



Explanation of the State of Wisconsin **Residential Listing Contract**

Wisconsin REALTORS® Association

EXPLANATION OF THE STATE OF WISCONSIN RESIDENTIAL LISTING CONTRACT

This publication is intended to help you understand the WB-1 Residential Listing Contract (the listing). It is a general discussion and not a substitute for the assistance of a REALTOR® or an attorney. The Wisconsin REALTORS® Association recommends that you work with an experienced REALTOR® and a real estate attorney when selling real estate.

This publication should be reviewed together with the 2008 WB-1 Residential Listing Contract – Exclusive Right to Sell.

EXCLUSIVE RIGHT TO SELL

Line 1

In line 1, the seller hires the broker to sell the property. The broker is given the exclusive right to market the property and negotiate the sale. If the seller or another broker finds a buyer during the term of the listing contract, the listing broker will review the offer with the seller, handle all negotiations and close the transaction. Other forms of listing arrangements are possible and may be discussed with a broker.

PROPERTY DESCRIPTION

Lines 2-4

In most cases, using the street address as the description of the property is adequate. However, there may be reasons to clarify this description by using the space at lines 242-250 or an addendum for a legal description or other explanations.

TERMS OF LISTING

Lines 5-14

List Price: This is the price at which the broker will advertise the property. If a full-price offer is made by a ready, willing and able buyer (and the offer meets the other requirements stated in the listing), the broker will earn the commission. The seller may accept an offer at a price that is lower or higher than the list price.

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, for example, a lawn mower or appliances. The broker can work with the seller to identify these items so that the broker can properly advertise the property. Sellers should avoid disputes by listing personal property items that will be sold with the house.

Not Included in List Price: There may be items that would legally be considered part of the real estate (fixtures) that the seller does not wish to sell. If there are fixtures or other items on the property that the broker or a prospective purchaser would assume to be part of the sale – for example, built-in stereo components or rose bushes – the seller should be sure to specify if they are not being sold with the house. The buyer may assume that the seller owns the water softener and that the buyer will own it after closing, but many water softeners are rented. Sellers should avoid disputes by listing the fixtures, rented property and other items that will not be sold with the house.

MARKETING

Lines 15-22

Most brokers will have a marketing program designed to quickly sell a home for the best price possible. However, the seller may wish to discuss specific marketing activities with the broker, such as: how will the broker advertise the property? Will the multiple listing service (MLS) be used? What publications will be used? Will the listing be on the Internet? Will open houses be held? Should special financing offers or incentives be advertised?

The seller is obligated to cooperate with the broker's marketing efforts and must notify the broker 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 broker so the broker can followup and encourage the buyer to write an offer.

OCCUPANCY

Lines 23-25

When a buyer purchases the property, the seller will give the buyer occupancy of the home 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.

COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION

Lines 26-33

A property is more likely to sell if other real estate agents try to sell the property to buyers with whom they are working. When the listing broker cooperates with other brokers in an effort to sell a property, this is known as “co-brokerage.”

Other brokers may become involved in the sale as:

1. A “subagent” of the broker providing services for the seller’s benefit, or
2. A “buyer’s agent” representing the buyer’s interests.

When the cooperating broker is a subagent, the listing broker is the subagent’s client and the buyer is that broker’s “customer.” If the cooperating broker is a buyer’s agent, the broker has signed a buyer agency agreement with the prospective buyers who are that broker’s “clients.”

Cooperation includes providing access for showings and objectively presenting offers and other proposals. The seller may list any brokers the seller does not want to participate in the sale of the house and any persons who the seller does not want to attend showings. The seller may also describe any offers that the seller does not want to see (based upon the buyer, price, etc.), if any. Any limits placed on cooperation may make the home harder to sell.

EXCLUSIONS

Lines 34-39

The seller may have previously listed the property for sale with another broker. The prior broker may be entitled to a commission if a Protected Buyer buys it within one year after that prior broker's listing expires. A Protected Buyer is a buyer who, during the prior broker's listing term, 1) attended an individual showing of the property, 2) negotiated for the property with a broker or the seller or 3) wrote an offer on the property.

Because the seller would not want to pay both the prior broker and the new broker, this clause says that if the first broker earns a commission, the seller will not have to pay commission to the new broker. The new broker is entitled to know the names of all Protected Buyers. The seller must furnish a list of these names to the new broker within seven days after the new listing is signed. The seller or new broker can request this information in writing from the prior listing broker.

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 these people on line 38 of the listing. If the seller sells to a person named on line 38, the seller will not owe the broker the commission. Because a broker could spend a great amount of time and money only to have an excluded buyer buy the house near the end of the listing term, the broker may wish to limit the time the seller has to sell the property to the excluded buyer(s). This deadline is stated on line 37. 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.

COMMISSION

Lines 40-58

The seller agrees to pay the listing broker the commission stated on line 40.

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 broker has earned the commission:

1. The seller sells the property, such as signing a deed to a friend or relative or even to another seller of the property in any way except by divorce judgment, or enters into an enforceable contract to sell the property.
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.
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 broker presents the seller with an offer that meets the terms of the listing, even if the seller does not accept this offer.

The broker's commission is earned when the seller and a buyer enter into an enforceable contract of sale. The broker may be entitled to the commission even if the sale does not close. For example, the seller or buyer may decide not to close or there may be some reason a party is unable to close.

COMPENSATION TO OTHERS

Lines 59-60

The broker indicates what compensation will be offered to cooperating brokers who help sell the property.

EXTENSION OF LISTING

Lines 61-65

When a broker has a buyer who is a “likely prospect” at the end of the listing contract term, this section of the listing contract extends the term of the listing contract just for these prospects for one year. Specifically, the listing provides that buyers who have submitted offers, attended an individual showing, or negotiated with the seller or a broker are eligible for this one-year extension (Protected Buyers).

Unless the seller has 1) received a written offer from or 2) personally negotiated with a Protected Buyer, the broker must notify the seller in writing of the names of all buyers the broker believes fall into this “protected” category. The broker must do this within three days after the listing expires.

TERMINATION OF LISTING

Lines 66-73

If the seller would want to end the listing contract before the term is over, the seller only has the legal right to do so if the broker has not met his or her obligations under the listing contract. If the broker has met the broker’s obligations but the seller still needs to terminate the listing, the seller can do so but would likely owe the broker some money as damages. The best thing for a seller to do at a time like this is to contact the broker and discuss the situation.

If the seller or the broker wishes to terminate the listing before the date stated on line 259, this must be stated in writing and delivered to the other using the delivery techniques approved for the listing (see the definition of Delivery on Page 4 of the listing).

The only person the seller ordinarily deals with is the real estate agent, but the listing contract is actually between the seller and the agent’s company. The agent is not authorized to release the seller from the listing, change the commission amount or shorten the listing term unless the changes are first approved in writing by the agent’s supervising broker.

SELLER COOPERATION WITH MARKETING EFFORTS

Lines 74-80

The listing requires the seller to assist with the broker's marketing efforts. For example, the broker may want to put a lockbox on the property. A lockbox holds a key to the house so that cooperating brokers can show the property to buyers. The broker may wish to put information regarding the property onto a Web site or use the multiple listing service (MLS). If the seller objects to these methods, this must be indicated to the broker.

The seller may learn of prospective purchasers of which the broker is not aware. For example, prospective buyers 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 he or she is selling the property. Instead of trying to strike a deal with such a buyer without the involvement of the broker, the seller has an obligation to tell the broker in writing about these persons.

LEASED PROPERTY

Lines 81-85

Tenants may occupy the property for sale. The seller, as the landlord, has certain rights and obligations regarding tenants. In any offer the seller enters into, the seller agrees to transfer the seller's rights to the new owner, who will become the new landlord. The seller must also transfer all security deposits and prepaid rents to the new owner. The sale of the property, however, does not end the obligations the seller may have regarding the tenants. The seller should consider asking the buyer to legally protect the seller against claims made by the tenants after the property is sold. The broker should have a "rental property addendum" that will address these issues in the offer.

BROKER DISCLOSURE TO CLIENTS

Lines 86-146

This section is intended to help you understand the relationships between brokers and consumers.

DUTIES OWED TO ALL PARTIES AND DUTIES OWED TO CLIENTS

Lines 87-111

This section contains basic information about agency relationships: the duties the agent and the agent's broker owe to all parties and the duties the agent and the agent's broker owe just to clients.

Those people who have signed a written contract with a broker are clients of that broker. Those people who do not have a written contract with a broker, but who are helped by a broker, are customers.

Brokers owe all customers certain duties such as offering fair and honest treatment, providing accurate market information upon request, safeguarding money in the broker's trust account and presenting offers with an unbiased explanation of the pros and cons. Brokers also owe all customers the duty of confidentiality (see the explanation of lines 147-163) and the duty to disclose material adverse facts (see the explanation of lines 211-214). A broker 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.

The broker has an obligation to provide a higher level of service to a client. The broker owes a client the same duties owed to a customer plus additional duties such as loyalty, obedience, disclosure of important facts about the transaction (not just material adverse facts), negotiation on behalf of the client and providing real estate advice and information upon request. Brokers can help clients strategize and draft offers to achieve the best price and most beneficial terms for the client.

A seller who signs a listing contract is the client of the broker. The broker guides the seller throughout the real estate transaction, providing information on such issues as pricing the home, which purchase offers are fair and how to structure a purchase contract to the seller's advantage. However, some sellers may choose to sign listing contracts in which the listing broker is not obligated to perform all client duties.

A buyer who signs a buyer agency agreement is a client of the broker. A buyer's agent can give a negative critique of a property, recommend an offering price and give an opinion regarding whether a property is priced too high or too low.

MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY

Lines 112-137

If a broker's company has both the listing contract with the seller and a buyer agency agreement with the buyer, the broker 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 the seller and the buyer in the transaction consent to designated agency, then one of the broker's agents will represent the seller and one of the broker's agents will represent the buyer. Each agent will provide regular client services and work to advance the interests of the party the agent represents. In multiple representation without designated agency, the broker and the broker's 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 but not designated agency, then the broker will treat the situation as a multiple representation without designated agency relationship.

On lines 128-131 the client consents to only one of the following representation relationships: multiple representation with designated agency, multiple representation without designated agency or no multiple representation. A client's consent to multiple representation with or without designated agency may be withdrawn at any time by giving written notice to the broker.

SUBAGENCY

Lines 138-141

A client's broker may authorize other brokers to help the client's broker by working with the other party when the other party is a customer and not a client. Most often this occurs when a cooperating broker helps the listing broker sell the property by working with the buyer in a customer relationship.

OTHER ADVISORS

Lines 142-146

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

CONFIDENTIALITY NOTICE TO CLIENTS

Lines 147-163

One of the duties that brokers owe to all clients and customers is confidentiality. For example, the seller's agent might know the maximum price a particular buyer is willing to pay for the property. Because this is information that the broker knows a reasonable person would want kept confidential, the broker is not allowed to provide this information to the seller without the written consent of the buyer. The broker owes the same duty of confidentiality to the seller regarding the lowest price the seller would accept. On the other hand, the seller may know of a significant problem with the property and specifically ask the broker to keep this confidential. The broker, however, cannot do this.

There are other categories of information that the broker should keep confidential. For example, a seller may be moving out of state or may be in the process of a divorce. In these situations a buyer may assume that a lower offer will be more readily accepted. If the seller wants the broker to keep this information confidential, it should be specified as confidential on lines 158-160.

REAL ESTATE CONDITION REPORT

Lines 164-168

As an owner of the property, the seller knows things about its condition that might not be discovered by the broker, 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 broker 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 broker will help the seller decide if any repairs should be made 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 broker can give copies of the completed form to prospective buyers, and that the seller will revise the form if the seller learns of new defects.

SELLER REPRESENTATIONS REGARDING DEFECTS

Lines 169-173

The seller represents to the broker 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.

OPEN HOUSE AND SHOWING RESPONSIBILITIES

Lines 174-182

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 so that there will be no injuries or accidents and so that the seller's property and valuables are safe. For example, a buyer or an agent could slip on the stairs or on an icy sidewalk, or someone could take jewelry from a dresser drawer during an open house. It is the seller's responsibility to guard against these incidents.

Buyers or agents may bring cameras or video cameras to open houses or showings to help them remember features of the home. This is allowed unless the seller specifies otherwise in writing.

DEFINITIONS

Lines 183-229

Adverse Facts and Material Adverse Facts (Lines 184-190 and 211 – 214):

When a broker learns of a material adverse fact, the broker is legally obligated to disclose this in writing to all parties – even if the broker’s client tells the broker not to. Material adverse facts most often are serious property deficiencies or shortcomings with regard to 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. However, not all adverse facts relate to physical defects in the property. For example, if the broker learns that a buyer is not able or does not intend to close the sale because he lost his job or filed bankruptcy, this must be disclosed to the parties in writing.

Deadlines – Days: This explains how to count days when determining a deadline.

Delivery: This section of the listing describes the procedures the seller and the broker would use when giving notices or transmitting documents to one another. These procedures include the mail, commercial delivery services (like UPS or FedEx), faxing and personal delivery.

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 10-14.

Procure: The real estate term for finding a buyer is to “procure” a buyer. This means that the broker must find a buyer who is ready, willing and able to purchase the property and who submits a written offer on terms that meet the requirements of the listing contract or are otherwise acceptable to the seller. The broker does not ensure that the offer will close.

Property: This refers to the real estate described on lines 2-4 of the listing.

Protected Buyer: A “protected buyer” is a buyer who, during the prior broker’s listing term, 1) attended an individual showing of the property, 2) negotiated for the property with the broker or the seller, or 3) wrote an offer on the property. Unless the seller has 1) received a written offer from, or 2) personally negotiated with a protected buyer, the broker must notify the seller in writing of the names of all buyers the broker believes fall into this “protected” category. The broker must do this within three days after the listing expires.

FAIR HOUSING

Lines 230-233

The seller and broker are expected to follow the local, state and federal laws regarding Fair Housing and to not unlawfully discriminate against prospective purchasers.

EARNEST MONEY

Lines 234-241

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 sales contract.

The seller agrees that the broker may hold the money in its trust account. The broker must follow contract and legal restrictions on how the broker can disburse the earnest money. For example, the seller may feel that the buyer has broken the contract and that all earnest money should immediately be disbursed to the seller. Although the broker is the seller’s agent, the broker may not be able to give the seller the earnest money unless the buyer agrees or a court orders the broker to do so.

The seller also agrees that, if a transaction fails and the earnest money is to be disbursed to the seller, the broker is entitled to one-half of the earnest money as its full commission on the failed transaction. The disbursement of earnest money to the seller and the broker on a failed transaction does not end the listing. The broker can still try to earn another commission by finding another buyer before the listing term ends.

ADDITIONAL PROVISIONS AND ADDENDA

Lines 242-254

The seller or the listing broker may wish to make changes to the listing contract form. If these changes are agreed to, they may be stated in these lines. If the changes or additions are too long to fit in the lines provided, they can be written or typed on a separate page called an addendum. An addendum should be referred to and made a part of the listing at lines 251-254.

NOTICE ABOUT SEX OFFENDER REGISTRY

Lines 255-257

The seller can use the sex offender registry contact information if the seller has questions. More importantly, the seller can provide this same contact information to buyers in the Real Estate Condition Report. Giving all buyers this information will give the seller immunity for disclosure of sex offender information. If asked about sex offenders, the seller 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 seller might know.

TERM OF CONTRACT

Lines 258-259

A listing contract has a beginning date and an ending date. Most brokers will want the listing to last for several months to allow a reasonable amount of time to market and sell the property. As the end of the listing term approaches, the listing broker may ask the seller to agree to extend the listing. If the seller wants to continue working with the broker, the seller must sign an agreement extending the listing or the broker must stop all marketing activities when the original listing term expires.

READING/RECEIPT

Lines 260-262

This contract is a legal and binding contract. Sellers should make sure that they have all of the pages and understand the listing contract's requirements before signing it.

