



EXPLANATION OF THE WISCONSIN WB-36 BUYER AGENCY AGREEMENT



WB-36 BUYER AGENCY AGREEMENT

An explanation of the Wisconsin WB-36 Buyer Agency Agreement

TABLE OF CONTENTS

EXCLUSIVE AUTHORITY TO ACTLines 1-4 **PAGE 3****PURCHASE PROVISIONS**Lines 9-13 **PAGE 3****EXCLUDED PROPERTIES**Lines 14-29 **PAGE 3****COMPENSATION**Lines 30-52 **PAGE 3****EARNEST MONEY**Lines 53-57 **PAGE 4****FIRM'S DUTIES**Lines 58-60 **PAGE 4****COOPERATION**Lines 61-69 **PAGE 4****DISCLOSURE TO CLIENTS**Lines 70-96 **PAGE 4****MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY**Lines 97-126 **PAGE 4****SUBAGENCY**Lines 127-131 **PAGE 5****OTHER ADVISORS**Lines 132-136 **PAGE 5****CONFIDENTIALITY NOTICE TO CLIENTS**Lines 137-156 **PAGE 5****NON-EXCLUSIVE RELATIONSHIP**Lines 157-160 **PAGE 5****NON-DISCRIMINATION**Lines 161-164 **PAGE 5****DISPUTE RESOLUTION**Lines 165-171 **PAGE 5****PROPERTY DIMENSIONS**Lines 172-176 **PAGE 5****DEFINITIONS**Lines 177-217 **PAGE 6****LIEN NOTICE**Lines 218-222 **PAGE 6****NOTICE ABOUT SEX OFFENDER REGISTRY**Lines 223-225 **PAGE 6****TERMINATION OF AGREEMENT**Lines 226-234 **PAGE 6****EXTENSION OF AGREEMENT TERM**Lines 235-240 **PAGE 6****DELIVERY OF DOCUMENTS AND WRITTEN NOTICES**Lines 241-263 **PAGE 7****ADDITIONAL PROVISIONS/ADDENDA**Lines 264-282 **PAGE 7****TERM OF AGREEMENT**Lines 283-286 **PAGE 7****WIRE FRAUD WARNING**Lines 287-298 **PAGE 7****READING/RECEIPT**Lines 299-301 **PAGE 7****SIGNATURES**Lines 302-318 **PAGE 7**

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This publication is intended to help you understand the WB-36 Buyer Agency Agreement. It is a general discussion and cannot substitute for the assistance of a REALTOR® or an attorney. Buyers are encouraged to work with a REALTOR® and a real estate attorney when buying real estate.

This publication should be reviewed together with the WB-36 Buyer Agency Agreement. Please have a copy of the WB-36 Buyer Agency Agreement in hand before continuing.

EXPLANATION OF THE WISCONSIN WB-36 BUYER AGENCY AGREEMENT

EXCLUSIVE AUTHORITY TO ACT

Lines 1-4

This contract is used to create a buyer agency relationship. The buyer agrees not to enter into any other buyer agency agreements except for excluded properties specified in a later portion of the contract.

Lines 5-8

Sometimes a firm that is listing a property for a seller will make an offer of compensation to a cooperating firm that causes the sale by bringing a buyer to a transaction. To be eligible to receive that offer of compensation though, a cooperating firm must often meet a standard of performance established by the listing firm. Often compensation received from a listing firm can be used to reduce what the buyer owes to the buyer's firm. If a buyer contacts the seller or the firm that listed the property, and that contact makes the firm representing the buyer ineligible for the compensation offered by the firm that is listing the property, the buyer will remain responsible for the full amount of commission owed to the buyer's firm according to the terms of this contract.

PURCHASE PROVISIONS

Lines 9-13

Price Range: The buyer sets the price range for potential properties the buyer is interested in purchasing. Regardless of the price range indicated, the contract applies to all properties in the state of Wisconsin so even if a buyer purchases a property outside of the price range indicated, the firm has still earned a commission unless the buyer purchases a property excluded from the contract.

EXCLUDED PROPERTIES

Lines 14-29

Excluded Properties (14-17): The buyer may exclude specific properties or limit the scope of the agreement. Scope limitations may be used to place geographic limitations, such as excluding properties outside of Dane County. The buyer could also exclude property types, such as excluding non-residential properties. If the buyer purchases an excluded property, the buyer will not owe commission to the firm representing the buyer.

Excluded Properties Subject to a Prior Agreement (18-26): The buyer must identify a former buyer's firm's "protected properties" for exclusion from this contract. The idea of "protected properties" protects a firm's right to earn a commission if the buyer purchases a property that qualifies as a protected property in the one-year period after the expiration or termination of the buyer agency agreement. For example, a buyer signs a buyer agency agreement with Firm A. During the term Firm A's buyer

agency agreement, the buyer submits an offer to a seller, but the seller did not accept the offer. Because the buyer wrote an offer on that property during the term of Firm A's buyer agency agreement, Firm A can identify that property as a "protected property." That means that if the buyer purchases that property in the one-year period after the expiration of Firm A's buyer agency agreement, Firm A represents that buyer and Firm A earns the commission. The Excluded Properties Subject to a Prior Agreement section of the buyer agency agreement is instructing a buyer who had a previous buyer agency agreement with a firm to exclude that former firm's protected properties from this buyer agency agreement so that the buyer does not end up owing a commission to the former firm and the current firm if the buyer purchases one of those protected properties.

Limited Exclusion Properties (27-29): The buyer may list specific properties to exclude from the buyer agency agreement until a specified date.

COMPENSATION

Lines 30-52

Commission (32-33): The firm and the buyer indicate the amount of commission the buyer will owe if the buyer acquires an interest in property or enters into an enforceable contract for sale at any terms and price acceptable to the seller and buyer. The amount of commission a firm charges is always negotiable between the buyer and the firm.

Commission Earned (34-37): The firm has earned a commission if, during the term of the buyer agency agreement or an extension of the agreement, the buyer acquires an interest in property or enters into an enforceable contract to purchase a property not excluded by the terms of the buyer agency agreement.

Commission Due and Payable (38-39): Once earned, the firm's commission is due at the earlier of closing or the date set for closing, even if the transaction does not close.

Commission Calculation (40-42): The calculation of a percentage commission may vary based on how the property has been acquired. If purchased, the commission is calculated based on the total consideration in the transaction. If property is acquired through an exchange or an effective change in ownership or control, commission is calculated based on the fair market value of the property in the transaction.

Other Compensation (43-46): The buyer and the firm may agree on other forms of compensation or fees such as a retainer,

hourly compensation, advances, etc. The contract must list when other compensation is due and payable.

Payment by Owner or Owner's Agent (47-52): The buyer's firm may seek payment of commission from the seller or the listing firm if all parties to the transaction give prior written consent. The buyer must pay their firm's compensation, which will be reduced by any amount the buyer's firm received from the seller or listing agent. The buyer is reminded of the note at lines 5-8 informing the buyer that if the buyer's contact with the seller or listing firm results in the listing firm not paying an offer of compensation, the buyer remains responsible for the agreed upon commission amount in the contract. The buyer is reminded there is not standard market commission rate and that commission is negotiable.

EARNEST MONEY

Lines 53-57

A buyer will often include earnest money with the buyer's offer. It is not legally required for a buyer to include earnest money with the buyer's offer, but including earnest money with the buyer's offer is often a demonstration to the seller of good faith by the buyer. Earnest money can become important too in transactions that are not going to close as the buyer and seller can use it to negotiate a resolution to a failed transaction. If a real estate firm in Wisconsin is holding earnest money, the firm must hold it in the firm's trust account. Real estate trust accounts are regulated in Wisconsin, and any Wisconsin real estate firm that is holding earnest money must follow the applicable laws regarding how to hold that earnest money and how it is disbursed. The firm may refuse to hold earnest money or other trust funds. If the transaction fails to close and the earnest money is disbursed to the buyer, then upon disbursement to the buyer the earnest money shall be paid first to reimburse the firm for cash advances made by the firm on behalf of the buyer.

FIRM'S DUTIES

Lines 58-60

In exchange for commission or other compensation, the firm agrees to use professional knowledge and skills, and reasonable efforts in accordance with law to help the buyer locate and negotiate the acquisition of an interest in property. Professional knowledge and skills may include advising a buyer about offer terms, negotiation strategies, and guiding buyers through the transaction.

COOPERATION

Lines 61-69

The buyer agrees to cooperate with the firm and provide all relevant materials and information in the buyer's possession that are required in connection with the acquisition of an interest in property. This could include loan commitments from the buyer's lender necessary to satisfy a financing commitment contingency or a copy of an inspection report sent to the buyer after the buyer's inspection. The buyer agrees to be reasonably available for showings of properties, and the buyer authorizes the firm to do acts reasonably necessary to fulfill the firm's obligations under this agreement, such as alerting the buyer to properties

that fit the buyer's search parameters and following up with the buyer to obtain feedback after looking at properties. The buyer agrees to let sellers and other agents know that the firm represents the buyer as the buyer's agent.

DISCLOSURE TO CLIENTS

Lines 70-96

Duties Owed to All Parties (71-83): This section contains basic information about agency relationships, specifically the duties the firm and its agents owe to all parties in a transaction. People who have signed a written contract with a firm are clients of that firm. People who do not have a written contract with a firm, but who are helped by a firm and its agents, are customers. Duties owed to all parties include: (1) providing brokerage services fairly and honestly, (2) exercising reasonable skill and care in providing brokerage services, (3) providing accurate market information upon request within a reasonable time, (4) disclosure of materially adverse facts, (5) protecting confidential information, (6) protecting trust funds or other property the firm holds, and (7) when negotiating, presenting contract proposals in an objective, unbiased manner and disclosing the advantages and disadvantages of the proposals.

Duties Owed to Clients (84-96): In addition to the duties a firm owes to all parties, a firm owes additional duties to the firm's clients. These additional duties include: (1) providing information and advice on real estate matters that affect the client's transaction upon the client's request, (2) providing all material facts affecting the transaction, (3) fulfilling the firm's obligations under the agency agreement and fulfilling the client's lawful requests that are within the scope of the agency agreement, (4) negotiating on behalf of the client, and (5) keeping the client's interests above the firm's and refusing to disclose or give information or advice to other parties, unless required by law, if giving the information or advice is contrary to client interests.

MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY

Lines 97-126

If a firm has both the listing contract with the seller and a buyer agency agreement with the buyer, the firm is providing services to two clients – the seller and the buyer – at the same time. This arrangement is called multiple representation. There are two kinds of multiple representation: one with designated agency and the other without designated agency.

With Designated Agency (101-106): If both the seller and the buyer in the transaction consent to multiple representation with designated agency, then one of the firm's agents will represent the seller, and one of the firm's agents will represent the buyer, and each agent will provide regular client services and work to advance the interests of the party the agent represents. In this kind of agency relationship, the buyer gets their own agent associated with the firm, and the seller gets their own agent associated with the firm.

Without Designated Agency (107-111): If the buyer and the seller agree to multiple representation without designated agency, the firm and its agents adopt a neutral role and cannot provide advice that would favor one party over the other. In this kind of agency relationship, it is possible for one agent to negotiate the transaction acting as a neutral facilitator between the firm's two clients.

No Multiple Representation (112-113): If a buyer does not consent to multiple representation, the firm will not be allowed to provide brokerage services to more than one client in the transaction. This means that the firm cannot also represent the seller in the buyer's transaction.

Lines 115-121 allow the buyer to decide which form of multiple representation they wish to have or decide to refuse multiple representation.

Lines 122-126 allow a buyer to modify their multiple representation selection at any time and require the firm to disclose the commissions and fees they will owe based on the multiple representation selection they choose.

SUBAGENCY

Lines 127-131

The buyer's firm may, with the buyer's authorization, engage subagent firms to assist them by providing brokerage services to the buyer for the buyer's benefit. A subagent firm, like the buyer's firm, is required to put the buyer's interests ahead of their own and refuse to give advice or opinions to other parties that may harm the buyer unless required by law.

OTHER ADVISORS

Lines 132-134

An agent can answer questions about brokerage services; but legal advice, tax advice or home inspection advice must be sought from a specialist.

CONFIDENTIALITY NOTICE TO CLIENTS

Lines 137-156

The firm will keep all confidential information discovered or given to it by the buyer confidential unless the buyer gave consent to disclose the confidential information or if disclosure is required by law. Disclosure required by law includes material adverse facts or any facts known by the firm that contradict any information included in a written inspection report on the property subject to the transaction. For example, if a buyer indicated to the buyer's agent that the buyer did not intend to comply with the buyer's contractual obligations, this would be a material adverse fact that the firm would have to disclose to all parties in writing in a timely manner. On the other hand, if a buyer told the buyer's agent that the buyer is actually willing to pay more for a property than the buyer is planning to offer, this would be confidential information that the buyer's agent could not disclose.

The duty of confidentiality extends beyond the termination of the buyer agency relationship.

Lines 149-151 allow the buyer to list any information they determine to be confidential. The buyer may also provide the firm with other information they wish to be kept confidential at any time.

The firm and its agents have permission to disclose the buyer's identity and financial qualification information to the seller, listing agent, and other third parties without prior consent from the buyer, unless the buyer states otherwise. The buyer may specify any other information they wish to let the firm disclose in lines 154-156.

NON-EXCLUSIVE RELATIONSHIP

Lines 157-160

The buyer acknowledges and agrees the firm may represent other buyers in connection with the location of properties and may negotiate on behalf of those other buyers. The firm shall not disclose confidential information of one buyer to another buyer unless required by law. A firm may be representing more than one buyer at the same time even if those buyers are interested in the same property.

NON-DISCRIMINATION

Lines 161-164

The firm will not discriminate based on race, color, sex, sexual orientation, disability, religion, national origin, marital status, lawful source of income, age, ancestry, family status, status as a victim of domestic abuse, sexual assault or stalking, or in any other unlawful manner.

DISPUTE RESOLUTION

Lines 165-171

If the buyer and the firm have a dispute about the buyer agency agreement or either party is alleging a breach of the agreement, they can consider going to alternative dispute resolution such as mediation or arbitration instead of going to court. If the buyer and the firm wish to use alternative dispute resolution, such as mediation or arbitration, they can add language to the buyer agency agreement specifying this preference for dispute resolution. The statute that sets the time period during which an action can be brought against a real estate licensee is referenced.

PROPERTY DIMENSIONS

Lines 172-176

Property dimensions, total acreage, and total square footage may be estimates or approximations. The buyer should verify any property measurements if they will be material to the buyer. The buyer can discuss any necessary contingencies to be used in the buyer's offer to verify measurements if those are material to the buyer's decision to purchase the property.

DEFINITIONS

Lines 177-217

Adverse Fact (178-184) and Material Adverse Fact (193-196):

When an agent learns of a material adverse fact, the agent is legally obligated to disclose this in writing to all parties – even if the agent’s client tells the agent not to disclose. Material adverse facts most often are serious property deficiencies or shortcomings regarding value, structural integrity or health risks, and might include things such as a leaky basement, high radon levels or a cracked heat exchanger in the furnace. Not all adverse facts relate to physical defects in the property. For example, if the agent learns that a buyer is not able to or does not intend to close the sale because the buyer is no longer employed or filed bankruptcy, the agent must disclose this to all parties in writing.

Buyer (185): The party in this agreement seeking aid in acquiring an interest in real estate.

Deadlines/Days (186-187): This explains how to count days when determining a deadline. Exclude the day the event (such as acceptance) occurred and count subsequent calendar days.

Firm (188): A firm can be a licensed sole proprietor broker or business entity such as a corporation or a limited liability company (LLC).

Interest in Property (189-190): Purchase, option, exchange, or other acquisition of property.

Locate an Interest in Property (191-192): Identify, evaluate, and determine the availability of the interest in property sought by the buyer with the buyer’s cooperation.

Negotiate the Acquisition of an Interest in Property (197-202): To assist a buyer, within the scope of this agreement, to ascertain terms and conditions in which an interest in property may be acquired. This may include discussing terms of a potential contract, completing forms, presenting either party’s proposals to the other, explaining a proposal’s advantages or disadvantages, or otherwise assisting a buyer in the acquisition in an interest in property.

Person Acting on Behalf of Buyer (203-207): Any person joined in interest with the buyer or acting on behalf of the buyer. This may include the buyer’s family, agents, employees, directors, managers, members, officers, owners, partners, incorporators, and all corporations controlled by or affiliated with the buyer.

Property (208): Property located within the state of Wisconsin

Protected Property (209-217): Any property that during the term of this agreement is (1) subject to a written proposal by buyer or person acting on their behalf, (2) viewed by or directly negotiated by buyer or anyone acting on their behalf, or (3) located or negotiated by the firm or its agents if the firm delivers

the description to the buyer in writing no later than three days of the expiration of this agreement.

LIEN NOTICE

Lines 218-222

The Firm has the authority to file a lien for commissions or compensation earned but not paid when due against the commercial real estate that is the subject of a buyer agency agreement. “Commercial real estate” includes all real estate except (a) real property containing 8 or fewer dwelling units, (b) real property that is zoned for residential purposes and that does not contain any buildings or structures, and (c) real property that is zoned for agricultural purposes.

NOTICE ABOUT SEX OFFENDER REGISTRY

Lines 223-225

Information about the sex offender registry maintained by the Wisconsin Department of Corrections is printed in the listing contracts, buyer agency agreements, offers to purchase, real estate condition reports, and various other real estate documents that a seller or a buyer might encounter in a real estate transaction. By including the “Notice About Sex Offender Registry” in these real estate documents, both buyers and sellers have the necessary information to research their own neighborhoods and potential neighborhoods. If asked about sex offenders, the agent can point to this sex offender registry contact information and be protected from liability without having to answer any questions with specific information that the agent might know.

TERMINATION OF AGREEMENT

Lines 226-234

Neither the buyer nor the firm may unilaterally terminate the buyer agency agreement absent a material breach by the other party. This is an agreement with the firm, and agents of the firm may not alter or amend certain provisions of this agreement without the consent of the supervising broker. Termination will only occur following the proper procedure outlined in the buyer agency agreement. Unilateral termination of the buyer agency agreement may be a breach of contract and make the terminating party liable for damages.

EXTENSION OF AGREEMENT TERM

Lines 235-240

The buyer agency agreement is extended for one year on any protected property. Upon request by the buyer, the firm agrees to provide a list of all protected properties subject to the extended term. If the buyer agency agreement is terminated prior to its expiration, it is extended for one year from the termination of the agreement. If a buyer shows additional interest in a protected property, the firm that protected the property resumes its duties as the buyer’s firm and can conduct showings, draft offer and present other negotiations to the buyer and will earn a commission if the buyer ends up buying a protected property during the extension of the agreement term.



DELIVERY OF DOCUMENTS AND WRITTEN NOTICES

Lines 241-263

The buyer and the firm agree to the delivery methods in the contract. This is how the buyer and the firm agree to communicate with each other regarding the buyer agency agreement. Delivery of documents may pertain to events such as delivering a list of protected properties or delivering a notice of termination. The buyer and the firm can agree to multiple forms of delivery if they choose by checking the coordinating box or boxes. Personal delivery is always included unless the buyer and firm strike lines 244-247 from the buyer agency agreement.

ADDITIONAL PROVISIONS/ADDENDA

Lines 264-282

The buyer or the firm may wish to make changes to the preprinted terms of the buyer agency agreement. Changes agreed upon by both the buyer and the firm can be noted in the additional provisions. If the changes or additional terms do not fit in the space provided for additional provisions, the firm and the buyer can include them by way of an addendum. An addendum should be referenced on lines 281-282 to be incorporated into the contract terms.

TERM OF THE AGREEMENT

Lines 283-286

A buyer agency agreement has a beginning date and an ending date. If the end of the contract term is approaching and the buyer has not yet purchased a property, the buyer and the firm can agree to an amendment to the contract to extend the term. If the buyer has not yet purchased a property and the buyer and firm do not amend it, the contract terminates on the date on line 285, and the firm must stop representing the buyer. If the buyer buys a property, the parties can negotiate whether the purchase of the property terminates the agreement or if the agreement continues so the firm can continue to locate and negotiate for properties for the buyer. Typically, if a buyer is looking for a new home, the agreement will terminate when the buyer purchases a property, but if a buyer is an investor looking to add properties to a portfolio, the buyer and firm may negotiate that the firm's authority to assist the buyer extends beyond just a single property.

WIRE FRAUD WARNING

Lines 287-298

Buyers are advised of the dangers of wire fraud. Buyers are instructed to verify wire transfer instructions and not to initiate any wire transfer without confirming instructions. Agents and firms are not responsible for transmitting, forwarding or verifying any wiring or money transfer instructions.

READING/RECEIPT

Lines 299-301

This contract is a legal and binding contract. A buyer should verify receipt of all pages and any addenda prior to signing the contract.

SIGNATURES

Lines 302-318

If the buyer and the firm can agree to terms of the contract, the respective parties complete lines 302-318 as applicable. If the buyer is a person and not a legal entity such as an LLC, corporation or trust, the buyer uses lines 302-308 to sign, using signature lines as needed depending on the number of buyers. If the buyer is an entity, such as an LLC or a corporation, the person authorized to sign on behalf of the entity prints the person's name on line 314 and signs on behalf of the entity on line 312. The buyer's agent completes lines 315-318 on behalf of the agent's firm.

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