



# LEGAL UPDATE

AUGUST 2020, 20.08

## A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

### WB-14 Residential Condominium Offer to Purchase 2020

In June 2020, the Real Estate Examining Board (REEB) not only approved a second new version of the WB-11 Residential Offer to Purchase form for the year, but it also approved an updated WB-14 Residential Condominium Offer to Purchase. The optional use date is August 1, 2020, and the mandatory use date is September 1, 2020.

Changes to the basic transactional provisions of the offer were made in the WB-11 Residential Offer to Purchase (mandatory use date 1-1-2020), and those changes were refined in the second 2020 WB-11. Since that was the second WB-11 Residential Offer to Purchase released in 2020, it will be referred to as WB-11 "Take 2." All applicable basic transactional provisions in the WB-11 Take 2 are found in the revised WB-14. Those WB-11 Take 2 changes are discussed in the resources found at [www.wra.org/formsupdate](http://www.wra.org/formsupdate).

This *Legal Update* focuses on the changes made to those provisions of the WB-14 that are uniquely about condominium transactions. The section-by-section discussion points out the new set of changes adopted by the REEB and provides practice tips for getting the best results with this newest version of the WB-14.

#### ① MORE INFO

An "educational use only" copy of the WB-14 with yellow highlights indicating the changes made is available on the WRA Forms Update Resources page at [www.wra.org/formsupdate](http://www.wra.org/formsupdate) as well as a new FIRPTA flow chart, *Wisconsin Real Estate Magazine* articles and videos noting the changes made.

### The Condominium Offer

The WB-14 Residential Condominium Offer has been placed in the transactional flow as was done with the WB-11 Residential Offer to Purchase. The provisions relative to condominium transactions from the prior 2011 version of the WB-14 have been retained, however some of these provisions were modified and are discussed in this issue along with the other 2020 condominium transaction changes. The following discussion of the new condominium features and provisions follows the sequence of the provisions in the updated WB-14 offer.

### Condominium Disclosure Materials

The Condominium Disclosure Materials section in the newly revised WB-14 Residential Condominium Offer to Purchase begins on the bottom of the second page and covers lines 107-121.

The provision now begins by stating, "Seller agrees to deliver to Buyer, within 10 days after acceptance of Offer, current and accurate copies of the Condominium disclosure materials required by Wis. Stat. § 703.33. (emphasis added)"

#### Timing

The 2011 WB-14 indicated the timeframe for the seller getting the condominium disclosure documents to the buyer was, "within 10 days after acceptance of Offer, but no later than 15 days prior to closing." This proved to be confusing and hard to work with. Agents reportedly were misunderstanding the language, mistakenly thinking there was a choice as to deadlines and choosing to rely on the later deadline. That put them in breach of the contractual deadline of 10 days after acceptance of the offer.

In the revised WB-14, the "but no later than 15 days prior to closing" verbiage was removed so that the deadline now is simply "within 10 days after acceptance of Offer." This eliminates the confusion of having two deadlines and misleading licensees and parties into believing there is a choice.

The 15 days before closing is the statutory deadline in Wis. Stat. § 703.33(1). This deadline would still also apply but should not be relevant in most cases if the contractual deadline of within 10 days after acceptance is observed.

*Wis. Stat. § 703.33 Disclosure requirements. (1) Material to be furnished by seller to purchaser before closing. Not later than 15 days prior to the closing of the sale of a unit to a member of the public, the seller shall furnish to the purchaser the following: ...*

#### Deliver

The Condominium Disclosure Materials section now also uses the term "deliver" rather than the ambiguous word "provide," used in the 2011 version of the WB-14. The seller will deliver the disclosure documents. "Deliver" is a term discussed at length in the offer (lines 720-738) and is a well-established concept familiar to licensees, whereas "provide" is undefined.

## Buyer Rescission Rights

The Buyer Rescission rights subsection in the newly revised WB-14 Residential Condominium Offer to Purchase appears on the third page at lines 131-143.

The Buyer Rescission Rights subsection in the 2011 WB-14 refers to buyer rescission rights at two points in time: first, within five business days of when the condominium disclosure materials are first delivered to the buyer. The buyer can rescind at that point – regardless if all of the disclosure materials were received – without giving any reasons, with no liability involved and no questions asked. The buyer is automatically entitled to get their earnest money back per the statutes.

The second point in time when the buyer might exercise their rescission rights is if the buyer did not receive all of the condominium disclosure materials initially and asks the seller to deliver the missing documents. There is the five-business day timeline: within five business days after receipt of the disclosure documents the buyer can ask for the missing documents and the seller has five business days after receipt of the request to provide the missing documents. The buyer may rescind within five business days after the earlier of the receipt of the missing documents or the deadline for seller's delivery thereof. That is what is reflected in the 2011 version of the WB-14.

In the WB-14 revisions the language now includes a third instance when a buyer might rescind. Wis. Stat. § 703.33(3m) & (4) provide that when disclosure materials delivered to the buyer are later amended in a way that would materially affect the rights of the buyer, the amended documents must be promptly delivered to the buyer. For example, the association board of directors amends the budget, or the unit owners amend the bylaws or rules regarding pets or unit rentals. Under the statutes any such amendment that materially affects the rights of a buyer must be promptly delivered to the buyer. That triggers a third right to rescind for the buyer, which lasts for five business days after the buyer receives the amended information.

The language in the Buyer Rescission Rights subsection in the WB-14 at lines 131-143 has been modified to include this third opportunity to rescind when there are material changes in any condominium disclosure document already provided:

**BUYER RESCISSION RIGHTS:** *As provided in Wis. Stat. § 703.33(4) (a), Buyer may, within 5 business days after receipt of all the required disclosure documents or following notice of any material changes in the required disclosure documents, rescind this Offer by written notice delivered to Seller. If the disclosure materials are delivered to Buyer and Buyer does not receive all of the disclosure documents, Buyer may, within 5 business days after Buyer's receipt of the disclosure materials, either rescind the Offer or request any missing documents. Seller has 5 business days after receipt of Buyer's request for missing documents to deliver the requested documents. Buyer may rescind the sale within 5 business days after the earlier of Buyer's receipt of requested missing documents or the deadline for Seller's delivery of the documents [Wis. Stat. § 703.33(4)(b)]. Any document delivered to Buyer may not be changed or amended following delivery if the change or amendment would materially affect the rights of Buyer without first obtaining approval of Buyer. A copy of any such amendments shall be delivered promptly to Buyer.*

The Parties agree that the 5 business days begin upon the earlier of: (1) Buyer's Actual Receipt of the disclosure materials, requested missing documents or material changes or (2) upon the deadline for Seller's delivery of the disclosure materials or the requested missing documents. (emphasis added).

In other words, the buyer may, at any time within five business days following receipt of the condominium disclosure materials or following notice of any material changes in these documents, cancel the offer in writing and receive a full refund of the buyer's earnest money and any other deposits the buyer has made. If the seller delivers less than all of the documents required, the buyer has five business days following receipt of the documents to cancel the offer in writing or deliver to the seller a written request for any missing documents. If the buyer timely delivers a written request for missing documents, the buyer may, at any time within five business days following the earlier of either the receipt of the requested documents or the seller's deadline to deliver the requested documents, cancel the offer in writing and receive a full refund of the earnest money and any other deposits the buyer has made. The buyer has no further right to cancel the offer based on the documents unless the documents are materially changed.

### ***Introduction to the Contingency for Additional Condominium Information***

Lines 147-148 of the revised WB-144 contain a transitional sentence introducing the new Contingency for Additional Condominium Information: "In addition to review of the disclosure materials required to be provided by Wis. Stat. § 703.33, Buyer may wish to consider reviewing other Condominium materials as may be available."





## New Contingency for Additional Condominium Information

There is a new – although not entirely "new" – provision on the third page of the newly revised WB-14 Residential Condominium Offer to Purchase at lines 149-175. The 2020 WB-14 takes much of what had been the Additional Condominium Issues paragraph in the prior 2011 condominium offer and creates in its place a new optional contingency designed to provide the buyer and the buyer's lender with important insight into the operation of the condominium association, any issues or changes on the horizon, and a sharper snapshot of the financial status of the association.

The information listed in the Additional Condominium Issues paragraph was frequently glossed over unless the listing firm had taken this information and created a contingency in the company addenda.

Those important additional condominium issues will no longer be so easily overlooked as they are now bullet points in the new optional contingency.

The items listed in the new optional contingency can allow the buyer to better determine the financial health of the association. This information can provide valuable insight into any condominium improvements or special assessments under consideration, let the buyer know if the association is involved in any litigation that may impact the association's financial status and in turn lead to a shortage in funds or additional assessments, and alert the buyer to any rule or bylaw amendments on the horizon. The buyer may want to know if the association has regular meetings, if the unit owners are active and what issues have been before the board of directors. The listed information also includes documentation that may be required by a lender or underwriter, such as the association's certificate of insurance.

149 ☐ **CONTINGENCY FOR ADDITIONAL CONDOMINIUM INFORMATION:** This Offer is contingent upon Seller delivering  
 150 to Buyer, at Seller's expense, within 10 days after acceptance of this Offer the information listed below that exists as of the  
 151 date on line 1 of this Offer:

- 152 ♦ The Condominium Association's financial statements for the last 2 years.
- 153 ♦ The minutes of the last 3 Unit owners' meetings.
- 154 ♦ The minutes of Condominium board meetings during the 12 months prior to acceptance of this Offer.
- 155 ♦ Information about contemplated or pending Condominium special assessments.
- 156 ♦ The Association's certificate of insurance.
- 157 ♦ A statement from the Association indicating the balance of reserve accounts controlled by the Association.
- 158 ♦ Any Common Element inspection reports (e.g. roof, swimming pool, elevator and parking garage inspections, etc.)
- 159 held by the Association.
- 160 ♦ Information regarding any pending litigation involving the Association.
- 161 ♦ The Declaration, bylaws, budget and/or most recent financial statement of any master association or Additional
- 162 Association the Unit may be part of.
- 163 ♦ Other: \_\_\_\_\_

164 (hereinafter collectively the "listed materials").

165 **NOTE: Because not all of the listed materials may exist or be available from the Condominium Association, Seller**  
 166 **may wish to verify availability prior to acceptance of the Offer.**

167 ■ **BUYER RESCISSION RIGHTS:** Buyer may, within 5 business days after receipt of all the listed materials rescind this  
 168 Offer by written notice delivered to Seller. If the materials are delivered to Buyer and Buyer does not receive all of the listed  
 169 materials, Buyer may, within 5 business days after Buyer's receipt of the materials, either rescind the Offer or request any  
 170 missing materials in writing. Seller has 5 business days after receipt of Buyer's request for missing listed materials to deliver  
 171 the requested materials. Buyer may rescind the sale within 5 business days after the earlier of Buyer's receipt of requested  
 172 missing materials or the deadline for Seller's delivery of the materials.

173 **The Parties agree that the 5 business days begin upon the earlier of: (1) Buyer's Actual Receipt of the listed**  
 174 **materials or requested missing materials or (2) upon the deadline for Seller's delivery of the listed materials or**  
 175 **requested missing materials.**

In the new Contingency for Additional Condominium Information the deadline for the delivery of the listed materials is the same as the deadline for the delivery of the required condominium disclosure materials – 10 days after acceptance of the offer.

The list of information, referred to as the "listed materials," is stated in bullet points for ease of use. If materials on the list are not desired or not available, they can be lined out or referred to as deleted in the additional provisions section when the buyer drafts the offer. There also is the opportunity to request other documents or information by writing it in on the blank line marked "Other."

The only documents the seller must deliver are those in existence on the date on line 1 of the offer. That means if a document delivered under the new contingency is modified or changes after it is delivered, there is no obligation under the new contingency to provide the amendment or updated version to the buyer.

### Planning ahead

There is a note that comes with this contingency that says: **Because not all of the listed materials may exist or be available from the Condominium Association, Seller may wish to verify availability prior to acceptance of the Offer.** This should prompt the licensees and the parties to have a conversation about which of the documents on the list are available from the seller or the condominium association so the contingency may be drafted in such a way that the seller doesn't need to counter and other plans can be made to acquire the materials that are needed.

By having the bullet point items listed in the optional contingency, the seller and listing firm are put on notice these are documents a buyer may ask for so they know to get in touch with the condominium association and any management company to learn what documentation is on hand and accessible, as well as what information can be produced upon request.

In a well-managed condominium, the financial statements, minutes for unit owners' and board of directors' meetings, and the certificate of insurance should be readily available. In fact, the seller may have received copies of these documents or links to them if the condominium association has a website or other online storage of documentation.

#### **REALTOR® Practice Tip**

Whenever a condominium unit is being offered for sale it is prudent to be prepared and determine the availability of the required condominium disclosure materials and the materials listed in the optional contingency. The seller and listing firm can reach out to the condominium association or the condominium management company and discuss the required condominium documents and the listed materials that may be needed. They can prepare by rounding up the documents, or the links thereto, and let cooperating agents know in advance if certain items are not available or may be problematic.

#### **REALTOR® Practice Tip**

The buyer and the cooperating firm should find out what information will be required by the lender and be sure to request that in the contingency.

#### **REALTOR® Practice Tip**

Some concern has been raised that condominium sellers will not be able to address a buyer's request for information addressing any common element inspection reports or information regarding pending litigation against the condominium association. Associations or their management companies may wish to check with legal counsel if they have thorny litigation issues or complex inspection reports. It will be wise for them to get ahead of the issue and decide what information will be provided to buyers, if requested, or decide if they will decline to give any information.

#### **REALTOR® Practice Tip**

The cooperating agent may reach out to the listing agent to see what items are and are not available and discuss this with the buyer. If the buyer's offer asks for documentation that cannot be obtained, that offer may be rejected or countered.

### **Buyer Rescission Rights**

The new optional Contingency for Additional Condominium Information includes its own subsection of buyer rescission rights. The buyer rescission rights for the listed materials are stated separately in the contingency because they are not quite the same as the statutory buyer rescission rights for the required condominium disclosure materials. The buyer's ability to request the listed materials is contractual only and not anchored in the statutes, as is the buyer's right to receive the required condominium disclosure materials. Similarly, the connected buyer rescission rights are contractual, not based in the statutes.

With regard to the new contingency, the buyer's opportunity to rescind the offer arises when the listed materials are first received within 10 days after acceptance of the offer or after going through the process for requesting missing listed materials. The buyer may, within five business days after receipt of the listed materials, rescind the offer by written notice delivered to the seller. If the buyer does not receive all of the listed materials, the buyer may, within five business days after receipt of some of the listed materials, either rescind the offer or request any missing listed materials in writing. The seller has five business days after receipt of the buyer's request to deliver the missing listed materials. The buyer may rescind the sale within five business days after the earlier of receipt of requested missing materials or the deadline for the seller's delivery thereof.

There is no feature for changed materials. This contingency aims only for listed materials in existence on the date on line 1 of the offer and does not impose upon the seller any responsibility to update items that are subsequently revised, although the seller of course is free to do so.

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## Condominium definitions

Page 4 of the revised condominium offer includes a section of definitions for condominium terms at lines 176-214. Each definition

provides the language used in the definitions of these terms in the condominium statutes. This is followed by a consumer-friendly explanation, some including examples, to help promote consumer understanding of condominium terminology.

176 ■ **ASSOCIATION:** Wis. Stat. § 703.02(1m) provides, "'Association' means all of a condominium's unit owners acting as a  
177 group, either through a nonstock corporation or an unincorporated association, in accordance with its bylaws and  
178 declaration." The Association is the entity that the Unit owners typically use to act together as a group to manage and  
179 maintain the Condominium property and finances. Every Unit owner is automatically a member of the Association, which  
180 adopts budgets and sets the amounts of the fees or assessments paid by the Unit owners.

181 ■ **ADDITIONAL ASSOCIATION:** Refers to any community, neighborhood, subdivision, master or umbrella association with  
182 the power to levy fees or assessments on the Property owner.

183 ■ **COMMON ELEMENTS:** Wis. Stat. § 703.02(2) provides, "'Common elements' mean all of a condominium except its  
184 units." In a typical residential Condominium project, the Common Elements may include the land, structural and common  
185 parts of buildings (entranceway, halls, elevator, meeting room, etc.), landscaping, roads, any outside parking areas, outdoor  
186 lighting, any recreational facilities (swimming pool, tennis courts, clubhouse, etc.) and all other common areas and  
187 amenities. The Common Elements are owned collectively by all of the Unit owners. For example, in a Condominium with  
188 100 Units, each Unit owner may own a one percent interest in all Common Elements. Thus, the Unit owner would own an  
189 undivided one percent interest in the tennis courts, road, parking lot, etc.

190 ■ **CONDOMINIUM:** Wis. Stat. § 703.02(4) provides, "'Condominium' means property subject to a condominium declaration  
191 established under this chapter" [Wis. Stat. Ch. 703].

192 ■ **DECLARATION:** Wis. Stat. § 703.02(8) provides, "'Declaration' means the instrument by which a property becomes  
193 subject to this chapter, and that declaration as amended from time to time." The Declaration is a written document that  
194 creates a Condominium from one or more parcels of real estate. The owner declares his or her property to be a  
195 Condominium. The Declaration divides the property into Units, which are individually owned, and the Common Elements,  
196 which are owned in common by all of the Unit owners together.

197 ■ **LIMITED COMMON ELEMENTS:** Wis. Stat. § 703.02(10) provides, "'Limited common element' means a common  
198 element identified in a Declaration or on a condominium plat as reserved for the exclusive use of one or more but less than  
199 all of the Unit owners." A Unit owner does not own a Limited Common Element, except for the percentage interest in the  
200 Common Elements, but is the only one who may use it, either alone or with others (but not all Unit owners). This exclusive  
201 use may be subject to restrictions stated in the Declaration or the Condominium rules. Limited Common Elements may  
202 include a storage area, patio, balcony, garage parking space or a boat slip.

203 ■ **SMALL CONDOMINIUM:** Wis. Stat. § 703.02(14m) provides, "'Small Condominium' means a condominium with no more  
204 than 12 Units." Small Condominiums are subject to all provisions in Wis. Stat. Ch. 703, including the provisions for disclosure  
205 materials, unless optional provisions in Wis. Stat. § 703.365 for a simplified Condominium are adopted in the Declaration  
206 for the Small Condominium.

207 ■ **UNIT:** Wis. Stat. § 703.02(15) provides, "'Unit' means a part of a condominium intended for any type of independent use,  
208 including one or more cubicles of air at one or more levels of space or one or more rooms or enclosed spaces located on  
209 one or more floors, or parts thereof, in a building. A unit may include 2 or more noncontiguous areas." The Unit owner is  
210 entitled to exclusive ownership and possession of his or her Unit. A Unit is not necessarily limited to an apartment-like  
211 concept and may also be a freestanding house, a structure plus surrounding land, or land similar to a lot. Units may also  
212 include a separate area that is some distance away from the basic individual dwelling area. For example, a Unit may be  
213 defined to include a storage area, patio, garage parking space or a boat slip. What is included in a given Unit depends on  
214 how the term "Unit" is defined in the Condominium Declaration and plat.

### Small condominiums defined

The new addition to this section of condominium definitions is the definition of a "small condominium" at lines 203-206. A small condominium is a condominium with no more than 12 units.

A small condominium may choose to operate in accordance with the laws and rules applicable to all other condominiums. On the other hand, if the small condominium wants to make the condominium less formal, this must be established in the condominium declaration. For example, if the small condominium wants to adopt any or all of the bylaw provisions under Wis. Stat. § 703.365(3) whereby the association acts with a board of directors comprised of one representative from each unit, that must first be authorized in the declaration or an amendment to the declaration. In other words, none of the provisions in § 703.365(3) apply unless the provision is first adopted in the condominium declaration.

If the declaration for the small condominium contains an election to have abbreviated condominium disclosure materials as described in Wis. Stat § 703.365(8), then the condominium's required disclosure materials include:

- the declaration, bylaws, and any rules or regulations, together with an index of their contents;
- the articles of incorporation of the association if it is incorporated;
- any management or other contract affecting use, maintenance or access at the condominium;
- a budget;
- any lease to which the unit owners or association will be parties; and
- a copy of the condominium plat.

A small condominium making this election in its declaration, or in an amendment to the declaration, need not have an executive summary.

#### ① MORE INFO

See "The Best of Legal Hotline: Condominium Issues" in the July 2006 *Wisconsin Real Estate Magazine* at [www.wra.org/WREM/July06/Hotline](http://www.wra.org/WREM/July06/Hotline).

## Special Assessments

The Special Assessments subsection on lines 544-557 of the updated WB-14 refers specifically to condominium special assessments as well as municipal special assessments. The section provides a definition of “levied” with regard to municipal special assessments, but also adds a separate definition of what levied means with regard to condominium special assessments: “‘Levied’ with regard to Condominium special assessments means the Association has adopted a resolution imposing fees on the Units, other than regular Association fees, for special projects or expenses.”

## Maintenance section

The Maintenance section on lines 597-600 of the revised WB-14 says:

*Seller shall maintain the Unit and any Limited Common Elements that may be used only by the owner of the Condominium Unit being transferred and all personal property included in the purchase price until the earlier of closing or Buyer's occupancy, in materially the same condition it was in as of the date on line 1 of this Offer, except for ordinary wear and tear and changes agreed upon by the Parties.*

The reference to “the Unit and any Limited Common Elements that may be used only

by the owner of the Condominium Unit being transferred” is an example of the language used throughout the WB-14 instead of referring to the “Property.” “Property” means the real estate described at lines 4-9, which does not capture the other components involved in the condominium unit sale.

“The Unit and any Limited Common Elements that may be used only by the owner of the Condominium Unit being transferred” is far more specific and consistent when identifying the pertinent aspects of the condominium with regard to representations about the condition of the condominium, what is inspected and repairs. The condominium unit owner does not have independent control or rights over other units in the condominium, the common elements, or even limited common elements used by or shared with others.

### **① MORE INFO**

For further discussion about condominiums, see the March 2011 *Legal Update*, “2011 WB-14 Residential Condominium Offer to Purchase,” at [www.wra.org/LU1103](http://www.wra.org/LU1103), the June 2004 *Legal Update*, “Condominium Law Revisions,” at [www.wra.org/LU0406](http://www.wra.org/LU0406) and the Condo Law Resources page at [www.wra.org/condolaw](http://www.wra.org/condolaw).

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