



EXPLANATION OF THE STATE OF WISCONSIN RESIDENTIAL LISTING CONTRACT



WB-1 RESIDENTIAL LISTING CONTRACT

An explanation of the WB-1 Residential Listing Contract – Exclusive Right to Sell

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EXPLANATION OF THE STATE OF WISCONSIN RESIDENTIAL LISTING CONTRACT

This publication is intended to help you understand the WB-1 Residential Listing Contract – Exclusive Right to Sell. It is a general discussion and cannot substitute for the assistance of a REALTOR® or an attorney. Sellers are encouraged to work with a REALTOR® and a real estate attorney when selling real estate.

This publication should be reviewed together with the WB-1 Residential Listing Contract – Exclusive Right to Sell. Please have a copy of the listing in hand before continuing.

EXPLANATION OF THE STATE OF WISCONSIN RESIDENTIAL LISTING CONTRACT

WB-1 Residential Listing Contract – Exclusive Right to Sell

EXCLUSIVE RIGHT TO SELL

Line 1

In line 1, the seller engages the real estate firm to sell the property. In this listing contract, the real estate brokerage company is referred to as “the firm.” The firm is given the exclusive right to sell the property. If the seller or another firm finds a buyer during the term of the listing contract, the listing firm and its agents will review the offer with the seller, handle all negotiations and close the transaction.

PROPERTY DESCRIPTION

Lines 2-5

In most cases, the listing agent will describe the property using the street address. However, if necessary, the listing agent can include additional information to describe a property at lines 308-327 or by incorporating an addendum for a legal description or other descriptions.

INCLUDED/NOT INCLUDED IN LIST PRICE

Lines 6-15

Included in List Price: Although the seller is selling real estate, there also may be items of personal property that the seller wants to sell with the house, such as a lawn mower or appliances. The listing agent can work with the seller to identify these items so that the agent can properly advertise not only real estate but personal property items the seller is willing to sell.

Not Included in List Price: There may be items that are considered part of the real estate, such as fixtures, that the seller does not wish to or is unable to sell. Fixtures include items such as water softeners and rose bushes. “Fixture” is further defined at lines 186-196. If the seller rents a fixture, such as a water softener, the seller should list that fixture on lines 11-14 as not included in the list price. Additionally, the seller uses lines 11-14 to identify other fixtures, rented or owned, that the seller cannot or will not sell to the buyer.

LIST PRICE

Line 16

This is not the price at which the seller must sell the property. It is the price at which the firm will advertise the property. The seller may accept an offer at a price that is lower or higher than the list price.

MARKETING

Lines 17-25

Most firms will have a marketing program designed to quickly sell a seller’s home for the best price possible. However, the seller may wish to discuss specific marketing activities with the firm, such as: How will the property be advertised? Will the multiple listing service (MLS) be used? What publications will be used? How will it be marketed on social media? Will open houses be held? Will the seller offer special financing or incentives that the listing firm should advertise? Special financing may refer to a land contract, and home warranties make popular incentives.

The seller agrees to cooperate with the firm’s marketing efforts and must notify the listing firm if the seller becomes aware of any prospective buyers. For example, a buyer driving down the street may see the “for sale” sign and knock on the seller’s door to talk about the property. The seller must tell the buyer to contact the listing firm so the firm can follow up and encourage the buyer to write an offer.

COMMISSION

Lines 26-50

The seller and the firm agree to the firm’s commission on lines 26-27.

Commission Earned: If any of the following happen during the term of the listing – or, within one year after the term of the listing for Protected Buyers – then the listing firm has earned the commission.

1. The seller sells the property or the seller enters into an enforceable contract to sell the property. A sale of the property would be evidenced by a deed from the seller to the buyer. The deed is the instrument that transfers ownership from the seller to the buyer. The firm earns a commission if one seller sells to a co-owner unless that sale is ordered as part of a divorce judgment. An enforceable contract means a party to the contract can go to court and obtain a remedy for the contract’s breach, usually damages or specific performance.
2. The seller enters into an agreement giving a buyer an option to buy the property in the future and the buyer later buys the property by exercising the option.
3. The seller exchanges the property for another property.
4. Ownership or control of the property transfers to another

person such as when the stock of the corporation that owns the property is sold to another person.

5. The listing firm presents the seller with an offer that meets the terms of the listing, even if the seller does not accept this offer. For example, the seller lists the property for \$300,000 and would like to include the washer and dryer in the sale price. The buyer writes an offer for \$300,000 that includes the washer and the dryer and does not include any contingencies. The firm succeeded in obtaining an offer on exactly the terms the seller was requesting. The firm has succeeded under the terms of the listing and earned a commission even if the seller does not accept this offer.

Commission Due and Payable: Once a commission is earned, it is due and payable at the earlier of closing or the date set for closing, even if the transaction does not close, unless stated otherwise in writing.

Calculation: If there is a percentage commission on lines 26-27, then the percentage is multiplied times the amount stated in the Calculation subsection. For example, if there is an accepted offer creating an enforceable contract, the percentage is multiplied by the total price paid.

COMPENSATION TO OTHERS

Lines 51-57

The firm indicates what compensation will be offered to cooperating firms that help sell the property. Commission is always negotiable between the firm and a client. There are not standard market commission rates. Firms and clients can negotiate commission based on the services agreed to between the firm and the seller.

BUYER FINANCIAL CAPABILITY

Lines 58-61

Ideally, a buyer obtains a pre-approval from a lender before beginning the buyer's search for a property. A seller can use terms in the offer to purchase, such as requiring a pre-approval, a loan commitment or other verification of funds, to investigate the buyer's financial capability. It is not the listing firm's responsibility, but rather the seller's responsibility, to investigate the buyer's financial capability to purchase the property.

DISPUTE RESOLUTION

Lines 62-67

If there is a dispute regarding the listing contract that cannot be resolved by mutual agreement, the seller and the listing firm can consider alternate dispute resolution methods such as mediation or arbitration.

FAIR HOUSING

Lines 68-71

The seller and the firm are expected to follow the local, state and federal laws regarding fair housing and not to discriminate unlawfully against prospective purchasers.

DISCLOSURE TO CLIENTS

Lines 72-139

This section is intended to help the seller understand the relationship between the listing firm, its agents and consumers.

DUTIES OWED TO ALL PARTIES

Lines 73-85

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.

The firm and its agents owe certain duties to all parties to a transaction regardless of whether the party is a customer or a client. Duties to all parties include fair and honest treatment, providing accurate market information upon request, safeguarding money in the firm's trust account, and presenting offers with an unbiased explanation of the pros and cons. The firm and its agents also owe all parties the duty of confidentiality (see the explanation of lines 140-155) and the duty to disclose material adverse facts (see the explanation of lines 200-203). A firm and its agents might help a buyer who is a customer by briefing the buyer about properties for sale in the marketplace, showing properties to the buyer, drafting an offer to purchase, and providing other brokerage services with reasonable skill and care.

DUTIES OWED TO CLIENTS

Lines 86-99

In addition to the duties a firm owes to all parties, a firm owes additional duties to the firm's clients. The firm and its agents have an obligation to provide a higher level of service to a client. They owe a client the duties owed to all parties to a transaction plus additional duties such as loyalty, obedience, disclosing important facts about the transaction (not just material adverse facts), negotiating on behalf of the client and providing real estate advice and information upon request. The firm and its agents can help clients strategize and negotiate offer terms to achieve the best price and most beneficial terms for the client.

A seller who signs a listing contract is the client of the firm. The firm and its agents guide the seller throughout the real estate transaction, providing information on such issues as pricing the home, which offers are fair, and how to structure an offer to the seller's advantage.

MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY

Lines 100-129

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.

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.

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. If one or both parties in a transaction consent to multiple representation without designated agency, then the firm will treat the situation as a multiple representation without designated agency and act in the neutral role.

On lines 117-124, the client checks a box and consents to only one of three representation relationships: multiple representation with designated agency, multiple representation without designated agency, or rejection of multiple representation. A firm needs written consent from both clients before engaging in multiple representation. A client can withdraw consent to multiple representation relationships at any time by giving written notice to the firm.

SUBAGENCY

Lines 130-134

The listing firm may authorize other firms and agents, called subagents, to help the listing firm by providing brokerage services, such as drafting offers, to a buyer who is not a client of the subagent. A subagent provides brokerage services to a buyer who is a customer for the benefit of the listing firm's client.

OTHER ADVISORS

Lines 135-137

A seller cannot rely only on the real estate agent or firm for all services the seller may need. The real estate agent is prohibited from giving legal advice, so it is recommended each party consult with an attorney. The seller may also need the assistance of other professionals, such as a tax advisor and home inspector.

CONCLUSION OF AGENCY DISCLOSURE

Lines 138-139

Lines 138-139 conclude the "agency disclosure" section of the listing and inform the seller that the agency disclosure section describing duties owed to all parties, duties owed to clients, agency selection and subagency is included to comply with state law requiring such disclosure.

CONFIDENTIALITY NOTICE TO CLIENTS

Lines 140-155

A firm and its agents owe the duty of confidentiality to all parties in a transaction. For example, the listing agent might know the maximum price a buyer is willing to pay for the property. Because this is information the listing agent knows a reasonable person would want kept confidential, the listing agent is not allowed to provide this information to the seller without the written consent of the buyer. The firm and its agents owe the same duty of confidentiality to the seller regarding the lowest price the seller would accept. Examples of information that a firm and its agents would have to keep confidential include the seller is selling because of a divorce, or a buyer is moving to be closer to a hospital better equipped to treat the buyer's illness. To document a party's desire to keep certain information confidential, the listing agent can note it at lines 152-153. Similarly, if there is information that a party does not want to remain confidential, such as a seller's unwillingness to consider offers contingent on financing, the firm and the seller could note that at lines 154-155, and the firm and its agents would then be authorized to disclose that information to other firms and potential buyers.

The duty of confidentiality does not extend to material adverse facts, which a firm and its agents must disclose regardless of whether a party would like the information kept confidential. See lines 200-203 for more information about material adverse facts.

COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION

Lines 156-163

A property is more likely to sell if other real estate agents try to sell the property to buyers they are working with. A listing firm is required to cooperate with other firms when listing a seller's property. Other firms a listing firm may cooperate with include a subagent providing brokerage service to a buyer who is a customer, or a buyer's firm providing brokerage services to a buyer who is a client.

Cooperation includes providing access for showings and objectively presenting offers and other proposals. The seller may list any firms or agents with whom the seller does not want the listing firm cooperating. The seller may also restrict access to the property for certain named buyers and describe offers that the seller will not consider, such as offers below a certain price or that include certain contingencies. Any limits on cooperation may make the property harder to sell. The "CAUTION" at line 163 informs a seller that restrictions on the firm may make it harder to sell the property.

EXCLUSIONS

Lines 164-171

If the seller's property was listed before, the former listing firm may have "protected buyers." Protected buyers really are "protected commissions" for the former listing firm. If a protected buyer returns and purchases the seller's property during the one-year extension of the first firm's extension of the listing contract, the first firm earns the commission. Protected buyers are defined at lines 210-224.

If a firm is listing a property that was previously listed, the former listing firm's protected buyers are excluded from the subsequent listing contract to the extent of the former firm's rights to those buyers. If the listing contract did not include a provision excluding a former firm's protected buyers, the seller could potentially owe two commissions to two different firms if the property sold to the former firm's protected buyer. If the seller fails to provide the new listing firm with the former listing firm's list of protected buyers, the seller could potentially be liable to the new listing firm for damages. If the seller does not provide the list, the new listing firm can contact the former listing firm and request the list.

There may be other buyers the seller wants to exclude from the listing. For example, a neighbor or relative may have expressed an interest in buying the property. The seller can exclude these persons by naming them on lines 168-169 of the listing. If the seller sells to a person named on lines 168-169, the seller will not owe a commission to the listing firm. Because a listing firm could spend a great amount of time and money marketing a property only to have an excluded buyer buy the house near the end of the listing term, the firm may wish to limit the time the seller has to sell the property to the excluded buyer(s). This deadline is stated on line 169. If the seller has not accepted an offer from the excluded buyer by the deadline, then the exclusion ends, and the buyer is included in the listing.

DEFINITIONS

Lines 172-224

ADVERSE FACTS AND MATERIAL ADVERSE FACTS (LINES 173-179 and 200-203): 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 the parties in writing.

DEADLINES – DAYS: This explains how to count days when determining a deadline.

DEFECT: This section defines "defect" as it pertains to a seller's property. A seller is asked to identify defects on the seller's real estate condition report.

FIRM: "Firm" refers to the licensed sole proprietor or a licensed broker business entity. The parties to a listing contract are the seller and the firm.

FIXTURES: Although it is not possible to define exactly what should be considered part of the real estate and therefore included with the sale, this section explains items called fixtures that are assumed to be included with the property. Fixtures include items such as a furnace, built-in appliances and garage door openers. If any of these items will not be included in the sale, they should be excluded on lines 11-13.

PERSON ACTING ON BEHALF OF BUYER: A person acting on behalf of a buyer may be somebody related to the buyer, such as a family member, a limited liability company or a trust. For example, an out-of-state buyer is interested in a property in Madison, where the buyer's mother happens to live. The buyer asks her mother to view the property with the listing agent. Based on her mother's feedback, the buyer submits an offer to the listing firm despite not seeing the property. The buyer's mother is a "person acting on behalf of buyer."

PROPERTY: This refers to the real estate described on lines 2-5 of the listing.

PROTECTED BUYER: A protected buyer is a buyer who, personally or through any person acting on behalf of a buyer, during the term of the listing, 1) writes an offer on the property that was delivered to the seller or the firm, 2) sees the property with the seller or discusses with the seller potential terms upon which the buyer may purchase the property, or 3) attends an individual showing or discusses with the firm or its agents potential terms upon which the buyer may purchase the property.

For a listing firm to properly protect buyers, the listing firm must notify the seller in writing of the names of buyers who attended individual showings or who discussed potential terms with the firm or its agent. The notification to the seller is often referred to as the "Protected Buyer List" and must be delivered to the seller within three days of the expiration of the listing contract. Buyers who submitted offers, who saw the property with the seller, or who discussed potential terms with the seller are automatically protected buyers and do not need to be on a "Protected Buyer List" submitted to the seller. By "protecting buyers," a listing firm is really protecting a commission that may be earned if one of the protected buyers purchases the property during the one year after the listing contract expires or is terminated.

EXTENSION OF LISTING

Lines 225-229

When a firm has protected buyers, this provision of the listing contract extends the listing contract as to those buyers for

one year from the expiration or termination of the listing contract. If a protected buyer shows additional interest in the property during the Extension of the Listing, the listing firm that protected that buyer resumes its duties as the listing firm and conducts showings, drafts offers and presents offers according to the instruction of the parties and will earn a commission if the property sells to that protected buyer during the extension of listing term.

OCCUPANCY

Lines 230-232

When a buyer purchases the property, the seller gives occupancy of the property to the buyer at closing. The seller must remove all debris and other items by closing unless other arrangements were made with the buyer, and the home must be broom-swept.

LEASED PROPERTY

Lines 233-237

When a seller sells property that is currently rented, the sale does not terminate the tenancy in most cases. The seller would need to have the seller's attorney review the lease with the tenants to see if there is a provision in the lease stating that the sale would terminate the tenancy. Absent a provision like that in a lease, the tenancy is not terminated by the sale, and the new buyer purchases the property subject to the existing lease. The seller agrees to transfer all pre-paid rents and security deposits to the new buyer at closing. The sale does not necessarily relieve the seller from obligations to the tenant established by the lease, and both the seller and the buyer should have their respective attorneys review the lease to advise them on what rights and obligations each party may have under the terms of the lease. The seller should consider asking the buyer to legally protect the seller against claims made by a tenant after the property is sold.

NOTICE ABOUT SEX OFFENDER REGISTRY

Lines 238-240

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.

REAL ESTATE CONDITION REPORT

Lines 241-245

As an owner of the property, the seller knows things about its condition that might not be discovered by the agent, the

buyer or even the buyer's home inspector. Buyers want to know all about the property condition problems that the seller knows about. The agent needs to know about the property's condition before spending time and money to market the property. If there are problems with the property's condition ("defects") that may discourage buyers, the agent can discuss with the seller whether the seller wants to make repairs before marketing the property.

For residential properties, this information about defects is usually provided on a form called the Real Estate Condition Report. The seller also agrees that the agent can give copies of the completed Real Estate Condition Report to prospective buyers, and that the seller will revise the form if the seller learns of new defects.

SELLER REPRESENTATIONS REGARDING DEFECTS

Lines 246-250

The seller represents to the firm and its agents that the seller has no knowledge or notice of any defects other than those stated in the Real Estate Condition Report. The seller may be liable for damages and costs if the seller is not truthful or if the information on the form is not correct or complete.

SELLER COOPERATION WITH MARKETING EFFORTS

Lines 251-257

The seller agrees to cooperate with the firm's marketing efforts. For example, the listing agent may want to put a "lockbox" on the property. A lockbox holds a key to the house so that cooperating firms and their agents can show the property to buyers. The listing firm may wish to put information regarding the property on the internet or use a multiple listing service (MLS). If the seller objects to these methods, the seller and the listing agent can document this in the listing contract.

The seller may learn of prospective purchasers that are unknown to the listing firm or its agents. For example, a prospective buyer may see the "for sale" sign in the yard and come to the door to ask questions about the property. Or the seller may mention to someone at work that the property is for sale. Instead of trying to strike a deal with such a buyer without the involvement of the firm or its agents, the seller has an obligation to tell the firm in writing about potential buyers.

OPEN HOUSE AND SHOWING RESPONSIBILITIES

Lines 258-267

There will be many prospective buyers, other agents, home inspectors and appraisers coming through the property while it is listed. The seller is expected to make the property safe and secure to minimize the risk of injuries, accidents or theft of the seller's property and so that the seller's property and valuables are safe. For example, the seller should ensure

weapons are properly secured and that valuables such as jewelry are inaccessible.

Some buyers may take photographs or videos at open houses or individual showings to help them remember the features of the home. This will be permitted unless the seller specifies otherwise in writing.

TERMINATION OF LISTING

Lines 268-276

Neither the seller nor the listing firm can terminate a listing contract early unless the other party is not or has not met that party's obligations under the listing contract. For example, if a listing firm was failing to market a property as agreed to in the listing contract, the seller could potentially claim the listing firm was breaching the contract, giving the seller the right to terminate it early. On the other hand, if the listing firm was complying with all contractual obligations as agreed to in the listing contract and the seller still wanted to terminate it early, the listing firm would honor the seller's request to terminate if delivered correctly, but the seller would potentially be liable to the listing firm for damages because the seller breached the contract by terminating it early. If either party wants to terminate the listing contract early, the terminating party will deliver written notice of termination to the other party according to its agreed-upon delivery method(s).

A listing agent does not have the authority to shorten the term of a listing, terminate a listing early or reduce the commission amount without the written permission of the listing agent's supervising broker.

EARNEST MONEY

Lines 277-284

If the seller enters into a contract with a buyer, the buyer should pay "earnest money" to show a good faith intent to proceed with the transaction. The amount of earnest money paid and the timing of payment will be negotiated in the offer to purchase.

If the buyer and seller agree to let the listing firm hold earnest money in the firm's trust account, the firm agrees to hold and disburse the earnest money in accordance with state statute and administrative code provisions. Disbursal of earnest money held by a firm is addressed in the offer to purchase.

If a transaction between a buyer and a seller fails to close, one outcome is for the buyer to let the seller keep the earnest money as liquidated damages. If that occurs, the seller agrees to reimburse the listing firm for cash advances made on behalf of the seller and split the remaining earnest money with the listing firm. The earnest money paid to the listing firm is the firm's full commission for the failed transaction. Disbursing earnest money according to this section of the listing contract does not terminate the listing, and the listing firm can continue to try to find another buyer for the property.

DELIVERY OF DOCUMENTS AND WRITTEN NOTICES

Lines 285-307

The seller and the firm agree to delivery methods in the listing contract. This is how the seller and the firm agree to communicate with each other regarding the listing contract. Delivery of documents may pertain to events such as delivering a protected buyer list or delivering a notice of termination. The seller 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 seller and the firm strike lines 288-289 from the listing contract.

ADDITIONAL PROVISIONS AND ADDENDA

Lines 308-329

The seller or the listing firm may wish to make changes to the preprinted terms of the listing contract. Changes agreed upon by both the seller and the listing 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 listing firm and the seller can include them by way of an addendum. An addendum should be referenced on lines 328-329 to be incorporated into the listing contract terms.

TERM OF CONTRACT

Lines 330-332

A listing contract has a beginning date and an ending date. Many firms prefer a listing to last several months to give the firm a reasonable opportunity to market and sell the property. If the end of the listing term is approaching and the property has not sold, the seller and the listing firm can agree to an amendment to the listing contract to extend the term. If the property has not sold and the seller and the listing firm do not amend the contract to extend the term, the listing contract terminates on the date on line 331, and the listing firm must stop marketing the property and representing the seller.

WIRE FRAUD WARNING

Lines 333-344

Sellers are advised of the dangers of wire fraud. Sellers 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 345-347

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

SIGNATURES

Lines 348-361

If the seller and the listing firm can agree to terms of the listing, the respective parties complete lines 348-361 as applicable. If the seller is a person and not a legal entity such as an LLC, corporation or trust, the seller uses lines 356-359 to sign, using signature lines as needed depending on the number of sellers. If the seller 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 359 and signs on behalf of the entity on line 358. The listing agent completes lines 360-361 on behalf of the agent's firm.

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