



LEGAL UPDATE

AUGUST 2021, 21.08

A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

2021 FORMS UPDATE: WB-25 & WB-46; WB-16 & WB-17

Five newly revised forms are coming your way. The Real Estate Examining Board (REEB) and the Real Estate Contractual Forms Advisory Council (Council) have been busy and hard at work improving the WB forms that you use in your transactions. They finally made it to the end of the offer to purchase line by updating the WB-16 Offer to Purchase – Business With Real Estate Interest and the WB-17 Offer to Purchase – Business Without Real Estate Interest. In addition, the Council made some improvements to the WB-46 Multiple Counter-Proposal and the WB-25 Bill of Sale. All of these forms received final REEB approval on September 13, 2021, and have an optional use date of September 1, 2021, and a mandatory use date of October 1, 2021. In addition, the WRA Business Disclosure Report has been updated to add typical real estate disclosures to the business-related disclosures.

Form Resources: These WB forms are available on the DSPS website at <https://dsps.wi.gov/Pages/BoardsCouncils/RealEstate/ContractualForms/Forms.aspx>. All five revised forms are in zipForm and in the WRA PDF forms library (for forms library subscribers only). Look for a *Wisconsin Real Estate Magazine* article, educational versions of the forms with yellow highlights on the new provisions and other resources coming to the Forms Update Resources page at www.wra.org/Resources/Transactional/Form_Update_Resource.

To let members know what to expect in these updated forms, this *Legal Update* overviews the highlights and provides a bit of the reasoning and explanation for the changes made.

Overview

The WB-25 Bill of Sale was modified so that it is effective only upon the successful closing of the buyer's purchase of the seller's real estate, and an entity signature block was added to the form.

The WB-46 Multiple Counter-Proposal was updated to streamline the language and add a place at the end where the seller can reject or counter a buyer-approved Multiple Counter-Proposal.

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The WB-16 Offer to Purchase – Business With Real Estate Interest and the WB-17 Offer to Purchase – Business Without Real Estate Interest were updated to reorganize the sequence of provisions to echo the transactional flow in the other WB offers to purchase and to incorporate the standard provisions used in the other offers such as Earnest Money, the Inspection Contingency and FIRPTA. The terminology in the WB-16 was recalibrated to use the terms "Real Estate," "Other Assets of the Business" and "Assets," avoiding the term "Property" as it is confusing in the business offer context. In both forms, references assuming the purchase included any accounts receivable were removed, and provisions such as Allocation of Purchase Price, Sales and Use Tax and the Appraisal Contingency were updated and improved.

In addition to the WB forms, the WRA Business Disclosure Report was updated to include more standard real estate disclosure items and upgrade the business disclosures to add details and a wide array of issues. The disclosure items in the report substantially mirror the disclosure items in the definition of "Conditions Affecting the Business, Assets or Transaction" in the WB-16.

WB-25 Bill of Sale

The revised WB-25 Bill of Sale looks a lot like the previous version of the WB-25 Bill of Sale. The revisions to the WB-25 Bill of Sale create an effective date for the transfer of personal property ownership and improve layout and functionality. As before, the seller uses a bill of sale to legally transfer ownership of personal property to the buyer. A seller uses a deed to transfer ownership of real property to a buyer and a bill of sale to transfer ownership of personal property to a buyer.

Effective Date provisions

The major change to the WB-25 Bill of Sale is that it now has an effective date tied to the successful closing of the associated real estate transaction. In the previous version of the WB-25 Bill of Sale, the transfer of ownership was seemingly immediate upon the seller signing the WB-25 Bill of Sale and delivering it to the buyer. This occasionally led to some unintended consequences.

Consider the following scenario: A buyer submits an offer that includes the seller's washer and dryer. Along with the offer, the buyer drafted a WB-25 Bill of Sale on the previous version of the form that includes the washer and dryer and attaches it to the offer as an addendum or sends it along with the offer separately. When the seller signed to accept the offer, the seller also signed the WB-25 Bill of Sale even though the buyer's intent was to include the WB-25 as an exhibit that was to be executed at closing along with the deed. The moment the seller signed the previous version of the WB-25 Bill of Sale and returned it to the buyer along with the offer, the seller sold the washer and dryer to the buyer even if the real estate transaction ultimately did not close. To avoid this error of accidentally transferring ownership of personal property in a transaction that does not close, the updated version of the WB-25 Bill of Sale is not effective unless the transaction closes.

Lines 1-10 of the WB-25 Bill of Sale provide:

Upon the Effective Date below, Seller conveys to _____ (Buyer), for good and valuable consideration, all of Seller's interest in the personal property identified in the Personal Property Schedule at lines 11-31 and in the attached Addenda per lines 32 (if any).

EFFECTIVE DATE This Bill of Sale is only effective upon the successful closing of the Buyer's offer to purchase, dated _____, to purchase Seller's property located at

_____ and payment additional consideration (if any) in the amount of \$ _____ ("none" if left blank) no later than closing.

NOTE: A copy of the fully executed closing statement and a receipt, or other reasonable evidence of full payment of any required additional consideration, shall be confirmation of the Effective Date for this Bill of Sale.

Accordingly, an inadvertent seller signature on the Bill of Sale will not sell the listed personal property until and unless the real estate transaction closes.

Language and format tweaks

The sentence on lines 33-35 of the revised WB-25 includes a few wording changes but contains the same seller's representations regarding ownership and the right to transfer the personal property: "Seller hereby warrants and represents that Seller owns said personal property free and clear of all liens and encumbrances, has good right to sell the same and will warrant and defend the same against the lawful claims and demands of all persons, except: _____."

The note on lines 36-37, that appeared in the prior version of the WB-25 Bill of Sale, is now in **bold** in the updated version. "**Note: The above warranty applies only to title. If there are any other warranties or representations as to other characteristics of the personal property a separate agreement must be drafted.**"

Finally, the previous version of the WB-25 Bill of Sale included four signature lines for individual sellers. The updated version of the WB-25 Bill of Sale includes two signature lines for individual sellers and a signature block for a seller that is an entity such as a limited liability company or a corporation.

WB-46 Multiple Counter-Proposal

Like the WB-25 Bill of Sale, the new WB-46 Multiple Counter-Proposal looks nearly identical to the previous version. It might be difficult to even spot the differences. That is because the form, as designed, was functioning well in the exact way intended. This form allows a seller to engage in non-binding negotiations with multiple buyers at the same time, giving sellers a powerful tool, especially in a competitive market. The changes to this form do not modify its purpose or function but rather improve the layout and add a line requested by members to document a potential reaction of the seller.

The WB-46 modifications include:

- Two signature lines for the seller both appear on line 25 of the revised WB-46 Multiple Counter-Proposal instead of the two full separate lines that appeared in the prior version. In an effort to be more judicious with the use of space and keep the form on one page, the signature lines for the sellers are all on one line with one signature line on the left side of line 25 and one on the right.
- Two signature lines for the buyer in the Approval by Buyer section both appear on line 33 of the revised WB-46 instead of two full separate lines. Now the signature lines for the buyers are one line with one signature line on the left side and one on the right.
- The Approval by Buyer section contains a line to indicate who presented the Multiple Counter-Proposal to the buyer and when it was presented, and a line where the buyer may indicate if they choose to reject or counter the Multiple Counter-Proposal. In the prior WB-46, the space for a buyer to reject or counter came first before the information on presentation. In the updated WB-46, logic and order has been restored and the information on presentation comes first, followed by the line where the buyer may indicate they reject or counter the Multiple Counter-Proposal should that be their choice.
- The revised WB-46 Multiple Counter-Proposal has one new addition at the very end of the form. There is now a line where the seller may document if they wish to reject or counter the buyer's approved Multiple Counter-Proposal. Line 50 of the revised WB-46 Multiple Counter-Proposal reads: "This Multiple Counter-Proposal approved by Buyer is (rejected) (countered) STRIKE ONE (Seller's Initials) _____".

The Business Offers

The business offers to purchase win the prize for being two of the longest forms and some might say the most complicated forms. The WB-16 Offer to Purchase – Business With Real Estate increased from 14 pages to 17 pages, and the WB-17 Offer to Purchase – Business Without Real Estate Interest increased from 11 pages to 12 pages. The main reason they have become a bit longer is that a bigger font size was used so they can be read more easily.

The business offers were last updated in 2014. Many of the new 2021 revisions to the business offers incorporated the changes that were made to the other offers such as including default deadlines, improving the flow

of the form and including the Foreign Investment in Real Property Tax Act (FIRPTA) provision.

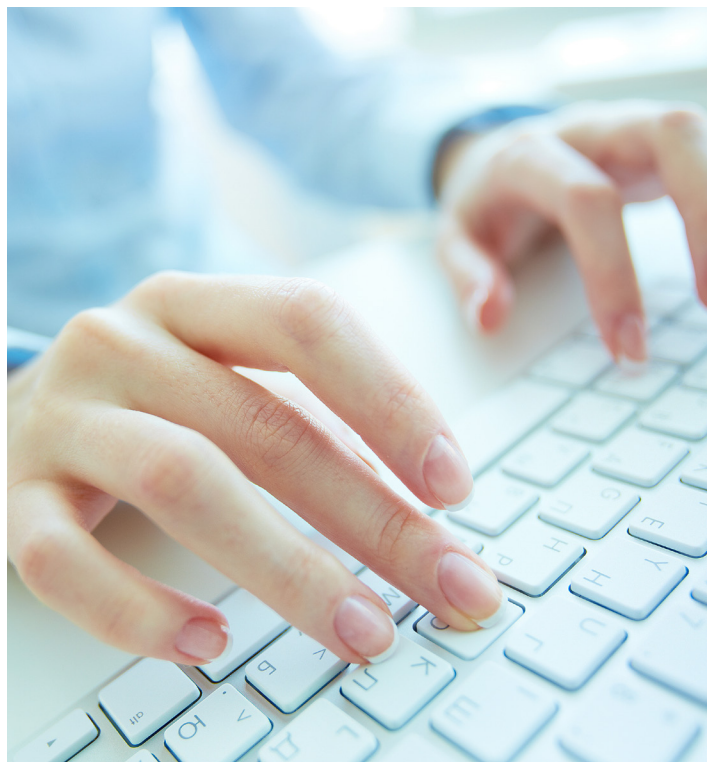
The discussion of the WB-16 Offer to Purchase – Business With Real Estate Interest consists of those issues unique to business offers including real estate. Many of the issues discussed relative to the WB-16 also apply to the WB-17.

WB-16 Offer to Purchase – Business With Real Estate Interest

The provisions of the prior WB-16 Offer to Purchase – Business With Real Estate Interest were reshuffled and reorganized to follow as much as possible the transactional flow adopted in the other offers to purchase. At the same time, the “standard” offer provisions that were updated in other WB offers were also adopted in the WB-16. This includes provisions such as Not Included in Purchase Price paired with the “Fixtures” definition, Closing, Earnest Money, Proposed Use Contingencies, Environmental Evaluation Contingency, Map of Real Estate, Inspections and Testing, Inspection Contingency, Financing Commitment Contingency, Seller Financing, If this Offer is Not Contingent on Financing Commitment, Title Evidence, Distribution of Information, Maintenance, Damage to Assets Between Acceptance and Closing, Buyer’s Pre-closing View of Assets, FIRPTA, Tax-Deferred Exchange, and Delivery of Documents and Written Notices. In many provisions, defaults were included for time frames.

Terminology

The terms used in the updated WB-16 are a little different from what everyone is accustomed to seeing in the other offers and approved forms. Because the WB-16 talks about a purchase of business assets together with an interest in real estate, the term “Property” is not used because it may lead people to automatically assume the reference is to the land and improvements when the transaction also includes business personal property and other sorts of property interests involved with the business.



Business. In the WB-16 Offer to Purchase – Business With Real Estate Interest lines 6-12 describe the “Business.” The buyer in the WB-16 offers to purchase certain assets of the business and those assets include real estate and personal property interests.

Included in Purchase Price. On lines 16-46 under “Included in Purchase Price” there is a description of two components: Interest in Real Estate, described on lines 18-29, and Other Assets of the Business, described on lines 30-34. Lines 35-36 state: “the interest in Real Estate described above on lines 18-29 together with the Other Assets of the Business described on lines 30-34, are hereinafter collectively referred to as the ‘Assets.’”

Interest in Real Estate + Other Assets of the Business = Assets

Thus “Assets” is the global term referring to everything the buyer is purchasing in the WB-16.

If a reference relates only to the real estate, then the term “Real Estate” is used. The real estate interest is described by giving the street address, indicating who is the owner and who it is leased to, if applicable, as well as a delineation of what type of interest in the real estate is included in the transaction. The type of interest may be ownership, leasehold, an assignment of existing lease or some other type of interest.

Business Personal Property. The Other Assets of the Business may include “Business Personal Property” which is defined on lines 37-43 of the updated WB-16.

“Business Personal Property” is defined as “all tangible and intangible personal property and rights in personal property owned by Seller and used in the Business as of the date on line 1 of this Offer, including, but not limited to, furniture, trade fixtures and equipment, tools used in business, telephone numbers and listings if transferable, customer lists, trade names, intellectual property, Internet domain names, digital media, digital marketing, databases, business records, supplies, leases, advance lease deposits, customer deposits, signs, all other personal property used in Business, and if transferable, all permits, special licenses and franchises, except those assets disposed of in the ordinary course of business or as permitted by this Offer.”

Conditions Affecting the Business, Assets or Transaction. The definition of “Conditions Affecting the Business, Assets or Transaction” on line 151-266 is a long laundry list of disclosure items covering real estate and business assets considerations and concerns. It addresses the items found in the updated WRA Business Disclosure Report.

Accounts receivable not automatically included

While the prior version of the WB-16 included any accounts receivable among the business assets included in the sale, accounts receivable is no longer included in that manner. It was called to the attention of the Council and the WRA Forms Committee that it is generally the case in small business transactions that accounts receivable are not included unless as part of a Net Working Capital calculation where accounts receivable and inventory less accounts payable is the generally accepted formula.

There was concern that to have only accounts receivable called out as an asset on its own may be counterproductive and confusing.

Small businesses are generally not valued with accounts receivable included because accounts receivable is a constantly moving number, and banks also generally do not like lending with accounts receivable included as the amount of the loan is variable depending on the actual accounts receivable at closing versus included in the purchase price.

Therefore “accounts receivable” was removed as an included asset in the Included in Purchase Price provisions on the first page of the WB-16 and removed from the Allocation of Purchase Price section, but accounts receivable is an optional item the buyer may write in to include in the transaction if desired per the language on lines 32-34. The buyer may also request documentation of the estimated principal balance of accounts receivable on line 414 in the Document Review/Receipt Contingency.

Allocation of Purchase Price

The Caution in the Allocation of Purchase Price section on lines 267-286 of the WB-16 now provides:

CAUTION: Failure of the parties to agree on an allocation of purchase price prior to closing may have tax implications. Fair market value of the real property must be determined prior to closing to complete the transfer return per Wis. Stat. § 77.22. The Parties should consult accountants, legal counsel or other appropriate experts, as necessary. Buyer and Seller shall each file, in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended, an asset allocation statement on Form 8594 with its federal income tax return for the tax year in which the closing occurs.

IRS Form 8594 is an asset allocation statement. When a sale or purchase of a group of assets constituting a business occurs, both parties file Form 8594 with their individual income tax returns. Both parties must report the total sales price of the business and must agree to the allocation of the total sales price among seven different classes of assets. Using this allocation method, the values are assigned according to the fair market value of the assets at the time of sale.

① MORE INFO

See the Instructions for Form 8594 at www.irs.gov/instructions/i8594.

Sales and Use Tax

The provision for Sales and Use Tax and the optional provision for the Sales and Use Tax Escrow have been modified as a result of a change in procedure at the Department of Revenue (DOR) for obtaining a clearance certificate. A clearance certificate is requested by the buyer of a business or their representative after the sale is complete to ensure that the seller has filed all sales and use tax returns and paid all sales and use taxes due. The clearance certificate protects the buyer from incurring successor liability for the seller's unpaid taxes that were incurred and payable before the sale.

① MORE INFO

See the Department of Revenue Successor Liability and Clearance Certificates information at www.revenue.wi.gov/Pages/FAQS/ise-clrcert.aspx#clrcert3.

The WB-16 provision requires that the buyer provide the seller with a copy of any clearance certificate they obtain from the DOR so that the seller will have that documentation and may use it to release any funds held in a tax escrow established per lines 295-30.

SALES AND USE TAX Sales and use tax, if any, for sales occurring prior to closing shall be paid by Seller. After closing, Buyer shall request a sales and use tax clearance certificate from the Department of Revenue confirming Seller has paid any sales and use tax due, per Wis. Stat. Ch. 77, and provide a copy to Seller. These responsibilities shall survive closing.

☐ **SALES AND USE TAX ESCROW:** Seller agrees to escrow \$_____ at closing to be held by _____ (escrow agent) and released to Seller when Seller provides the escrow agent with a copy of a sales and use tax clearance certificate from the Department of Revenue confirming that any sales and use tax due for sales occurring prior to closing has been paid, per Wis. Stat. Ch. 77. If a certificate is not provided to escrow agent within 120 days of closing, the escrow funds shall be released to Buyer. Release of funds to Buyer shall not relieve Seller of Seller's obligation to pay any sales and use tax due for sales occurring prior to closing. All escrow fees shall be paid by Seller.

Document Review/Receipt Contingency

In the Document Review/Receipt Contingency on lines 392-434 of the WB-16, the separate deadline for each individual document or item has been removed and there is one deadline for documents to be obtained by the buyer on lines 393-403 and another deadline for documents to be delivered by the seller on lines 404-434. The default for each deadline is 20 days.

Map of the Real Estate

The Map of the Real Estate contingency on lines 488-511 is similar to the map provision in the WB-15 Commercial Offer to Purchase. An ALTA/NSPS Land Title Survey is the default if a particular survey type is not specified on line 489. In terms of map features the buyer may want to have included, the parties are referred to the ALTA/NSPS Table A for a wide-ranging list of features that may be included under the comprehensive standards utilized in commercial and business surveys. The note on line 502 indicates that current ALTA/NSPS standards, including Table A Items, can be found at www.nsps.us.com.

① MORE INFO

See the American Land Title Association® (ALTA) and National Society of Professional Surveyors (NSPS) Minimum Standard Detail Requirements For ALTA/NSPS Land Title Surveys at https://cdn.ymaws.com/www.nsps.us.com/resource/resmgr/alta_standards/table_a_from_2021_alta_stand.pdf. Additional details about the requirements (Effective February 23, 2021) are at www.nsps.us.com/page/2021ALTA and https://cdn.ymaws.com/www.nsps.us.com/resource/resmgr/alta_standards/2021_Standards_20201030_grk.pdf.

As in the map provisions in the other updated offers, the contingency concludes on lines 509-511 by stating, “Once the deadline for delivery has passed, if Seller was responsible to provide the map and failed to timely deliver the map to Buyer, Buyer may terminate this Offer if Buyer delivers a written notice of termination to Seller prior to Buyer's Actual Receipt of said map from Seller.”

Appraisal Contingency

An appraisal contingency was added to all the revised offers to purchase, however, the Appraisal Contingency on lines 649-662 of the WB-16 is a bit different. The contingency has three parts, one for an appraisal of all assets included in the purchase price (appraised value to be greater than or equal to the purchase price), one for the appraisal of the real estate (appraised value to be greater than or equal to a specified amount) and one for the appraisal of specified assets (appraised value to be greater than or equal to a specified amount). Thus, the parties have the ability to select whether there will be an appraisal or more than one appraisal of all assets, just the real estate, specified assets only or some combination thereof.

The buyer can choose to have all the assets appraised by one appraiser or a team of appraisers with expertise pertaining to different sorts of assets. The appraisal report must be dated after the date on line 1 of the offer. If the appraised value does not equal or exceed the purchase price, the buyer may deliver a copy of the appraisal report and notice objecting to the appraised value to the seller.

The buyer can also choose to just have the real estate appraised. The buyer may want to confirm whether the real estate value the buyer assumed when computing the overall purchase price was too high or too low. In that case the buyer may place the value they assumed or assigned to the real estate when computing the purchase price in the blank line at line 673. If the appraised value of the real estate does not equal or exceed the amount on line 673, the buyer may deliver a copy of the appraisal report and notice objecting to the appraised value to the seller.

The same sort of process may be followed if the buyer wants to have certain non-real estate assets appraised. The buyer would write in the assets to be appraised on lines 674-675 of the WB-16 and write in their assumed value on the blank line at line 678. If the appraised value of the specified assets does not equal or exceed the amount on line 678, the buyer may deliver a copy of the appraisal report and notice objecting to the appraised value to the seller.

The buyer may choose to have one or more of these appraisals performed by checking the boxes and filling in the blank lines as appropriate.

APPRAISAL CONTINGENCY: This Offer is contingent upon the Buyer or Buyer's lender obtaining the appraisal reports checked below at buyer's expense. This contingency shall be deemed satisfied unless Buyer, within _____ days of acceptance, delivers to Seller a copy of the appraisal report(s) dated subsequent to the date stated on line 1 of this Offer, indicating the appraised value is less than the amount(s) indicated in the corresponding subsection(s) selected below and a written notice objecting to the appraised value(s) below CHECK LINES 667, 671 OR 674, AS APPROPRIATE:

ALL ASSETS APPRAISAL: An appraisal of all Assets appraised by a qualified independent appraiser for Real Estate, or by a qualified, independent appraiser for non-Real Estate Assets, who issues an appraisal report dated subsequent to the date stated on line 1 of this Offer indicating an appraised value for the Assets equal to or greater than the agreed upon purchase price.

☐ **REAL ESTATE APPRAISAL:** An appraisal of the Real Estate by a Wisconsin licensed or certified independent appraiser who issues an appraisal report(s) dated subsequent to the date stated on line 1 of this Offer indicating an appraised value equal to or greater than \$ _____.

☐ **SPECIFIED ASSETS APPRAISAL:** An appraisal of the following non-Real Estate Assets: _____ (specify by category such as inventory, vehicles, machinery, equipment, etc. or name specific Assets) by a qualified independent appraiser who issues an appraisal report(s) dated subsequent to the date stated on line 1 of this Offer indicating an appraised value equal to or greater than \$ _____.

Under the Right to Cure subsection of the Appraisal Contingency in the WB-16, the seller can "cure" by agreeing to amend the offer to modify the purchase price to account for the value differences revealed by the appraisal(s). If the appraisal was for all of the assets and it is lower than the purchase price, the seller may cure by delivering an amendment to change the purchase price to match the appraised value within a certain number of days (seven days is the default) after the buyer's delivery of the appraisal report and the notice. The buyer must accept and deliver the amendment back within a certain number of days (the default is five days). If the seller does not respond to the buyer's appraisal report and notice within the stated time frames, the offer will become null and void, unless the parties amend the offer to establish another solution and arrive at a mutually satisfactory price. This is stated on lines 680-682 and 688-696 of the WB-16 and is similar to the way the Appraisal Contingency functions in the other offers.

If the appraisal was for just the real estate or for a specified asset and the seller has the right to cure, the seller may cure by delivering an amendment to reduce the purchase price within a certain number of days (seven days is the default) after the buyer's delivery of the appraisal report and the notice. The amendment would reduce the purchase by the difference between the amount written on line 673 or 678, respectively, and the appraised amount for the real estate or the specified asset, as the case may be. The buyer must accept and deliver the amendment back with a certain number of days (the default is five days). If the seller does not respond to the buyer's appraisal report and notice within the stated



time frames, the offer will become null and void, unless the parties amend the offer to establish another solution and arrive at a mutually satisfactory price. This is stated on lines 683-696 of the WB-16.

For example, assume the buyer wants to have the canning equipment appraised to see if the value the buyer attributed to that equipment when calculating the purchase price was accurate. The buyer describes the canning equipment on lines 674-675 and may be wise to use an addendum with a specific itemization and description of what comprises the canning equipment. The buyer believed the equipment was worth \$200,000 and writes that value on line 678. The appraised value of the canning equipment is \$175,000. The buyer delivers a copy of the appraisal report and a notice objecting to the appraised value to the seller. The seller would cure by delivering an amendment reducing the purchase price by \$25,000.

■ **RIGHT TO CURE:** Seller (shall) (shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure.

If Seller has the right to cure, and the appraisal report is for all Assets, Seller may satisfy this contingency by delivering a written amendment to Buyer within _____ days ("7" if left blank) after Buyer's delivery of the appraisal report of all Assets and a notice objecting to the appraised value, solely to adjust the purchase price of the Assets to match the appraised value.

If Seller has the right to cure and the appraisal is of the Real Estate or specified Assets, Seller may satisfy this contingency by delivering a written amendment to Buyer within _____ days ("7" if left blank) after Buyer's delivery of the appraisal report and the notice objecting to the appraised value, solely to reduce the purchase price of the Assets by the difference between the amount stated on line 673 or 678 above and the appraised value if the appraised value is less than the amount on line 673 or 678, respectively.

Buyer agrees to deliver an accepted copy of the amendment to Seller within _____ days ("5" if left blank) after Seller's delivery of the amendment to Buyer. Buyer and Seller agree to make other amendments to this Offer necessitated by this change in purchase price.

This Offer shall be null and void if Buyer makes timely delivery of the notice objecting to the appraised value(s) and the written appraisal report(s) and:

- (1) Seller does not have the right to cure; or
- (2) Seller has the right to cure but:
 - (a) Seller delivers written notice that Seller will not amend the Offer to adjust the purchase price; or
 - (b) Seller does not timely deliver the written amendment adjusting the purchase price as described above.

CAUTION: Buyer may wish to confer with Buyer's lender(s) before engaging any appraisers to ensure the appraiser is acceptable to the lender.



REALTOR® Practice Tip

After consulting with the buyer and their lenders, licensees should be sure to check the boxes to select the specific types of appraisals that will be obtained. It is also necessary to set the target value for an appraisal of the real estate or specified assets, and to appropriately complete the **STRIKE ONE** feature in the Right to Cure provision on line 679. The default gives the seller the right to cure.

Personal Property Taxes/Real Estate Taxes

Separate lines were added for the proration of the Personal Property Taxes at lines 705-707. But beware: because legislation has been introduced to eliminate personal property taxes, these lines may not be used after all.

Lots of blank lines

On page 16 of the updated WB-16 there are 46 blank lines for licensees to write in additional provisions or contingencies.

Signature blocks

The signature lines on page 17 of the WB-16 are multi-purpose. For example, lines 962-956 appear as shown in the image at the bottom of the page.

If the buyer is an entity, the Buyer Entity Name goes on the first line. The next line is for the signature and the date of the person signing on behalf of the entity. For example, if the buyer entity is ABC Corporation, the signature on the next line at (x) might be that of Sam Smith, the president of ABC Corporation. On the line below Sam's signature, "Sam Smith, President" would be inserted. If ABC Corporation required two officers to sign, the second officer, for example, Susan Jones, Secretary, would sign at the second (x) and then state her name and title on the line below.

If the buyer was an individual, John Johnson would sign after the first (x) and then print his name on the line below. There would be nothing for an entity name and the person would not have a title.



962	Buyer Entity Name (if any) (include type and state of organization): _____	
963 (x)		
964	Buyer's/Authorized Signature ▲ Print Name/Title Here ►	Date ▲
965 (x)		
966	Buyer's/Authorized Signature ▲ Print Name/Title Here ►	Date ▲

WB-17 Offer to Purchase – Business Without Real Estate Interest

The WB-17 Offer to Purchase - Business Without Real Estate Interest is more-or-less the WB-16 Offer to Purchase - Business With Real Estate Interest stripped of its real estate provisions. It is the only offer that does not include FIRPTA because the WB-17 does not relate to real estate. Most of the discussion in this *Update* relative to the WB-16 also applies to the WB-17 unless the provision in question deals with real estate interests.

Acquisition of Real Estate Interest in Proposed Use Contingency

The Proposed Use Contingency in the WB-17 includes an additional sub-contingency not found in the WB-16. The thought was that the buyer may need to acquire a real estate interest as a condition of the buyer's purchase. This may be true if the buyer was purchasing the business assets and intends to locate the business at a different site and not where the business has operated in the past. Accordingly, lines 269-277 may be used to make the offer contingent on the buyer obtaining a letter of intent, execution of a lease, accepted offer to purchase, deed or another indication confirming sufficient acquisition of the real estate interest the buyer needs to proceed with the asset purchase. The objective was to make it available for the buyer to make the offer contingent on the buyer separately and successfully negotiating an interest in real estate.



REALTOR® Practice Tip

The updated business forms have been made consistent, to the extent possible, with the other approved forms. Business transactions, however, differ from other sales transactions. Because business transactions may be quite complicated, brokers should consult with their attorneys or with other brokers with business expertise when specialized competence is required. Parties may choose to have their attorneys draft contracts if the business acquisition is complicated or requires specialized provisions.

① MORE INFO

For more information about business offer provisions, read the September 2014 *Legal Update*, "Business Listing and Offers – 2014 Revisions," at www.wra.org/LU1409 and *Legal Update* 00.11, "The 2000 Business Listing and Offers," at www.wra.org/LU0011.

WRA Business Disclosure Report

The WRA has updated and expanded the WRA Business Disclosure Report available on zipForm. This report contains the disclosure items that form the foundation for the definition of "Conditions Affecting the Business, Assets or Transaction" found in the updated WB-16.

The number and detail of the disclosure items were greatly expanded to include a comprehensive array of disclosure items that are seen in the residential, vacant land, commercial, and previous business condition or disclosure reports. The content, however, is condensed and many items are combined. A specific effort was made to add items relating to physical conditions having to do with real estate to balance out the business-focused concerns that predominated in the prior version.

EDITORIAL STAFF

Authors

Debbi Conrad
Jennifer Lindsley

Production

Emily Zampardi

ASSOCIATION MANAGEMENT

Chairman

Mary Duff

President & CEO

Michael Theo, CAE

CONTACT INFORMATION

Wisconsin REALTORS® Association
4801 Forest Run Road, Suite 201
Madison, WI 53704
608-241-2047
800-279-1972

LEGAL HOTLINE

Ph: 608-242-2296
Fax: 608-242-2279
Web: www.wra.org

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