk-through:** A buyer can conduct a pre-closing walk-through to look at the property, confirm there is no significant change in the condition since the written offer, and verify that seller has cured defects in the manner the parties agreed to in the contract.

**Lines 206-215 Property Damage Between Acceptance and Closing:** If the property is damaged between the offer’s acceptance, the amount of damage determines the parties’ rights and obligations under the contract. If the damage is less than 5% of the selling price, the seller must repair the property by restoring it to the same condition that it was in on the day of the offer. If the damage is 5% of the purchase price or greater, the buyer may cancel the offer. If the buyer carries out the offer, the seller provides insurance proceeds from the damage and provides lien waivers for all lienable repairs and restoration no later than closing.

**Lines 217-263 Financing Contingency:** The Financing Contingency works with any loan program. Line 219 is for the number of days after acceptance the buyer has to provide a first mortgage loan commitment to the seller. The Buyer's Loan Commitment subsection provides that if the buyer qualifies for the financing described in the Financing Contingency or for any other financing acceptable to the buyer, the buyer delivers a copy of the written loan commitment to the seller or the seller’s agent by the deadline specified in the Financing Contingency. Delivery of a loan commitment satisfies a buyer’s Financing Contingency. Licensees and lenders may not deliver a loan commitment without the buyer’s written direction.

**Lines 264-271 Appraisal Contingency:** The Appraisal Contingency allows the buyer to make an offer contingent on an appraisal of the property that reflects a value of the agreed upon purchase price or greater. If the appraisal does not value the property for the purchase price or greater, the buyer can terminate the offer.

**Lines 272-277 Distribution of Information:** This section provides licensees with written permission from the parties to provide a copy of the offer to the appropriate settlement service providers and also permits licensees to disclose certain information to appraisers.

**Lines 278-297 Default:** The Default section describes remedies available to a non-breaching party when the other party defaults on contract terms. Licensees should not recommend any remedy to parties and should refer parties to attorneys for advice about the status of a contract and remedies available to a non-breaching party.

**Lines 298-300 Entire Contract:** An offer to purchase includes the original offer, any amendments to it, and any property incorporated into the offer. All prior negotiations and discussions are merged into the offer. The entire contract binds the parties and their successors in interest. If a party to the contract dies, the party’s estate or successors in interest remain bound by the contract.
**Lines 304-311 Closing of Buyer’s Property Contingency:** The Closing of Buyer’s Property Contingency permits a buyer to make an offer contingent on the sale of the buyer’s home. If a buyer is unable to close on the buyer’s property by the deadline on line 305, the buyer is unable to satisfy this contingency. A seller can ask a buyer to waive this contingency if a seller accepts a secondary offer. If the seller accepts a secondary offer, the seller may give notice to the primary buyer, triggering the “bump clause” portion of the contingency. If a seller provides notice of a secondary offer, the buyer must waive this contingency and satisfy any other obligations listed on lines 307-308 or the buyer will get “bumped” out of primary position. The “bump” notice becomes effective upon Actual Receipt by the buyer.

**Lines 312-317 Secondary Offer:** A seller who has accepted an offer can continue to accept secondary offers. Because licensees can disclose that a seller has accepted an offer, a buyer can write an offer on a property as a secondary offer. The buyer knows that the seller has already accepted an offer and the buyer can choose to select this optional provision and write the offer as a secondary offer. This provision informs a buyer that there is no priority among secondary offers. A buyer includes a deadline on line 316 before which the buyer will not withdraw the secondary offer. Licensees must understand how the deadlines for withdrawing secondary offers work to so that licensees can help sellers evaluate secondary offers and how to use them with primary offers containing a closing of buyer’s property contingency.

**Lines 318-324 Time is of the Essence:** The term “time is of the essence” applies to all dates and deadlines in the offer, unless stricken by the parties. If “time is of the essence” applies to a date or deadline, it is a breach of contract to fail to perform by that exact date. If “time is of the essence” does not apply, then performance within a reasonable time of the deadline is allowed.

**Lines 325-359 Title Evidence:** A seller conveys title by warranty deed unless the seller is a trustee or a personal representative of an estate. A trustee provides a trustee’s deed and a personal representative provides a personal representative’s deed. Sellers and buyers can modify the offer if they want title conveyance in another form. Parties list exceptions to title on lines 331-334. A seller gives evidence of title with a title insurance policy. Lines 341-342 state that the seller pays all costs of providing title evidence to the buyer and the buyer pays for the lender’s policy. A buyer allocates responsibility for providing gap endorsement on lines 343-345. A seller must provide evidence of merchantable title no less than five days before closing. If the title is not acceptable to the buyer for closing, the buyer notifies the seller of the buyer’s objections and the seller has a reasonable time, not exceeding 15 days, to try address the objections. If the seller is unable to remove the objections, the buyer has five business days from receipt of the seller’s notice to deliver a waiver of those objections. If buyer does not waive the objections, the offer becomes null and void.

**Lines 360-368 Special Assessments/Other Expenses:** Sellers are responsible for special assessments levied or where work has actually commenced prior the date of the offer. The buyer is responsible for assessments after the date of the offer.

**Lines 369-394 Earnest Money:** A listing broker holds earnest money. If a property is not listed, the buyer’s agent holds earnest money and if the transaction does not involve a broker, the seller holds earnest money. Parties can negotiate other arrangements for earnest money. Licensees should not draft earnest money agreements. If the transaction closes, the closing statement specifies how to disburse the earnest money. Lines 376-385 dictate the disbursement of earnest money if the transaction does not close. If a buyer submits an offer that a seller rejects or the buyer withdraws, the listing broker or person holding the earnest money disburses it to the party who paid the earnest money. If a transaction fails to close, the listing broker disburses the earnest money according to a written agreement signed by all parties to the offer. If the broker does not receive directions for disbursing the earnest money, lines 376-385 provide instructions to the broker.

**Lines 395-409 Inspections and Testing:** The seller agrees to permit the buyer’s inspectors, testers, and appraisers reasonable access to the property necessary to satisfy contingency provisions. An “inspection” is defined as an “observation of the Property which does not include an appraisal or testing of the Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel
source." The buyer must furnish copies of all inspection and testing reports to the seller and promptly restore the seller’s property to its original condition after any inspections unless the seller agrees otherwise. Testing is defined as “taking samples of materials such as soils, water, air or building materials from the Property and the laboratory or other analysis of these materials.” This also provides the buyer and licensee with the ability to be present at all inspections and testing.

**Lines 410-433 Inspection Contingency:** This provision provides for a home inspection by a Wisconsin registered home inspector. A party may also require a second concurrent inspection by a qualified inspector of a particular feature or structure as designated on lines 413-414. The process for giving a Notice of Defects is outlined. Licensees should refer parties to an attorney for determining if a condition is a defect. The definition of Defect is in the Definitions section of the WB-11 on page 4 at lines 182-184. Defects do not include structural, mechanical or other conditions the nature and extent of which a buyer had actual knowledge or written notice before signing the offer. If the buyer knew about the nature and extent of the defect before the inspection, the buyer cannot use the defect to cancel the contract. On line 427, a buyer can give a seller the right to cure defects and if a buyer does not choose, the seller has the right to cure. If the seller has the right to cure, the seller may choose whether to cure the listed defects or make the offer void. If the seller has the right to cure, the seller may deliver a written notice within 10 days of receipt of buyer’s notice of defects of the seller’s election to cure the defects and cure them in a good and workmanlike manner and deliver to the buyer a written report detailing the work done no later than 3 days prior to closing. A seller can also provide written notice that the seller is not going to cure the defects making the offer is null and void. If a seller does not timely deliver a written notice of the seller’s election to cure the defects, the offer is null and void. If the seller does not have the right to cure, the offer is null and void if the buyer makes timely delivery of the Notice of Defects and any inspection reports.

A buyer may choose to withhold a Notice of Defects and try to address defects using amendments. If the buyer elects to propose an amendment, the seller has the option to accept, reject, or propose a different amendment. A proposed amendment does not trigger the Right to Cure provision. However, buyers and licensees must be aware that if a proposed amendment is given instead of a Notice of Defects, the deadline on line 421 for giving a Notice of Defects may pass. If a Notice of Defects is not given by the deadline, and the seller does not accept the proposed amendment, the buyer has accepted the property “as is.”

**WB-14 RESIDENTIAL CONDOMINIUM OFFER TO PURCHASE**

**Lines 13-31 General Provisions:** Items included in the purchase price include the property, the seller’s interest in common elements, the limited common elements, and the seller’s interest in any common surplus and reserves allocated to the unit. Line 24 addresses a storage unit and line 25 addresses parking. Line 27-29 address association and other fees.

**Lines 136-138 Place of Closing:** Line 138 provides that immediately following closing, the buyer and seller shall notify the condominium association of the unit transfer.

**Lines 165-169 Leased Property:** This section warns buyers that the condominium association may have the power to prohibit, limit, or regulate a property owner’s right to rent the unit.

**Lines 204-234 Condominium Disclosures and Lines 235-246 Additional Condominium Issues:** A seller must deliver a complete, current copy of the condominium disclosure materials to a buyer no later than 15 days prior to closing. A buyer has the right to rescind the offer within five business days of the buyer’s receipt of the disclosure materials. The buyer’s rescission must be in writing. Lines 235-246 state that the buyer may want to review documents in addition to the condominium disclosure documents required by Wis. Stat. § 703.33.

**Lines 424-427 Title Evidence:** A seller provides title insurance that includes the ALTA Condominium endorsement.

**Line 443 Unpaid Condominium Assessment:** A seller pays all unpaid condominium assessments no later than closing.
WB-13 VACANT LAND OFFER TO PURCHASE

Lines 22-23 Items Not Included in the Purchase Price: The WB-13 list items customarily treated as fixtures. Annual crops are not fixtures and not included in the purchase price.

Line 24 Zoning: Zoning is important in all real estate transactions, especially when a buyer is purchasing vacant land for construction or development.

Lines 98-110 Government Programs Contingency: Lines 98-110 permit a buyer to make an offer contingent on a seller providing a list of government programs that apply to any part of the property. After receiving the list, the buyer has 7 days to terminate the offer based upon a government program. If a seller fails to provide the list, the buyer has 7 days from the seller’s deadline to terminate the offer. A buyer who purchases vacant land enrolled in a government program agrees to continue participation in the program and agrees to reimburse a seller for any penalties or fees a seller incurs because a buyer terminated participation in the program.

Lines 111-120 Managed Forest Land: The Managed Forest Land contingency provides a buyer with an opportunity to acknowledge that all or part of the property is managed forest land under the Managed Forest Law. It warns the buyer that Managed Forest Law orders remain in effect for 25 or 50 years.

Lines 121-145 Fences, Use Value Assessments, Farmland Preservation, Conservation Reserve Program, and Shoreland Zoning Ordinances: Wisconsin requires that the owners of adjoining properties keep and maintain legal fences in equal shares where one or both of the properties are used and occupied for farming or grazing purposes. This section also provides buyers with an overview of programs most likely to affect a vacant land transaction and includes resources for buyers who need more information on the programs. Licensees do not have to be experts on the programs and should refer buyers to an attorney or the resources included in this section.

Lines 297-305 Property Development Warning: This section warns a buyer who intends to develop the property to ensure that the proposed use is possible. A buyer should review zoning, recorded restrictions and covenants, easements, environmental conditions, availability of building permits, zoning variances, architectural control committee approvals, costs for utility connections, special assessments, road or utility installations, environmental audits and subsoil tests.

Lines 306-350 Proposed Use Contingency: A buyer states the proposed use of the property on lines 306-308 and checks the optional contingency items that a buyer wants to include as part of the umbrella proposed use contingency. For each contingency item selected, the contingency is deemed satisfied unless the buyer, within a specified number of days after acceptance, gives the seller written notice of the items not satisfied. The buyer must also give the seller written evidence showing why the contingency item(s) cannot be satisfied. Optional sub-contingencies include zoning, subsoils, private onsite waste water treatment system suitability, easements and restrictions, approvals, utilities, access to property, and land use approval.

Lines 351-364 Map of the Property: A buyer can make a vacant land offer contingent on receipt of a map of the property showing features such as minimum or maximum acres, property dimensions, and the location of improvements. Lines 359-360 caution the buyer to consider the cost and need for map features before selecting them because the more features a buyer includes, the more expensive the map will be and the longer it will take to complete. If the buyer receives the map on or before the deadline, the buyer has five days to determine whether the map shows any significant encroachments or information materially inconsistent with prior representation. The buyer satisfies the contingency unless the buyer delivers to the seller, within five days, a copy of the map and written notice identifying any encroachment or information materially inconsistent with prior representations. A buyer must deliver a notice to the seller within five days of the earlier of the buyer’s actual receipt of the map or the deadline for providing the map. If the buyer delivers a notice, the offer is null and void.

Lines 437-441 Provision of Merchantable Title: Buyers using the vacant land offer to purchase choose a deadline for providing merchantable title. If a buyer does not choose a deadline, the default is 15 days after acceptance.
Lines 442-449 Title Not Acceptable for Closing: A buyer sets a deadline for when a buyer will provide notice that the title is not acceptable for closing. The deadline runs from the seller’s delivery of the title commitment to the buyer or the buyer’s attorney. A buyer also sets the deadline for a seller to remove objections to the title. If the buyer does not include a deadline on line 444, the seller has five days from the buyer’s notice to deliver to the buyer that the seller is electing to remove the objections by closing. If a seller cannot remove the objections, the buyer can either waive the objections or deliver a notice terminating the offer.

Lines 503-524 Inspection Contingency: The inspection contingency in the vacant land offer does not provide for a home inspection but rather an inspection of the property. Buyers can include specific features for inspection.
Answer the following questions. If you need to, refer to the previous summary or WB forms.

1. The buyers have a home inspection. The buyers are wondering if some of the information disclosed on the report constitutes a defect and if they should give notice to the seller. Can the licensee give them advice on whether or not there is a defect?

2. What must occur before a licensee gives a third-party buyer’s offer to a party holding a right of first refusal?

3. When is a licensee prohibited from submitting a personal offer to purchase on a company listing?

4. A buyer submits earnest money with an Offer to Purchase. The offer is rejected. To whom is the earnest money disbursed?

5. When can a licensee refuse to draft or submit any offer?

6. Any income, taxes or expenses shall accrue to the seller and be prorated through:

7. When the buyer is drafting the WB-11 Residential Offer to Purchase and wants to represent that the buyer has reviewed a seller’s real estate condition report, where will buyer indicate this?

8. In the inspection section of the WB-11 Residential Offer to Purchase, an “inspection” is defined as an observation of the property which does not include testing of the property other than:
9. If "time is of the essence" does not apply to a date or deadline, when must performance occur before a breach?
__________________________________________________________________
__________________________________________________________________

10. Where in the WB-13 Vacant Land Offer to Purchase does it indicate the right to cure clause?
__________________________________________________________________

11. In the WB-14 Residential Condominium Offer to Purchase on what line does the buyer indicate that there is a storage unit?
__________________________________________________________________
MORTGAGE LAW

A mortgage is a voluntary lien on real estate. The borrower or mortgagor pledges the real property to the lender or mortgagee as collateral for the debt. Mortgage law is state specific and Wisconsin law regulates mortgage contract terms and the rights of mortgagors and mortgagees. Wisconsin recognizes lien theory, where the mortgage creates a lien on the real estate that is pledged as loan collateral. The borrower obtains legal title at closing from the seller and the lender obtains a lien right from the borrower. If the mortgagor defaults, the mortgagee must go through judicial foreclosure proceedings to obtain legal title.

FORECLOSURE

Foreclosure is a state-specific legal process by which a property that a buyer pledged as security for a debt is sold to satisfy the debt. A foreclosure transfers a property's title to a party that purchases the property at a foreclosure sale. A lender may choose to work with a buyer in default before pursuing foreclosure. Pursuing foreclosure could result in unrecoverable fees and costs, significant time commitments, adverse publicity, property deterioration, and potential environmental liability.

Stages of Foreclosure in Wisconsin

1. A borrower defaults on a loan.
2. The lender files a summons and complaint, which begins the foreclosure lawsuit.
3. A court reaches a judgment determining the total amount the defaulting borrower owes to the lender.
4. The court establishes the redemption period. The redemption period is the period during which a borrower can pay the judgment amount and retain the property. Minimum redemption periods depend on the type of property subject to the foreclosure action and whether the lender is seeking a deficiency judgment.
5. The sheriff conducts a public sale of the property.
6. A judge confirms the sheriff's sale and the new owner receives title to the property.

Judicial Foreclosure: A mortgagee files suit asking a court to sell the property to satisfy the mortgage debt. The highest bidder at the public sale purchases the property. If the sale results in a purchase price over what the borrower owes on the foreclosure judgment, the excess goes to the borrower. If there is a deficiency and the property does not sell for as much as the borrower owes to the lender, the lender may ask a court for a deficiency judgment against the borrower for the deficient amount. In Wisconsin, a court awards a defaulting borrower a right of redemption. A right of redemption is the time during which a borrower can pay the lender in full, stop the foreclosure proceeding, and keep possession of the property. The borrower can live on the property during the redemption period. Redemption periods vary depending on the property, the terms of the mortgage contract, and the foreclosure judgment.

Strict Foreclosure: A seller under a land contract can use strict foreclosure to reclaim the property if a buyer defaults. There is not a sheriff's sale. A seller still seeks court assistance to achieve strict foreclosure and return of the property. In the strict foreclosure process, the redemption period may be as short as seven business days.

Deed in Lieu of Foreclosure: A borrower deeds property back to a lender in full or partial settlement of the debt. Parties may refer to the deed in lieu of foreclosure process as "friendly foreclosure" because it permits a defaulting borrower to avoid the actual foreclosure process despite the default. If a lender agrees to a deed in lieu of foreclosure, the defaulting borrower may avoid the public exposure of financial difficulties brought by the public notices and advertisements of a foreclosure sale and may avoid the severe credit consequences of a foreclosure.
SOME FACTS ABOUT MORTGAGES
A mortgage contract is made up of two parts, the mortgage, which creates the lien and the promissory note, which is the borrower's promise to repay the loan. The promissory note serves as evidence of the debt, outlines the terms of repayment, and is negotiable because the note holder can transfer the note to another party. Lenders often sell notes to other lenders, investors, or the secondary market to raise capital for issuing new loans. Lenders bundle several loans together in a package and sell the packages to other parties. Lenders then have capital to issue new loans.

The terms of a borrower's loan might include a prepayment penalty. Prepayment penalties are charges a lender imposes on a borrower who pays off a mortgage early. The penalty covers some of the loss a lender incurs in lost interest income due to the buyer's early repayment. Lenders often charge prepayment penalties for only a portion of a loan term. Lenders may also waive a penalty if the borrower refinances a debt with the lender or takes out a new loan with the lender.

A mortgage contract will usually contain a defeasance clause. A defeasance clause requires a lender to remove the lender's lien from a borrower's property when the borrower repays the loan. A lender removes the lien by recording a satisfaction of mortgage in the public records.

Some mortgages are assumable loans. If a loan is assumable, a buyer can assume a seller's mortgage loan. The buyer acquires title to the seller's property and agrees to become personally liable for the terms and conditions of the existing mortgage.

To obtain a loan, a buyer will pay financing charges. An origination fee is finance charge that a lender charges a buyer to cover the costs of issuing the loan. Origination fees vary depending on the lender. A discount point is a financing charge a buyer pays to buy down an interest rate. A lender charges a borrower discount points before originating the loan. For test purposes, a buyer will pay 1% of the principal loan amount for every discount point the buyer purchases.

Mortgage loans payments are based on amortization of the loan. An amortized loan is paid off over time. A borrower makes regular payments of a constant amount and the lender calculates each payment on the remaining loan balance, the initial payments consist mostly of interest. With each payment, the principal loan balance decreases. More of each subsequent payment pays down the principal. In a fully amortized loan, the last payment pays off the loan. A lender originates an amortized fixed rate loan, which means the interest rate does not change over the life of the loan, or an adjustable rate loan, which has a fluctuating interest rate. The initial interest rate on an adjustable rate mortgage (ARM) may be lower than the rate on a fixed rate mortgage.

OTHER TYPES OF LOANS
A balloon loan is a short-term loan with payments amortized over a period longer than the term of the loan. A borrower's final payment is a balloon payment. A balloon payment is larger than other payments and satisfies the debt in full. The interest rate on a balloon loan is often lower than the rate for a conventional fixed or adjustable rate loan.

A reverse mortgage is a Housing and Urban Development (HUD) loan program that allows older homeowners to withdraw equity from their homes in the form of monthly payments from a private lender to the homeowner. Reverse mortgages are only available for homeowners age 62 and older and the property must be the homeowner's principal place of residence. The homeowner retains title to the property. The borrower must repay the loan if the borrower sells the home, moves out of the home, breaches the mortgage terms, or dies, in which case the borrower's estate repays the loan.

A bridge loan is a residential financing arrangement in which the buyer obtains a second mortgage on the buyer's unsold home to pay for a down payment on a new home. A buyer might apply for a bridge loan when a buyer wants to close on a new property but has not yet sold the buyer's existing property. A buyer pulls equity out of an existing home before it is sold to purchase a new home. Bridge loans are common in real estate transactions because many buyers do not have the funds to purchase a new home before selling the current home.
SOURCES OF FINANCING

Seller Financing

Land contract: A buyer/vendee makes installment payments for the purchase price of the property to a seller/vendor over the term of the contract. This is also known as an installment contract or a contract for deed. When the parties execute the contract, the buyer obtains equitable title and the seller retains legal title. Legal title passes to the buyer only when the seller is paid in full.

Purchase money mortgage: A seller provides a loan to the buyer for a portion of the purchase price. The seller holds a mortgage from the buyer, which is usually a second mortgage to the lender-held first mortgage. A buyer may use a purchase money mortgage to make up the difference between the buyer’s down payment and the amount of the lender-held first mortgage. Parties may refer to this form of seller financing as “the seller taking back a second.” The buyer receives legal title at closing.

Conventional Financing: Conventional financing refers to financing between a borrower and a private lender where the lender requires a 80% loan-to-value ratio and a borrower has a 20% of the purchase price for the down payment. A conventional loan is secured by the real estate and the promissory note is secured by the borrower’s ability to pay. The lender uses the appraisal of the property and the borrower’s credit worthiness to estimate the risk of lending. Lenders will originate loans to borrowers with a lower down payment if the borrowers participate in a private mortgage insurance program. Private mortgage insurance (PMI) insures the top 20% of the loan. The borrower is charged an insurance premium that covers the extra risk to the lender making a loan to a borrower with less than 20% down. PMI has separate underwriting guidelines.

Non-Conforming Loans: A broad term that refers to any loan that does not conform to the strict guidelines of conventional loans, such as a 20% down payment. Borrowers who do not qualify for conventional loans can look to nonconforming loans to finance a transaction.

Government Financing: The government insures or guarantees the funds that the lender is issuing to the borrower. If a borrower is unable to repay a loan, the government insurance compensates for the loss the lender incurs from the borrower’s default.

Federal Housing Administration Loan (FHA): The FHA provides mortgage insurance to private lenders to induce the lenders to lend to borrowers who might not be eligible for conventional financing. The borrower’s ineligibility for conventional financing often stems from a lack of a 20% down payment, which does not prohibit eligibility for an FHA loan.

Veterans Administration Loans (VA): The advantage of the VA loan is the guarantee feature that promises lenders that in the event of a deficiency in a foreclosure the lender is compensated by the VA for any losses incurred in the foreclosure and subsequent sale of the property up to the limit of the guarantee. A Certificate of Eligibility is required. The Certificate of Eligibility sets the maximum guarantee to which the veteran is entitled. The property must be appraised by a VA appraiser. A Certificate of Reasonable Value (CRV) for the property is prepared by the appraiser, and states the current market value based on the appraisal of a VA staff appraiser.

United States Department of Agriculture (USDA) Rural Housing Service: The Rural Housing Service is a federal agency under the Department of Agriculture and it offers programs to aid low-income and moderate-income rural residents to purchase, construct, repair or relocate a dwelling and related facilities.
THE PRIMARY MARKET VERSUS THE SECONDARY MARKET

Loans originate in the primary market. The primary market is made up of banks, savings and loans, insurance companies, mortgage banking companies, credit unions, and mortgage brokers. Participants in the primary mortgage market may retain the loans they originate or sell the loans. Primary mortgage market participants sell loans to raise capital for future lending. The secondary market is the market for sales of existing mortgages. Participants in the secondary mortgage market invest in existing mortgages as liquid assets. An investor in the secondary mortgage market purchases pools of mortgages from the primary market and the participants in the primary mortgage market use the invested capital to originate additional loans. The secondary market also standardizes loan requirements.

The federal government has taken an active role in the secondary mortgage market. This is accomplished through three major entities: the Federal National Mortgage Association (Fannie Mae), the Government National Mortgage Association (Ginnie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac). Ginnie Mae, Fannie Mae, and Freddie Mac provide financial services and products for low-income, moderate-income, and middle-income families that want to buy homes.

Factors Used in Secondary Market Underwriting Guidelines:

1. Credit score: A credit score is a statistical method of assessing the credit risk of a loan applicant.
2. Credit payment history: Underwriters look at the last seven years of an applicant’s credit history for:
   a) Mortgage or rent payments;
   b) Car payments;
   c) Credit card use;
   d) Bankruptcy; and
   e) Foreclosure.
3. Income
4. Debt-to-income ratio
5. Down payment for property
6. Loan to value ratio: Fannie Mae requires a 95% loan to value ratio. This means on a property with a purchase price of $120,000, the buyer is given a 95% loan from the bank ($120,000 x .95 = $114,000 loan). The difference between the loan amount and the purchase price is the buyer’s down payment. ($120,000 - $114,000 = $6,000).

Mortgage Fraud: Mortgage fraud occurs when a person misrepresents or omits information on a loan application with the intent to secure lending that a lender would not extend based on a truthful application. Parties may commit mortgage fraud by preparing two offers, one representing the actual terms and another prepared for the lender to induce the lender to extend more credit than a party needs to complete the transaction. Parties can also commit mortgage fraud by inflating a sale price or by misrepresenting the value of personal property a party is including in the property’s purchase price.

Any party in a real estate transaction including a seller, buyer, real estate broker or salesperson, mortgage broker or banker, appraiser, and loan originator who has knowledge of or participates in misrepresenting facts to a lender can be guilty of mortgage fraud.

To prevent mortgage fraud, a licensee should:

1. Prepare offers accurately and inclusively reflecting the true purchase prices and dates.
2. Ask mortgage brokers or lenders to provide any suspicious or improper requests in writing.
3. If the lender or others persist with a fraudulent scheme, issue a written memo or letter warning the parties, the lender and other involved providers of the fraud and urge them to consult with their attorneys and rectify the fraud. If they do not, the licensee should cease participation in the transaction.
4. Report apparent fraud situations to the Department of Financial Institutions or other appropriate agencies.
CALCULATING A BUYER’S MORTGAGE PAYMENT

\[ \text{Payment} = \text{mortgage amount} \times \text{factor} \]

FINANCING LEGISLATION

The Consumer Credit Protection Act, Truth in Lending Act, and Regulation Z

The Consumer Credit Protection Act is composed of several sections regulating consumer credit. Title I of the Act is the Truth in Lending Act (TILA). TILA requires creditors to disclose to consumers the true cost of obtaining credit and allows consumers to compare credit costs and terms of a loan. Regulation Z is the section of the federal administrative code that implements the provisions of TILA. For credit to fall under Regulation Z requirements, it must involve a finance charge or be payable in more than four installments by written agreement. If credit is regulated by Regulation Z, disclosure must include the financing charges, the annual percentage rate, the total amount financed, and the total number of payments. Finance charges include interest, loan origination fees, discount points, and service fees. Real estate expenses that a consumer pays regardless of whether credit is extended such as fees for legal services, deed preparation, surveys, or credit reports are not finance charges.

The Truth in Lending Act assumes that the more credit a borrower can obtain, the less protection that consumer needs. Regulation Z applies to all consumer loans for $25,000 or less that are for personal, family, household, or agricultural purposes. Regulation Z also applies to residential loans that are secured by a dwelling, new mortgage loans, refinanced loans, or consolidated loans. Regulation Z does not apply to business or commercial loans, consumer credit transactions over $25,000 not secured by a dwelling, or loans made to an artificial entity, such as a corporation. All creditors must comply with Regulation Z. A creditor is defined as a party who arranges for or extends credit more than 25 times in the preceding calendar year or more than five times in the preceding calendar year if the transaction is secured by a dwelling. Regulation Z regulates credit advertising. If an advertisement contains a triggering term, the advertisement must also disclose the full terms of the offered financing. The goal is to ensure that a consumer has all the important terms of a credit plan, not just the most attractive ones.

Real Estate Settlement and Procedures Act (RESPA): The purpose of RESPA is to ensure that borrowers in mortgage loan transactions have knowledge of all settlement costs. RESPA applies to all federally-related new first mortgages on residential one-to-four family properties.

RESPA requires that:

1. The lender must provide a good-faith estimate of all closing costs.
2. Kickbacks are prohibited from entities such as lenders, attorneys, and title insurance companies as a payback for referring the applicant’s business.
3. The lender must use the HUD Uniform Settlement Closing Statement and allow the applicant to inspect the statement the day before closing.
4. RESPA is administered by HUD.

Under RESPA, a person cannot give or receive fees or kickbacks for referral of settlement services, or give or receive a split or percentage of settlement charges other than for services actually provided. Paying or receiving a fee or a “thing of value” for the referral of business related to a mortgage loan settlement without rendering a service is illegal under RESPA. Receiving compensation for referring a buyer or borrower to a settlement service provider is prohibited and a settlement service provider cannot split or pay a settlement charge unless the settlement service provider actually provided services in exchange for the payment.

Under RESPA “settlement services” include any services related to: the origination, processing or funding of a federally-related mortgage loan; mortgage broker services such as counseling, taking applications, obtaining verifications and appraisals, lender-borrower communications, etc.; title company services; an attorney’s legal services; closing document preparation; credit reports and appraisals; property inspections; conducting the settlement; mortgage insurance; hazard, flood or casualty insurance, and homeowner warranties; mortgage life, disability or similar insurance; real property taxes and assessments; and real estate brokers and agents.
**Answer the following questions. If you need to, refer to the previous summary or WB forms.**

1. The party that issues the loan is called the ____________________________

2. After a borrower pays off a loan, what should he expect to be recorded by the lender?
   ______________________________________________________________________

3. To originate a loan at a rate lower than is being charged on the open market, a buyer most likely ______________________________________________________________________

4. Fannie Mae, Ginnie Mae, and Freddie Mac are part of the __________________________________________
   ______________________________________________________________________

5. A borrower is able to originate a loan that is amortized for 30 years; however, the borrower only has five years to pay the loan back. The borrower received what type of loan?
   ______________________________________________________________________

6. During a land contract, what type of title does the seller hold? What type of title does the buyer hold?
   ______________________________________________________________________
   ______________________________________________________________________

7. Private mortgage insurance is typically required when a borrower does not have what percentage?
   ______________________________________________________________________

8. Are FHA loans guaranteed or insured?
   ______________________________________________________________________

   ______________________________________________________________________
   ______________________________________________________________________
   ______________________________________________________________________

10. What federal legislation prohibits the payments of kickbacks?
    ______________________________________________________________________
WB-44 COUNTER-OFFER

The party drafting a counter-offer identifies the number of the counter-offer and the party drafting the counter-offer at the top of the form. Line 52 of the WB-44 reminds licensees of the correct way to number the counter-offer. A counter-offer is a rejection of the offer and a submission of a new offer. The legal effect of writing and delivering a counter-offer is the same as the rejection of the previous offer and a presentation of a new offer to the party who submitted the previous offer. Rather than rejecting an offer and drafting a new offer, using counter-offers permits parties to avoid the unnecessary drafting of an offer with terms nearly identical to the previous offer. Using counter-offers permits the countering party to counter only the terms that vary from the original offer. All other terms remain unchanged from the original offer and are incorporated by reference.

WB-46 MULTIPLE COUNTER-PROPOSAL

A seller uses the WB-46 Multiple Counter-Proposal as a way to propose transaction terms to prospective buyers. The multiple counter-proposal gives a seller a viable, legal method to negotiate with prospective buyers without committing to a particular buyer’s offer. A seller can use multiple counter-proposals to issue non-binding proposals to prospective buyers. The proposal is a statement of terms a seller wants a buyer to include in an offer. A seller does not have to issue proposals to all buyers and can customize each proposal based on the buyer’s specific offer. If any of the buyers agree to the seller’s proposals, the buyer signs the proposal and returns it to the seller. The seller is not bound by any of the returned proposals. If a seller likes the terms of an offer coupled with a buyer’s accepted proposal, the seller signs it and delivers it back to the buyer. There is now binding acceptance of the buyer’s offer including the terms of the accepted proposal. If a seller is issuing a proposal to just one buyer, the seller must strike language implying that the seller issued proposals to other buyers. Absent the modification, a buyer could misunderstand the number of other buyers with which a seller is negotiating and a seller could be liable for misrepresentation. A seller might issue a counter-proposal to just one buyer out of a pool of offers. A seller may choose to use a counter-proposal even if the seller only has one offer because, unlike a counter-offer, a counter-proposal allows a seller to negotiate the terms of an offer without rejecting it.

WB-42 AMENDMENT TO LISTING CONTRACT

A party would use the WB-42 Amendment to Listing Contract to amend the listing contract. Pre-printed terms for amendment include the listing price, the expiration date, and items to be added or deleted.

WB-40 AMENDMENT TO OFFER TO PURCHASE

Parties can use the WB-40 Amendment to Offer to Purchase when both parties mutually agree to change one or more of the terms of an accepted offer. An amendment is not a counter-offer. Parties use counter-offers when negotiating terms of an offer to purchase. Parties use amendments when negotiating terms of an offer to purchase with binding acceptance. An offer to purchase becomes a contract for sale after binding acceptance. The top of the form contains a caution to the parties regarding the difference between offering an amendment to another party and issuing a notice to another party. When a party wants to modify terms of an accepted offer to purchase, the party drafts an amendment and offers it to the other party. If the other party agrees to the changes, the party signs the amendment changing the terms of the accepted offer. If the other party does not agree to the proposed changes, the other party does not sign the amendment and the original terms of the offer to purchase control the transaction.
REAL ESTATE SALES

WB-41 NOTICE RELATING TO THE OFFER TO PURCHASE

A party can use the WB-41 Notice when unilaterally giving notice to the other party about a matter relating to an accepted offer to purchase. A party uses a WB-41 to give notice that a party’s attorney has approved the offer, an inspection report revealed defects, a secondary offer is being made primary, or to notify the other party that a contingency is satisfied. Unlike with an amendment, when a party is giving notice about a matter relating to an accepted offer, the other party does not need to approve, and only the party giving the notice completes and signs the form. The same caution found at the top of the WB-40 Amendment to Offer to Purchase is included on the WB-41. This caution is to remind parties and licensees of the difference between offering an amendment and issuing a notice.

WB-45 CANCELLATION AGREEMENT & MUTUAL RELEASE

Parties use this form to terminate a real estate contract when the parties mutually agree to terminate the original agreement. When parties sign a cancellation and mutual release agreement, parties forfeit any rights arising from the underlying contract including a right to sue for specific performance or for damages. Canceling the sale contract has the legal effect of rescinding it and restoring parties to their positions before they signed the contract. Parties can use a cancellation agreement and mutual release to rescind any bilateral contract including exchange agreements, leases, purchase agreements, and even agency agreements such as listing contracts.

WB-24 OPTION TO PURCHASE

An option is a unilateral contract where a seller agrees to sell the property if a buyer decides to buy it. If a buyer exercises an option, the seller is required to sell. A buyer is not obligated to exercise the option. Parties can negotiate whether an option will be recorded and whether a party can assign the option rights. If a right is assignable, it means a party can transfer contractual rights to another party. An option fee is usually not refundable if the option is not exercised. If the buyer exercises the option, the option terms specify how the option fee will be credited toward the purchase price of the property.

WB-25 BILL OF SALE

The WB-25 Bill of Sale is a contract that transfers the interest one person has in personal property to another person. It can be when a seller is selling a home and the home’s contents or when a property owner is selling a building and a business located in that building. For example, a property owner selling a building and the restaurant located in the building could use a bill of sale to transfer the restaurant’s freezers, stoves, tables, chairs, and other equipment.

An investor who wants a separate accounting of personal property for tax purposes may request that a seller prepare a WB-25 Bill of Sale. When a broker is involved in a sale that includes personal property, the broker should work with sellers and buyers to prepare an inventory of the items that will be transferred. When a seller presents a WB-25 Bill of Sale to a buyer, the seller is giving the buyer an interest in the personal property. The seller usually presents the document at closing.
Answer the following questions. If you need to, refer to the previous summary or WB forms.

1. What form would a licensee use to change a term of the sales contract?

2. What form would a licensee use to notify a secondary buyer that his offer was being elevated to primary position?

3. What is the form a seller would use to negotiate with more than one buyer at the same time?

4. The seller issues the buyer an amendment, which the buyer rejects. What is the status of the contract?

5. What is the legal effect of a counter-offer?

6. How is a counter-offer numbered?

7. What form will the parties use to mutually agree to cancel and release each other from an agreement?

8. Which party or parties sign the WB-41 Notice Relating to the Offer to Purchase?

9. Which party is obligated under the WB-24 Option to Purchase?

10. Which form transfers the personal property interest of one person in a real estate transaction?
RULES OF CONTRACT CONSTRUCTION

A contract is a legally enforceable promise or set of promises that parties must perform. Failure to perform is a breach of contract. If a party breaches the contract, the non-breaching party has legal remedies that the party can use to address damages due to the breach. If parties have an enforceable contract, a court can force parties to comply with the terms of the contract by ordering specific performance.

Contract Construction and Interpretation:
1. Courts give greater weight to added rather than pre-printed terms.
2. Courts give greater weight to specific language rather than general language.
3. Ambiguous contract terms are construed against the drafter.
4. Courts recognize the parol evidence rule, which is designed to achieve a degree of certainty in a transaction and to prevent fraudulent and perjured claims. The parol evidence rule means that courts will not accept prior written or oral information that contradicts the terms of the written contract as evidence in the case of a dispute.

Drafting Contracts:
1. Define important terminology.
2. Make sure all pertinent blanks and spaces are completed or marked with “N/A” or a dash (–).
3. Check the boxes for all optional provisions a party wants to include in the contract such as the financing or home inspection contingencies.
4. If a party does not want something included, strike the language. Stricken language must remain legible.

REEB 15 BROKER’S OBLIGATION TO FURNISH COPIES AND MAINTAIN RECORDS

After a party signs and completes a form, a licensee must provide the party with a complete and exact copy of the form. If the transaction involves a property manager acting on behalf of a property owner, the licensee must provide a tenant a complete and exact copy of the lease at the time the tenant signs the lease. Licensees must provide copies of leases to property owners upon the request of the property owner. Broker-employers must keep all documents pertaining to a transaction for at least three years. The three-year retention period is measured from the date of closing or, if the transaction does not close, from the date of listing. Brokers can keep transaction documents longer than three years if the broker chooses to retain the documents.

APPROVED FORMS AND LEGAL ADVICE

A licensee must use approved real estate forms when involved in a real estate transaction, whether representing a party or acting as a party. An approved form is defined as a contract or conveyance form that is approved by the DSPS. All WB forms, such as the listing contract, buyer agency agreement, and offers to purchase are state-approved forms. To “use a form” means to complete an approved form by filling in the blanks or modifying printed provisions on a form for the purpose of accomplishing the intent of a party in a specific real estate transaction.

Parties may ask a licensee to conduct a transaction with an unapproved form such as seller-provided listing contract or an offer to purchase drafted by the buyer. Licensees can negotiate the terms of these contracts but cannot fill in the blanks of the unapproved form. A licensee can complete another state’s real estate form as long as the licensee is physically present in Wisconsin and all negotiations take place in Wisconsin.
REAL ESTATE SALES

All licensees may use forms prepared by governmental agencies for use in programs administered by them, such as Housing and Urban Development or the Veterans Administration. Property management forms created by a landlord, the employing broker, or an attorney may also be used by licensees. All licensees may use forms prepared by governmental agencies, such as the Department of Housing and Urban Development or the Veterans Administration, for use in programs administered by those agencies. Licensees can also use property management forms created by a property owner, the employing broker, or an attorney. In addition to the forms that all licensees can use, an individual holding a valid Wisconsin broker’s license can use the forms created by the Wisconsin State Bar Association. Forms created by the State Bar of Wisconsin do not duplicate the state-approved forms. State Bar forms include land contracts and deeds but do not include listing contracts or offers to purchase.

If there is not an approved form available for the transaction, such as the sale of a cooperative, a licensee may use a form drafted by an attorney or a party to the transaction as long as the name of the drafter appears on the form. Licensees cannot give legal advice or opinions concerning the legal rights or obligations of parties to a transaction. Licensees cannot create after-closing escrow agreements or charge a fee for completing an approved form in connection with a transaction.

VALIDITY OF CONTRACTS

All real estate contracts must be in writing to be enforceable.

<table>
<thead>
<tr>
<th>There are additional elements that a contract must contain to create a valid and enforceable contract:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The contract must be entered into by legally competent parties. This means the parties are of legal age, 18 years, and are of sound mind.</td>
</tr>
<tr>
<td>2. The contract must have an offer made by one party and be accepted by another. This is known as a meeting of the minds and means that there is complete agreement about the purpose and terms of the contract.</td>
</tr>
<tr>
<td>3. All contracts must have consideration. Consideration is something of legal value given in exchange for a promise. In real estate transactions both good and valuable consideration are exchanged. Valuable consideration is anything of monetary value. Good consideration refers to consideration that does not have monetary value.</td>
</tr>
<tr>
<td>4. All contracts must be for a legal purpose.</td>
</tr>
</tbody>
</table>

CONVEYANCE OF REAL PROPERTY

Wisconsin law requires that any transaction by which any interest in land is created, alienated, mortgaged, assigned or may be otherwise affected in law or in equity must be evidenced by a conveyance that:

<table>
<thead>
<tr>
<th>Wisconsin law requires that any transaction by which any interest in land is created, alienated, mortgaged, assigned or may be otherwise affected in law or in equity must be evidenced by a conveyance that:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Identifies the parties;</td>
</tr>
<tr>
<td>2. Identifies the land;</td>
</tr>
<tr>
<td>3. Identifies the interest conveyed, and any material term, condition, reservation, exception, or contingency upon which the interest is to arise, continue or be extinguished, limited or encumbered;</td>
</tr>
<tr>
<td>4. Is signed by or on behalf of each of the grantors;</td>
</tr>
<tr>
<td>5. Is signed by or on behalf of all parties if a lease or contract to convey;</td>
</tr>
<tr>
<td>6. Is signed, or joined in by separate conveyance, by or on behalf of each spouse if the conveyance alienates any interest of a married person in a homestead except conveyances between spouses, but on a purchase money mortgage pledging that property as security only the purchaser need sign the mortgage; and</td>
</tr>
<tr>
<td>7. Is delivered.</td>
</tr>
</tbody>
</table>

If a party wants to authorize another party to sign on a party’s behalf as an agent, the principal party should give permission in writing to the party acting as the agent.
STATUS OF CONTRACTS

Valid contract: Contains all required essential elements and is binding and enforceable on both parties. A valid contract to convey an interest in real estate will contain all the essential contract elements and the state statutory requirements for conveying real property.

Void contract: Has no legal effect. A contract may be void because it is technically defective, illegal, or against public policy.

Voidable contract: Valid and enforceable but it may be voided by one of the parties. A contract often becomes voidable because one party breaches the contract.

Unenforceable contract: Appears valid but, in the case of a dispute between the parties, a court could not enforce the terms of the contract. Unenforceable contracts may be valid if there is no dispute between the parties. Drafting errors can create an unenforceable contract.

CREATION AND TERMINATION OF CONTRACTS

There are several ways to create and terminate contracts. Most contracts used in real estate transactions are bilateral and express. A bilateral contract is created when two promises are given, one in exchange for another. An express contract is created with written or spoken words. An offer to purchase, a listing contract, and a buyer agency agreement are examples of bilateral, express contracts. A unilateral contract is created when only one party makes a promise to another. An option to purchase is an example of a unilateral contract binding only the optionor (seller) to perform by selling if the optionee (buyer) chooses to exercise the option. The contract does not bind the optionee to perform.

A contract may be terminated in different ways.

1. **Performance** by the parties. The parties to the contract perform according to the terms of the contract.

2. **Mutual termination** by the parties. Parties can agree to release one another from the terms of the contract by amending the contract, executing a cancellation agreement, or entering into some other form of termination agreement.

3. **Breach** by a party. A party breaches a contract by violating a material term or condition of a contract without a legal excuse. The non-breaching or non-defaulting party has certain remedies.
**Answer the following questions. If you need to, refer to the previous summary or WB forms.**

1. Give an example of a bilateral contract.

   

2. Give an example of a unilateral contract.

   

3. Upon reviewing an offer to purchase submitted to her, Mrs. Seller signed her name and her husband’s name. She then delivered the accepted offer back to the buyer. Is the contract valid?

   

4. What are the buyer’s remedies against a seller that has breached a contract?

   

5. According to the terms of the offer to purchase may a seller keep the buyer’s earnest money and sue the buyer for damages?

   

6. A buyer does not deposit earnest money as specified by the sales contract. What is the status of the sales contract?

   

REEB 18 TRUST ACCOUNTS

All earnest money and other monies paid or received with respect to a licensee’s personal transactions are considered to be real estate trust funds. A licensee must deposit these funds in a real estate trust account regardless of whether the property is listed with the licensee’s company. The offer to purchase states that earnest money deposits must go into the listing broker’s trust account. If the property is not listed, the buyer’s agent deposits the funds in the agent’s account and, if there is not a broker involved, the seller holds the funds. Of course, parties can always agree to an alternate agreement for holding real estate trust funds. If they choose to have someone other than the broker hold the funds, the parties or an attorney should draft an escrow agreement. Brokers do not draft escrow agreements.

TRUST FUNDS: CLIENT FUNDS AND REAL ESTATE FUNDS

Client funds are defined by REEB 18.02(1) via the definition of Chapter 452.13(1)(a), as all down payments, earnest money deposits or other money related to a conveyance of real estate that is received by a broker, salesperson or time-share salesperson on behalf of the broker’s, salesperson’s or time-share salesperson’s principal or any other person. Chapter 452.13(1)(a) specifically states that client funds does not include promissory notes.

IBRETA

Wisconsin requires all real estate brokers who hold client funds to establish an IBRETA. The interest from these accounts is calculated by the depository institution and annually remitted (no later than February 1 to the Department of Administration for homeless assistance programs. At no time may the broker or any party remove or use the interest earned on these accounts. The depository institution may deduct a service charge or fee from the interest earned on an IBRETA before remitting the interest to the Department of Administration. If one or both of the parties wants to receive the interest earned from funds related to a real estate transaction, rather than having the interest remitted to the Department of Administration, the parties or an attorney must draft an escrow agreement stating the terms of how the funds should be held and who is the owner of the interest earned from the funds. A broker cannot set up this account or hold the funds for the parties. A third party such as a bank, savings and loan association, credit union, or an attorney can hold the funds for the parties.

DEPOSITING FUNDS

A broker shall deposit all real estate trust funds received by the broker or the broker’s salesperson or time-share salesperson in a real estate trust account within 48 hours of receipt of the trust funds. If the funds are received on a day prior to a holiday or other day when the depository institution is closed, the broker shall deposit the funds within the next two business days of the depository institution. If a broker receives funds that cannot be deposited by the broker the broker shall, no later than one business day after receipt either forward the funds to the payee, if someone other than the broker, or return the funds to the payor. If a licensee receives an item that cannot be deposited, the licensee cannot hold that item.
Answer the following questions. If you need to, refer to the previous summary or WB forms.

1. When must client funds be deposited into a broker's trust account?


2. If the parties to a transaction want to hold their earnest money in an interest-bearing account where the buyer benefits from the interest, who can draft the agreement?


3. If the property is listed earnest money deposits must go into:


4. The interest from an interest bearing real estate trust account is annually remitted to


5. If the broker receives funds which cannot be deposited by the broker, the broker shall


6. If a licensee receives an item, for example a painting, that cannot be deposited as earnest money, then the licensee:


