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Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

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WB-2 Farm Listing and Farm Real Estate Condition Report – 2008 Revisions

A farm sale may be the traditional sale of a family farm, a multi-million-dollar corporate agribusiness deal, a hobby farm transaction or the sale of farmland for new development. The buyers may be starry-eyed city slickers seeking the idyllic peace and tranquility of the country or sophisticated agribusiness corporations or developers. Regardless of the buyers' experience, a myriad of farm-related conditions and factors may need to be disclosed in the transaction.

The seller must disclose several issues unique to farms or predominant in rural life in a farm sale. In addition to disclosures relating to the complex use-value system for assessing farmland, safe well water is a primary concern given that 14 types of pesticides and herbicides have been found in farm water supplies due to livestock waste and the application of fertilizers, herbicides and pesticides. It is also important for the parties to know about the seller's enrollment in the Conservation Reserve Program, Wisconsin Farmland Preservation Program or similar programs because stiff penalties can be imposed when the property is conveyed without adhering to the program rules. A farmer's practices with respect to animal feedlots; livestock waste storage; land spreading of livestock waste; fertilizer application, handling and storage; pesticide application, handling and storage; and irrigation may have significant impacts on groundwater and soil quality.

The Department of Regulation and Licensing has made its final substantive

revisions to the WB-2 Farm Listing Contract – Exclusive Right to Sell. The optional-use date for the revised WB-2 is expected to be October 1, 2008, and the mandatory-use date is projected to be January 1, 2009.

At the same time, the WRA has updated and revised the WRA Real Estate Condition Report (RECR) – Farm, for use together with the updated farm listing. The WRA Farm RECR is a Wis. Stat. § 709.02 RECR for real property including one to four dwelling units that has been supplemented to bring in additional disclosure items pertinent to a working farm and rural life.

This *Legal Update* reviews the changes made to the WB-2 Farm Listing Contract – Exclusive Right to Sell, including changes adopted by the DRL and key issues to discuss with the seller, and practice tips for getting the best results with the new version of the WB-2. The *Update* also discusses many of the disclosure items in the WRA Farm RECR that are associated with farm life.

WB-2 Farm Listing Contract – Exclusive Right to Sell

The revised farm listing contract is based, in large part, on the residential listing contract. They have essentially the same procedural provisions for functions such as description of property included in list price, marketing, occupancy, cooperation with other brokers, exclusions and protected buyers, commission, broker duties

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The information contained herein is believed accurate as of 8/25/2008. The information is of a general nature and should not be considered by any member or subscriber as advice on a particular fact situation. Members should contact the WRA Legal Hotline with specific questions or for current developments.

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and agency representation options, open houses and other core processes involved when listing real estate.

As far as subject matter, the farm listing includes features from both the residential and vacant land forms.

Farms often include a farmhouse, which brings into play the considerations of the residential listing for the sale of a home. Farms also usually include numerous acres of vacant land which trigger many of the issues addressed in the vacant land forms, such as use-value and land conservation programs.

Uniform DRL Listing Revisions

In the big picture, the DRL-approved listing contracts have not undergone any major substantive changes other than the incorporation of the Broker Disclosure to Clients material. There is nothing drastically new or different. The DRL has made additional changes to update and improve the forms and make them a bit more understandable for consumers and licensees alike. Other DRL revisions are predominantly intended to clarify and improve the provisions already in place and do not make any major substantive changes.

The primary goal of the DRL revisions to the listing contracts – to incorporate the statutory Broker Disclosure to Clients language into the forms – has been successfully accomplished. REALTORS® will no longer need to use the separate Broker Disclosure to Clients form along with the WB-2 farm listing; REALTORS® will be able to go back to using just the WB-2 listing without a supplemental disclosure form.

Many of the changes to the WB-2 farm listing contract echo the revisions to the WB-1 Residential Listing Contract – Exclusive Right to Sell. The DRL intends to keep the various listing contracts for different property types as uniform as possible. Many provisions are identical and appear

in substantially the same order in each listing contract. For that reason, this *Legal Update* will overview the uniform provisions and highlight provisions specific to farm listings or deserving of particular emphasis. For a detailed discussion of the standard listing provisions found in the various DRL listing contracts, see the October 2007 *Legal Update*, “WB-1 Listing Contract – 2008 Revisions,” online at www.wra.org/LU0710.

The clarifications to the WB-2 are a by-product of eight years of experience with these forms, with a focus toward eliminating difficulties that have been experienced by licensees using the forms, and by the parties, their attorneys and the courts in attempting to interpret the forms. Many of the revisions are based, to a large extent, upon the input of WRA members who have served on WRA committees and who have called the WRA Legal Hotline with comments and suggestions.

The sample copy of the revised WB-2 Farm Listing Contract appearing on Pages 19-23 of this issue is a draft that may or may not end up being identical to the final form once the DRL completes its formatting and polishing. Line numbers and formatting may change a bit but the final content will be substantially the same. In the following discussions, the existing WB-2 (mandatory-use date 1-1-2000) will be referred to as the “2000 listing,” and the newly revised WB-2 will be referred to as the “2009 listing.”

Property Description (2009 Listing, Page 1)

The blanks in this section ask for the property's street address, which will generally be a sufficient description, but with a farm listing, a metes and bounds description may be needed. In that situation, the listing broker should follow the prompt and insert the description in the Additional Provisions lines on Page 5 or attach

the description as an addendum. This addendum can simply be a photocopy of the legal description from the seller's deed or title policy provided it is properly labeled as an addendum and incorporated by reference on Page 5 of the WB-2.

Acreage Allocation

The farm listing suggests that the seller include data such as total acreage, and the breakdown of tillable, pasture and wood lot acreage on an addendum to the listing. The listing does not require that allocation of acreage information be given because this type of data becomes unreliable as farm practices, natural influences and classification definitions change over the years. What once may have been tillable acreage may become wetlands or wood lot acreage over time.

REALTORS® are encouraged to use any good, current acreage allocations. This information may be helpful for pricing and valuation purposes, and may be relevant regarding acreage in conservation programs. Members must be careful when representing any acreage or acreage allocations to buyers that they make clear the source of such data (per seller, per tax bill, etc.).

Included in List Price (2009 Listing, Page 1)

List price is the price that will be used for marketing and determines the price component of a full-price offer that may earn the broker the commission even if the seller does not accept the offer. As the seller and the broker complete and review the listing, they are specifying what is included in the list price:

1. **Property.** "Property" is defined on the Definitions section on Page 4 of the 2009 listing as the real estate described in the Property Description section. So the list price includes the property.

2. **Fixtures Not Excluded.** The list price also includes all fixtures except those fixtures listed in the "Not Included in List Price" section. In other words, all items included in the definition of "fixtures" on the fourth page of the 2009 WB-2 are included in the sale unless specifically excluded.

"A 'fixture' is an item of property which is physically attached to or so closely associated with land or buildings so as to be treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises, items specifically adapted to the premises, and items customarily treated as fixtures." Fixtures in a farm transaction may include items such as in-ground and aboveground crop irrigation systems, ventilating fans, barn cleaners, silo unloaders, feeding equipment, bulk tanks and refrigeration systems, pipeline milking systems, and aboveground and underground fuel tanks.

Fixtures also include perennial crops. Perennial crops such as raspberries or apples, as well as trees, bushes and grass, that do not require annual planting and cultivation are classified as fructus naturales (fruits of nature) and are considered part of the real estate, that is, fixtures.

On the other hand, annual crops that have to be planted each year such as wheat and corn are classified as fructus industriales (fruits of industry) and are generally considered personal property. Accordingly, such crops must be specifically listed as "Included in List Price" on Page 1 of the WB-2 if they are to be included in the sale.

There also is a Caution at the end of the Fixtures definition reminding the seller to exclude any fixtures to be retained by seller (e.g., irrigation systems, prize rose bushes) and rented fixtures not owned by seller (e.g., water softener or other water conditioning systems, home entertain-

ment and satellite dish components, L.P. tanks, etc.).

3. **Items Listed.** The items inserted on the blank lines in the "Included in List Price" section are the third aspect of the property included in the list price. These presumably will be personal property items. For example, the seller is including movable appliances that are not considered fixtures, like a stove and refrigerator or the lawn mower. Annual crops are not part of the purchase price unless otherwise agreed.

The Caution at the end of the Fixtures definition on Page 4 reminds the seller to address annual and perennial crops, livestock and equipment like tractors, which may be personal property but are not included in the sale unless listed on the first page as "Included in List Price."

REALTOR® Practice Tips:

Any items that a buyer might think of as "detachable" should be considered by the seller and listed in the Included or Not Included sections. The seller should carefully consider property that has several components or pieces of which some may appear to be fixtures while others seem to be personal property. This may be true for home entertainment systems, stereo systems, satellite dish systems, invisible fencing and other multi-component features of the farm.

Zoning (2009 Listing, Page 1)

Unlike the residential listing contract, the farm listing contains an item where the seller represents the property's zoning.

In Wisconsin, there are many different types of agricultural zoning. The most restrictive zoning classification is Exclusive Agricultural Zoning (EAZ). EAZ generally provides that farmland cannot be developed and that no residences can be built unless

occupied by the farmer, the farmer's parents or children, or a person working on the farm. The minimum parcel size for building a farm residence is 35 acres. The landowner must demonstrate "substantial income" from farming to be allowed to build a home, otherwise the land must be rezoned to a residential district. Other allowable uses, such as a farm implement dealer or a roadside stand, must be compatible with farming. Special assessments for sanitary sewers, water, lights or nonfarm drainage may not be able to be imposed upon land zoned for exclusive agricultural use.

Approximately 7 million acres and about 31,000 farmers are subject to EAZ. There are currently 189 EAZ ordinances that cover 441 local units of government. Of this number, 19 are cities, 18 are villages and 404 are towns. Of the towns, 118 have established and administer their own EAZ ordinances, and 286 have adopted county-administered EAZ ordinances (33 counties administer EAZ ordinances). EAZ is a prerequisite for farmers who wish to take advantage of the Wisconsin Farmland Preservation Credit Program.

Governmental and Conservation Programs (2009 Listing, Page 1)

The 2009 WB-2 includes another section not found in the residential listing contract that asks the seller to disclose his participation in, or his property being enrolled in or subject to, any federal, state or local farmland preservation, environmental, conservation or similar use-restricting programs. Some of these may include the Conservation Reserve Program, Farmland Preservation Credit Program, Forest Crop and Managed Forest Programs, and conservation easements. This information is important because these programs typically involve requirements that the owner must meet, and penalty provisions are

often triggered by early withdrawal from the program or conveyances not in conformance with program rules.

Conservation Reserve Program

The Conservation Reserve Program (CRP) encourages farmers, through contracts with the U.S. Department of Agriculture, to stop growing crops on highly erodible or environmentally sensitive land and, instead, to plant a protective cover of grass or trees. CRP contracts run for 10 to 15 years, and owners receive an annual rent plus one half of the cost of establishing permanent ground cover. Removing lands from a CRP in breach of a contract can be quite costly.

The owners may receive up to \$50,000 per year under these contracts, but all annual payments are to be fairly allocated among the owner and any tenants and sharecroppers. A bidding process among applicant owners establishes the payment amounts. A conservation plan, approved by the local conservation district, is incorporated into the contract. Eligible cropland or pastureland must be suitable for any of the following conservation practices: riparian buffers, wildlife habitat buffers, wetland buffers, filter strips, wetland restoration, grass waterways, shelterbelts, living snow fences, contour grass strips, salt tolerant vegetation and shallow water areas for wildlife.

A buyer purchasing land subject to a CRP contract may become a successor to the existing contract or may enter into a new CRP contract under the same terms and conditions as the existing contract. Annual rent payments for the year of sale are prorated between the buyer and the seller. If an owner subject to a CRP contract sells the land and the buyer does not continue in the program, the seller forfeits all rights to future payments, must refund all payments already made, plus interest, and must pay liquidated damages in the amount

of 25 percent of the annual rent rate.

Visit the USDA Farm Service Agency's Conservation Reserve Program main page, online at www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=crp-sp, for additional information.

Wisconsin Farmland Preservation Program

In 1977, the state Legislature adopted the Farmland Preservation Act. The Act sought to address the loss of good farmland by encouraging local agricultural preservation planning and implementation, and by providing tax incentives to individual farmers who make a commitment under the program. The program consists of three components: land-use planning, soil and water conservation, and tax relief.

In order for farmers in any county to participate in the program, the county must adopt an agricultural preservation plan that is certified by the Department of Agriculture, Trade and Consumer Protection (DATCP) Land and Water Conservation Board. A farmer in an "agricultural preservation or transition area" may qualify for farmland preservation tax credits if a county, town or municipality has adopted a certified exclusive agricultural-use zoning ordinance.

All Farmland Preservation Program participants have a conservation plan. These plans outline soil conservation guidelines and restrictions on the property receiving the tax credit. Plans will be revised at least once every five years.

In order to receive a tax credit, the farmer must be a resident of Wisconsin, own a minimum of 35 acres of contiguous land that produced gross farm profits of not less than \$6,000 in the last year or \$18,000 in the last three years, or own a parcel of 35 or more acres of which at least 35 are enrolled in the CRP. No structures or improvements can be made unless they are consistent with agricultural use. If

the farmland is rezoned, the owner may be required to pay back all or part of the farmland preservation tax credits received in the last 10 years.

If a Farmland Preservation Agreement is not renewed after the first 10 years, no tax credit payback is required. If, however, an agreement is ended before the termination date, tax credits may have to be paid back for up to the past 10 years. If the land is zoned out of exclusive agricultural zoning, granted a non-agricultural purpose conditional-use permit or special exception, or otherwise taken out of the program, a payback of the tax credits received over the last 10 years is required. If the tax credits are not repaid upon notification of the amount due, a payback lien is recorded and 6 percent compound interest is assessed. If the land is sold to anyone other than the owner's child or is converted to a nonagricultural use, the payback lien becomes due.

For additional information see "Wisconsin Farmland Preservation Credit" (Wisconsin Department of Revenue Publication 503), online at www.revenue.wi.gov/pubs/pb503.pdf, and Community Planning in Wisconsin (Brian W. Ohm), Chapter 11: "Agriculture," online at www.lic.wisc.edu/shaping-dane/resources/planning/library/book/chapter11/chap11_1-1.htm.

Forest Crop and Managed Forest Programs

The purpose of Wisconsin's forest tax laws is to encourage sustainable forestry on private lands by providing property tax incentives to landowners. This is accomplished with a binding agreement between the state Department of Natural Resources and private landowners.

Early property tax policy in Wisconsin required woodland owners to pay higher taxes on their lands. This policy was a financial burden on woodland owners and, in many instances,

landowners overcut their timber to pay their tax obligation. The negative effect of overcutting prompted state authorities to enact forest tax laws to promote timber growing. Today over 33,000 primary landowners, owning more than 3.2 million acres, are enrolled in the two forest tax law programs: Forest Crop Law (FCL) and Managed Forest Law (MFL). The FCL program closed to new enrollment in 1986, when the MFL program replaced both the FCL and the former Woodland Tax Law.

Forest Crop Law

The FCL, enacted in 1927, closed enrollment on January 1, 1986. It allows landowners to pay taxes on timber only after harvesting or when the contract is terminated. The FCL program applies to properties of at least 40 acres of adjoining forest land and has promoted and encouraged long-term investments as well as the proper management of woodlands.

Current enrollment is about 2,500 landowners with about 359,000 acres. Renewal is not permitted. A landowner may enter his or her land into the MFL program, which replaced both the FCL program and the former Woodland Tax Law. Early conversion into the MFL is also available.

Managed Forest Law

Enrollment in the MFL program is open to all private owners of 10 or more acres of woodlands. Under the MFL, the landowner agrees to a management plan for a period of 25 or 50 years. Lands entered under the forest tax laws are required to have written management plans that landowners must follow. The management plans can address harvesting and thinning timber, tree planting, erosion control and wildlife measures. These plans must be prepared either by a certified plan writer or a DNR forester.

Landowners should carefully review all program obligations before signing the management plan. All forest tax

laws have stringent requirements and failure to follow these requirements can lead to substantial withdrawal penalties. Any landowner who wants to sell, transfer or withdraw all or part of their tax lands should work with their local DNR forester to fully understand possible consequences.

Under the forest tax laws, property taxes are set at a low rate – as low as 10 cents per acre – and as high as \$7.28 per acre. The MFL rates will be revised for 2008 by the state Department of Revenue.

Lands designated as MFL may be voluntarily withdrawn at any time or involuntarily withdrawn by the DNR if the landowner violates the conditions of the MFL order. Withdrawals must meet one of the following conditions: (1) an entire parcel(s) of MFL land, (2) all MFL land within a quarter-quarter section, government lot or fractional lot, or (3) an entire MFL entry. Withdrawals that do not meet one of these conditions may jeopardize the eligibility of the remaining land. Lands remaining after a withdrawal must meet the minimum eligibility requirements. A withdrawal tax plus a \$300 withdrawal fee will be assessed.

For further DNR MFL information and requirements, visit <http://dnr.wi.gov/forestry/ftax/mfl.htm>.

Conservation Easements

Conservation easements are legal agreements entered into voluntarily by a property owner for the purpose of protecting ecologically significant areas on a property. A conservation easement may be established pursuant to Wis. Stat. § 700.40 for the purpose of retaining or protecting natural, scenic or open space features; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; maintaining or enhancing air or water quality; preserving a burial site; or preserving the historical,

architectural, archaeological or cultural aspects of a property.

In a conservation easement, the property owner sells or gives away some of the rights associated with property ownership, such as the right to construct buildings, harvest timber or clear vegetation. In return, the property owner gains a tax benefit or compensation. Conservation easements are tailored to the characteristics of a specific piece of property and to the wishes of the property owner, and keep the property in private ownership.

If an individual is interested in obtaining tax benefits, the easement must be donated or sold for less than fair market value to a public agency or to a conservation organization qualified as tax-exempt under § 501(c)(3) of the Internal Revenue Code. Only governmental bodies and charitable organizations may hold and enforce conservation easements. Land restrictions can prohibit all development or limit development to certain types and uses.

A conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated and amended in the same manner as any other easement. Conservation easements run with the land, so all subsequent owners must abide by the terms of the easement.

For further discussion of conservation easements, see Pages 4-5 of *Legal Update 00.08*, "Express Easements," online at www.wra.org/LU0008.

Use-Value Assessment (2009 Listing, Page 1)

The 2009 WB-2 asks the seller to represent whether any of the property for sale has been assessed as agricultural property under the use-value system. This will alert the listing agent to ensure that the seller makes the three-part

use-value disclosure required by the Wisconsin statutes. This disclosure is included in the WRA Farm RECR.

Under the use-value assessment method, Wisconsin farmland is assessed for property tax purposes based upon its agricultural productivity rather than its fair market value or potential for development. If the use of land assessed under the use-value system is changed to a nonagricultural use, the then-current owner must pay a "conversion charge" (previously referred to as a penalty). In other words, if a buyer changes the use of the land assessed under the use-value system, the buyer may have to pay a conversion charge that captures between 5 and 10 percent of the property tax savings that occurred when the land was taxed as agricultural land in the year before the conversion. If the use changed before the sale, the seller would be responsible for the conversion charge.

A conversion charge is assessed when agricultural land is converted to a residential, commercial or any other non-agricultural use. The statutes do not define when a "change of use" occurs.


Rather, the local assessors are given the authority to make this determination.

With respect to real estate sales, Wis. Stat. § 74.485 requires sellers to notify the buyer of three things:


1. that the land has been assessed as agricultural land under the use-value law;
2. whether the seller has been assessed a conversion charge; and
3. if so, whether the conversion charge has been deferred.

See the discussion of the use-value disclosures in the WRA Farm RECR on Page 16. For additional use-value information, read "Full Disclosure – Real Estate Tax Penalties," in the February 2007 edition of the *Wisconsin Real Estate Magazine*, online at www.news.wra.org/story.asp?a=663, the June 2008 *Broker Supervision Newsletter*, "Use Value Assessment of Agricultural Land," online at www.wra.org/online_pubs/broker_supervision/2008/br0806.asp, and the Wisconsin Department of Revenue conversion charge FAQs at www.dor.state.wi.us/faqs/slf/usevalue.html.

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Occupancy (2009 Listing, Page 1)

The Occupancy section alerts the seller that the farmhouse or other dwellings on the property need to be broom swept with all debris and personal property removed at closing so that the buyer may take the keys and move in without having to deal with the seller's "stuff." This section also provides that, "Should Seller or Seller's tenant occupy the Property after closing or retain ownership of crops, consider a special agreement regarding an occupancy escrow, insurance, utilities, maintenance, responsibility for and rights to unharvested crops, farm operations and government programs, etc." This may require the use of WRA Addendum O to the Offer to Purchase – Occupancy Agreement or some other agreement regarding crops or a crop lease.

Cooperation, Access to Property or Offer Presentation (2009 Listing, Page 1)

In this section, the seller agrees that the broker will cooperate and work with other agents in marketing the property, including subagents (redefined to be consistent with the 2006 agency law revisions) and buyer's brokers, except as specified in the blank line near the end of this section. This is consistent with Article 22 of the Code of Ethics, which provides that REALTORS® shall cooperate with other brokers unless cooperation is not in the seller's best interests.

Similarly, Wis. Admin. Code § RL 24.13(2)(a) provides that listing brokers shall permit all buyers and their agents access to a listed property for showings unless such access is contrary to the seller's specific written instructions, and § RL 24.13(1) indicates that licensees should draft and submit all offers to the owner unless "contrary to the specific instructions of the owner." Any seller exceptions to universal cooperation are to be listed on the blank line provided.

Exclusions (2009 Listing, Page 1)

This section states, "All persons who may acquire an interest in the Property as a Protected Buyer under a prior listing contract are excluded from this Listing to the extent of the prior broker's legal rights, unless otherwise agreed to in writing." "Protected Buyer" is defined in the Page 4 Definitions section of the 2009 farm listing.

REALTOR® Practice Tips:

The prudent broker will talk to the seller about any prospective buyers and ask the seller to see any correspondence received from the prior listing broker, if the seller is willing. While the WB-2 no longer contains the caution to remind listing brokers to check with the prior listing broker for the names of protected buyers, that does not mean that a broker listing a property that was previously listed should still not immediately submit a written request to the prior listing broker for a list of all protected buyers and ask the seller to forward a copy of the list immediately upon receipt, as discussed in the February 2004 *Legal Update*, "Listing Procedures for the Prudent Broker," online at www.wra.org/LU0402.

As before, in addition to Protected Buyers from a prior listing, the seller may name certain buyers who are excluded from the listing until the stated date. This provision is intended to permit sellers to exclude their family members, neighbors and other potential buyers with whom the seller has previously negotiated.

Compensation to Others (2009 Listing, Page 1)

A new provision appearing at the bottom of Page 1 of the 2008 listing provides, "Broker offers the following commission to cooperating brokers: _____ (Exceptions if any): _____." This is a

provision championed by the DRL Secretary who believes that this is an important consumer protection provision and that the seller should know what cooperative commission the listing broker is going to offer to other brokers. The provision is also consistent with Standard of Practice 1-12 from the REALTOR® Code of Ethics.


Standard of Practice 1-12 provides that when entering into listing contracts, a REALTOR® must advise the seller/client about the REALTOR®'s company policies regarding cooperation with other brokers and the amount of compensation that will be offered to subagents and buyer's agents. The presumption is that sellers are entitled to know whether the compensation being offered will trigger the desired level of interest and market exposure. Prudent listing brokers should disclose their MLS compensation splits, disclose if they have policy letter compensation agreements with any brokers and let the seller see a copy of policy letters upon request.


The challenge in this provision is not describing the cooperative compensation the listing broker offers. Rather it is in the seller questions that may be prompted by the provision, for example, "Is that the highest rate?" "Is that the normal rate?" or "Shouldn't you give them more to make sure this house sells?" REALTORS® must exercise great care when responding to such questions to avoid any suggestion of commission rate price-fixing.

REALTORS® should strictly observe the following guidelines:

REALTOR® Practice Tips:

All decisions concerning commissions or fees must be unilateral, independent business decisions made solely within the broker's office, without consultation or discussion with anyone from other real estate brokerage firms. However, a broker may make pricing decisions based upon the prices charged by competitors.

 **REALTOR® Practice Tips:** REALTORS® must always avoid all communications and discussions with other brokers that relate in any way to the commission rates charged to sellers and buyers, the rates paid to other brokers for cooperative commissions and the compensation paid to salespersons.

 **REALTOR® Practice Tips:** Brokers should be sure that their sales agents and other staff are trained to explain the commissions and fees charged by the company in terms of independent decisions and competitive market forces and avoid giving the appearance of collusion among competing companies. Agents should never refer to the pricing policies of other companies or make statements like, "This is the rate every firm charges," or "commission rates are pretty standard."

Further discussion of antitrust law concerns is found in the March 2004 *Legal Update*, "Antitrust Primer for Real Estate Practice," online at www.wra.org/LU0403.

Commission (2009 Listing, Pages I-2)

The overall structure and substance of the commission section in the 2009 listing remain unchanged. The first line of the section is improved and simplified by simply stating, "Broker's commission shall be _____, leaving to the broker whether to state a percentage of the purchase price, a set amount or other compensation descriptions.

The 2009 listing provides that the listing broker's commission is earned if "A transaction occurs which causes an effective change in ownership or control of all or any part of the Property." Thus if a corporation, LLC, or some other business entity or organization owns the property and the majority corporate stockholder or LLC member sells to another person, the effect is the same as if

the property owned by the entity has been sold. The person or persons with voting control over the disposition of the property has changed.

In terms of changes to the Commission section, a provision at the end of the Commission section that states, "NOTE: A sale, option, exchange or procurement of a buyer for a portion of the Property does not terminate the Listing as to any remaining Property." This applies to the real estate only, not to any personal property items included in the list price. "Property" is defined in the Page 4 Definitions section as the real estate described at lines 2-6.

Extension of Listing (2008 listing, Page 2)

The Extension of Listing section near the top of Page 2 of the 2009 listing is remarkably brief and to the point once the definition of "protected buyer" is extracted and placed in the Definitions section on Page 4 of the 2008 listing: "The Listing term is extended for a period of one year as to any Protected Buyer." See Pages 8-10 of the February 2004 *Legal Update*, "Listing Procedures for the Prudent Broker," online at www.wra.org/LU0402 for discussion of listing protection procedures and issues.

Termination of Listing (2009 Listing, Page 2)

How is a listing contract terminated?

A listing contract can be terminated by: (1) sale of the property, (2) expiration of the listing term, (3) death or incapacity of either party, (4) cancellation by one party, although that party may be liable to the other for damages, (5) transfer of title to the property by operation of law, such as in a bankruptcy, (6) mutual consent, or (7) destruction of the property or a change in property use by outside forces, such as a change in zoning or condemnation by eminent domain. While the listing bro-

ker and seller can always mutually agree to terminate a listing contract, the Termination of Listing section of the 2009 listing contract addresses unilateral terminations by one party.

Power vs. Legal Right to Terminate

Both the 2000 and the 2009 WB-2 listing contracts say, "Neither Seller nor Broker have the legal right to unilaterally terminate this listing absent a material breach of contract by the other Party." However, the power to revoke or cancel the listing contract must be distinguished from the right to revoke or cancel it. The seller always has the power to cancel the listing contract but may not have the right to do so.

A listing contract is a personal services contract that establishes a fiduciary relationship of trust and confidence between the seller and the broker. An agency contract, such as a listing, is a personal service contract based upon a special fiduciary relationship of trust and confidence in the broker. Because the contract reflects an agency relationship, the seller possesses the power to revoke or terminate the listing contract at any time. A seller (the principal) cannot be compelled to remain in the agency relationship with a broker (the agent) with whom the seller no longer wishes to work.

Canceling the listing before its expiration date will typically constitute a breach of the contract terms and thus violate the broker's rights. The broker may then demand compensation for the damages sustained and reimbursement for out of pocket expenses as a result of the early listing termination. The broker cannot, however, sue the seller for specific performance because of the agency relationship. In other words, the broker cannot compel the seller to remain in the relationship or as a party to the listing contract.

The broker's damages, in general terms, might include the costs of advertising, reimbursement for other expenses incurred by the broker

in the process of listing and marketing the property, and the value of services rendered, assuming the broker can sufficiently prove this. Commission will be due only if the broker can prove that the broker had procured a buyer ready, willing and able to purchase the property upon the terms and conditions specified in the listing contract or on terms otherwise acceptable to the seller.

The seller may cancel the listing without risk of damages if the termination is for cause or based upon a material breach of contract by the listing broker. For example, if the listing broker fails to perform according to the terms of the listing contract or otherwise fails to act in good faith, then the seller will have the legal right, not just the power, to terminate the listing. Then the broker cannot claim any damages based upon the early termination because the broker was in breach.

Agents Lack Authority to End Contract or Change Commission

Both the 1999 and the 2008 listing contracts also provide that, "Seller understands that the parties to the listing are Seller and the Broker firm). Agents (salespersons) for Broker (firm) do not have the authority to enter into a mutual agreement to terminate the Listing, amend the commission amount or shorten the term of this Listing, without the written consent of the agent's supervising broker." This provision alerts the seller that the listing agent has no authority to terminate the listing, shorten the listing term or change the commission amount without the written consent of the agent's supervising broker.

Early Termination Notices must be in Writing

A new provision added to the Termination of Listing section indicates, "Seller and Broker agree that any termination of this Listing by either Party before the date stated on line 292 shall be indicated to the other Party in writing and shall not be

effective until delivered to the other Party in accordance with lines 213-218. CAUTION: Early termination of this Listing may be a breach of contract, causing the terminating Party to potentially be liable for damages."

Under the 2000 listing, the seller could terminate the listing by verbal notice, written letter or notice, or amendment of the listing contract (changing the expiration date to a current date). The 2009 listing eliminates the option to terminate verbally and requires that any written termination notice be delivered in accordance with the definition of delivery found on Page 4 of the 2009 listing. The termination notice will be effective upon delivery, which should substantially diminish the common problem of trying to determine the exact date of termination.

Once a seller has delivered written notice to the broker that the listing is terminated, the listing broker may wish to officially document this by amending the listing contract to change the end of the contract term to the effective date of the termination notice, or by submitting a cancellation agreement and mutual release (CAMR).

REALTOR® Practice Tips:

Brokers intending to establish listing protection should not use a CAMR because this waives all rights under the listing contract, including the right to assert listing protection. For more information about seller termination issues, see the September 2006 issue of the *Broker Supervision Newsletter*, "Early Termination of Listing Contracts," online at www.wra.org/BSNSept06.

Broker Disclosure to Clients (2009 Listing, Pages 2-3)

The content of the WRA Broker Disclosure to Clients is now incorporated into the 2009 listing. REALTORS® will no longer need to use the separate Broker Disclosure to Clients

form when they use the 2009 listing.

This section reviews the duties a broker owes to all parties and the duties owed to a client. Effective in 2006, Wis. Stat. § 452.133(2)(am) established a broker's duty to provide information and advice, when requested by the client, regarding matters that are material to the client's transaction and within the scope of the knowledge, skills and training required by Wis. Stat. ch. 452. The difference between the advice that a broker can provide to a customer and the advice the broker must provide to a client upon request is that the advice given to a client can favor the client's interests ahead of the other party. Therefore it is perfectly appropriate to tell a buyer/client that a property is overpriced, but it would not be appropriate to offer that advice to a buyer/customer.

This section also gives a detailed explanation of multiple representation relationships with and without designated agency before asking the seller to select an agency relationship. Agents should be prepared to discuss this information with a prospective client and explain how this will operate in various situations.

The fullest range of representation in all transactions will be available with multiple representation with designated agency. In a multiple representation with designated agency relationship, both clients are entitled to full advice and negotiation services so that the agents working with the buyer and the seller, respectively, can give their clients advice on how to gain advantages in the negotiations even if this advice is not in the best interests of the other client in the designated agency transaction. It is also important that the consumer understand the other options and make a choice that is comfortable for him or her.

What happens if one client refuses to allow multiple representation with

designated agency or if in the middle of negotiations one client withdraws the consent to multiple representation with designated agency?

The agents working in a transaction in which all parties have consented to multiple representation, but one or more parties have rejected multiple representation with designated agency, will practice as they would under the old law in a “dual agency” situation. In other words, this would be basic multiple representation without designated agency.

So that they can easily explain these concepts to consumers and address consumer questions, REALTORS® should periodically review the explanations of multiple representation and agency relationships in the April 2006 *Legal Update*, “Chapter 452 Modernization Act,” online at www.wra.org/LU0604, and the June 2006 *Legal Update*, “Revised Agency Law Implementation,” online at www.wra.org/LU0606.


The statutory Broker Disclosure to Clients section ends with an explanation of subagency and a reminder to the consumer that licensees are not attorneys or professional inspectors and that appropriate professionals and inspectors should be consulted within their areas of expertise throughout the transaction. This is followed by a section regarding confidentiality, which is substantially similar to the section that appears in the old agency disclosure forms.

Real Estate Condition Report (2009 Listing, Page 3)

The Real Estate Condition Report provision is found on Page 3 of the 2009 listing, following the Broker Disclosure to Clients material. This provision now provides, “Wisconsin Administrative Code Chapter RL 24 requires listing brokers to make inquiries of the Seller on the condition of the Property and to request that Seller provide a written response to

Broker’s inquiry. Seller agrees to complete a real estate condition report to the best of Seller’s knowledge. Seller agrees to amend the report should Seller learn of any defect(s) after completion of the report but before acceptance of a buyer’s offer to purchase. Seller authorizes Broker to distribute the report to all interested parties and agents inquiring about the Property. Seller acknowledges that Broker has a duty to disclose all material adverse facts as required by law.”

The seller’s agreement to complete “a real estate condition report” is critical because the RECR is the only property condition disclosure that the seller is asked to make in the farm listing contract. Unlike the 2000 listing, there is nothing in the 2009 listing that specifies or requires a Wis. Stat. ch. 709 RECR, but that report is required by law if the property includes a farmhouse or one to four other dwelling units. While the provision no longer requires the seller to complete the report provided by the listing broker, as was the case in the 2000 listing, that does not mean that REALTORS® should not make every effort to be ready to hand the seller the condition report that the listing broker would like the seller to use.

 **REALTOR® Practice Tips:** REALTORS® should be ready to provide the seller with copies of their preferred RECR at the listing appointment. Brokers may wish to establish this requirement as a matter of office policy to try to avoid situations where this important document is forgotten or overlooked.

Seller Representations Regarding Defects (2009 Listing, Page 3)


The Seller Representations Regarding Defects section directly following the RECR on Page 3 of the 2009 listing provides, “Seller represents to Broker that as of the date of this Listing, Seller has no notice or knowledge of any

defects affecting the Property other than those noted on the real estate condition report. WARNING: IF SELLER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, SELLER MAY BE LIABLE FOR DAMAGES AND COSTS.” Accordingly, the only provided means for collecting information about problems or concerns with the condition of the property in the 2009 listing is the “real estate condition report.”

If the farm property is subject to Wis. Stat. ch. 709, the competent broker will provide a chapter 709 RECR so that the seller can comply with the law and the listing contract. Chapter 709 generally applies to all persons who transfer real estate containing one to four dwelling units, including condominium units, time share property, living quarters in a commercial property, etc., but does not apply to:

1. personal representatives, trustees, conservators and other fiduciaries appointed by or subject to supervision by the court, but only if those persons have never occupied the property (note: this does not include powers of attorneys);
2. real estate that has not been inhabited, e.g., new construction; and
3. transfers exempt from the real estate transfer fee, e.g., between spouses, foreclosures, probate transfers, etc.

If chapter 709 does not apply, the broker may give the exempt seller a chapter 709 RECR to complete, thus essentially overriding the statutory exemption, or some other property condition report. Sellers who refuse to complete the RECR provided by the listing broker will be in breach of the listing contract.

 **REALTOR® Practice Tips:** REALTORS® may use the updated WRA Real Estate Condition Report – Farm, a Wis. Stat. § 709.02 RECR for real property including one to four dwelling units that has been supplemented

with additional disclosure items pertinent to rural life. The Farm RECR is discussed in detail beginning on Page 12 of this *Update*.

Broker Duties Regarding Property Condition Disclosures

A seller who does not make property condition disclosures increases the burden of the listing broker. The listing broker must still inspect the property and ask the seller about “the condition of the structure, mechanical systems and other relevant aspects of the property as applicable,” and request a written response from the seller.

- Wis. Admin. Code § RL 24.07(1)(a) provides: “A licensee, when engaging in real estate practice which involves real estate improved with a structure, shall conduct a reasonably competent and diligent inspection of accessible areas of the structure and immediately surrounding areas of the property to detect observable, material adverse facts.”
- § RL 24.07(1)(d) provides: “A reasonably competent and diligent inspection of vacant land does not require an observation of the entire property, but shall include, if given access, an observation of the property from at least one point on or adjacent to the property.”
- § RL 24.07(1)(b) provides: “Listing broker. When listing real estate and prior to execution of the listing contract, a licensee shall inspect the real estate as required by sub. (1), and shall make inquiries of the seller on the condition of the structure, mechanical systems and other relevant aspects of the property as applicable. The licensee shall request that the seller provide a written response to the licensee's inquiry.”

If the seller declines to provide written information, the listing broker will be left to disclose material adverse facts in writing to buyers based upon what the broker observes and what the seller says.

Definitions (2009 Listing, Page 4)

The 2009 listing defines “Adverse Fact,” “Deadlines–Days,” “Delivery,” “Fixtures,” “Material Adverse Fact,” “Procure,”

“Property” and “Protected Buyer” on Page 4. The definition of “conditions affecting the Property or transaction” is gone.

The “Deadlines – Days” definition specifies the formula for counting the days to a deadline, for example, the three days after the expiration of the listing contract used in listing protection. This formulation is based upon the language in the offer to purchase.

The definition of “procure” had been modified to require an enforceable, instead of a valid and binding contract of sale, to specify that a full-price offer must be submitted to the seller or listing broker, and to substitute the term “buyer” in place of the word “purchaser.”

The definition of “delivery” was modified to add “or 4) as otherwise agreed in additional provisions on lines 242-250 or in an addendum to this Listing” to the end of the list of authorized means of delivery. A specific authorization for e-mail delivery was not included, although it appears that an e-mail delivery provision will be included in the upcoming revisions to the offer to purchase forms.

E-Mail Delivery and E-Commerce

In this day and age of the Internet and e-mail, more and more REALTORS® are using these technologies to improve efficiency and consumer appeal. Apparently many practitioners do use e-mail already, to one extent or another, in some cases going beyond what is legally appropriate. So it is unfortunate that this means of delivery was not sanctioned in the listing contracts.

The two-step mechanism for obtaining a consumer’s consent to e-mail delivery is not hard at all once a REALTOR® gets the hang of it – in fact it is pretty easy! In the first step the broker copies and pastes a consumer electronic consent form into an e-mail that is sent to the consumer. After reading this information, the consumer clicks on Reply, types in his or her name in the signature space and sends it back to the broker. The first step is now done and that consumer may now receive and send transaction documents via e-mail.

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The second step is to place language authorizing e-mail delivery into the relevant contracts because REALTORS® are required to put agreements into writing. Thus the WRA Addendum D – or the language from that form or similar language – needs to be added to the listing contract, buyer agency agreement, offer to purchase, etc. The tools for accomplishing both the electronic consent and contract language steps can be found on the E-Commerce REALTOR® Resource Page, online at www.wra.org/ecommerce.

For further discussion of e-mail delivery, see the May 2008 edition of the *Wisconsin Real Estate Magazine*, “E-Mail Delivery: Working with Consumer Consents to Deliver Electronic Documents,” online at <http://news.wra.org/story.asp?a=922>, and the February 2008 *Legal Update*, “Electronic Commerce and E-Mail Delivery,” online at www.wra.org/LU0802.

Non-Discrimination (2009 Listing, Page 5)

The listing contract states the agreement of the seller and broker to not discriminate against any prospective buyer based on race, color, sex, sexual orientation as defined in Wis. Stat. § 111.32 (13m), disability, religion, national origin, marital status, lawful source of income, age, ancestry or familial status, or in any other unlawful manner.

Notice about Sex Offender Registry (2009 Listing, Page 5)

While REALTORS® have been using WRA forms that had been modified to include a notice about the sex offender registry, this notice is now a part of the approved form. The Megan’s Law disclosure in the listing contracts provides the broker with immunity regarding disclosure to sellers per Wis. Stat. § 452.24.

WRA Real Estate Condition Report – Farm

The *Update* now turns to a review of the updated WRA Real Estate Condition Report – Farm, intended for use together with the updated farm listing. The WRA Farm RECR is a Wis. Stat. § 709.02 RECR for real property including one to four dwelling units that has been supplemented to bring in additional disclosure items pertinent to a working farm and rural life. The supplemental information appears on the Farm RECR in italics. The sample copy of the revised WRA Real Estate Condition Report – Farm appearing on Pages 24-26 of this *Update* is a draft that is substantially identical to the final form, subject only to final formatting and polishing.

The Farm RECR includes features from both residential and vacant land RECR forms. Farms typically include a farmhouse, which brings into play the considerations of the Chapter 709 RECR concerning the purchase of a residence. Farms also typically include numerous acres of land, which trigger a great many of the issues addressed in the vacant land forms, such as fence law and land conservation programs. In addition, farms often include outbuildings and equipment unique to farming operations such as barns, silos, milking systems and feeding equipment. Thus the Farm RECR is a hybrid containing provisions from the residential and vacant land RECR forms and features unique to the operation of a farm.

The following discussion overviews many of the italicized farm-related supplemental items on the Farm RECR that have been added to the basic § 709.02 RECR to make it more appropriate for farm transactions.

OWNER’S INFORMATION, B.1. – Definition of “Property”

The text of the Chapter 709 RECR has been supplemented by

adding a definition of property. “Property” is defined to include:

1. the land;
2. dwellings;
3. barns and outbuildings; and
4. any other real or personal property included in the transaction.

The owner is reminded that the Property Condition Statements pertain to all property, not just dwellings.

PROPERTY CONDITION STATEMENTS, C.5. – Well Water Contamination

The supplemental language in this item cautions about contaminants such as coliform, nitrates and atrazine, and out-of-service wells and cisterns not closed/abandoned according to applicable regulations.

Fourteen types of pesticides and herbicides have been found in Wisconsin water supplies. Given the potential for groundwater contamination associated with livestock waste and the application of fertilizers, herbicides and pesticides, it is important for the buyer to know about any well water problems the owner has experienced. On a farm, nitrates (a danger for infants) can originate from fertilizer infiltration and animal feedlots.

Atrazine (used to control weeds in corn) is by far the most frequently detected pesticide and is considered a possible cancer-causing substance. In areas where corn has been planted, any wells contaminated with pesticides almost always contain some level of atrazine. Wells near underground gas tanks and old landfills may contain volatile organic chemicals (VOC) that can harm various organs and cause cancer and reproductive system problems.

For additional information about well water contamination, see Pages 4-10 of *Legal Update 02.10*, “Drinking Water and Wells,”

online at www.wra.org/LU0210, and the DNR "Tests for Drinking Water from Private Wells," online at <http://dnr.wi.gov/org/water/dwg/pubs/TestsForWell.pdf>.

PROPERTY CONDITION STATEMENTS, C.14. –

Fence Law

The Farm RECR asks the owner to report any disputes regarding fences as well as any lot line disputes and other encroachments and encumbrances. Under Wisconsin fence law, when one or both occupants of adjoining lands use the land for farming or animal grazing, a partition fence must be maintained in good repair between the adjoining lands, per Wis. Stat. § 90.03. Each owner is responsible for one half of the fence.

If there are disputes over who is responsible for what portion of a fence or if an owner fails to maintain or repair his or her portion, the controversy is addressed by two or more fence viewers who are town supervisors, city aldermen or village trustees. Written decisions rendered by the fence viewers are recorded with the town clerk. The refusal of an owner to comply may result in a tax roll special charge in the amount of the repair costs plus fees and interest. Failure to pay the charge may result in the lands being placed on the delinquent tax roll where they may ultimately be sold by the county for the delinquent taxes.

PROPERTY CONDITION STATEMENTS, C.17A. –

Hazardous Dumpsites

This supplemental item asks for owner information concerning "dumpsites on the property where pesticides, herbicides, fertilizer or other toxic or hazardous materials or containers for these materials were disposed of in violation of manufacturer's or government guidelines or other laws regulating said disposal." Obviously illegal disposal of toxic and hazardous

substances can have potentially severe consequences in terms of soil, groundwater and other contamination.

If hazardous dumping has been present, the owner may wish to take advantage of the Agricultural Chemical Cleanup Program. This program was enacted in response to growing concern over increasingly frequent discoveries of pesticides, herbicides, fertilizers and other agricultural chemicals in groundwater. The program, which closely resembles the Petroleum Environmental Cleanup Fund Award (PECFA) program, is established in Wis. Stat. § 94.73.

A "responsible party," such as the person who owns or controls the spilled chemical, the person causing the spill or the owner of the property where the spill has occurred, is eligible to apply for reimbursement of eligible cleanup costs incurred after January 1, 1989. Eligible reimbursable costs include lab testing, environmental consulting fees, monitoring wells, soil borings and costs to remove or treat contaminated soil or groundwater.

Maximum payment eligibility is on a "per discharge site" basis, rather than on a "per claimant" or "per incident" basis. Thus, persons buying properties that have been the site of an agricultural chemical spill and cleanup may wish to check whether any claims have been previously paid from the fund for that site.

Reimbursement is limited on a second corrective action claim for the same site.

Further information about this reimbursement program may be obtained by calling 608-224-4522 or visiting these resources:

- *Legal Update 95.10*, "Environmental Contamination Issues," at www.wra.org/LU9510.
- DATCP information: www.datcp.state.wi.us/arm/agriculture/pest-fert/pesticides/accp/index.jsp

PROPERTY CONDITION STATEMENTS, C.24M. –

Special Purpose Districts

New legislation includes several provisions relating to drainage districts designed to make sure property owners and buyers are made aware when a property is in a drainage district. This legislation requires an RECR to include information about whether the property is located in a special purpose district, such as a drainage district, that has the authority to impose assessments against the property. Effective November 1, 2008, this provision is mandatory for Chapter 709 RECRs.

PROPERTY CONDITION STATEMENTS, C.26. –

Recorded Restrictions

This item has been supplemented by asking the property owner to disclose conservation easements and restrictive covenants along with subdivision homeowner's associations, common areas co-owned with others, zoning violations or nonconforming uses, rights-of-way, easements or other uses of a part of the property by non-owners other than recorded utility easements. See the discussion of conservation easements on Page 5 of this *Update*.

PROPERTY CONDITION STATEMENTS, C.27. –

Other Defects

The WRA Farm RECR has added several examples of "other defects" including "lack of legal access; livestock siting violations (Wis. Admin. Code chap. ATCP 51); existing or abandoned manure storage facilities; production of methamphetamine (meth) or other chemicals on the property; or significant odor, noise, water diversion or other irritants emanating from neighboring property."

Livestock Siting

In Wisconsin, we have seen a trend in the agricultural industry to increase the size of farming operations in order to remain competitive with opera-

tions in other states and countries. In attempting to do so, farmers have found it difficult to create new or to expand existing livestock operations. These operations can be controversial because of associated odor issues and potential environmental impacts due to concentrated waste storage.

Wis. Stat. § 93.90 and Wis. Admin. Code ch. ATCP 51 were adopted to provide consistency across the state for farmers seeking to create new livestock operations or expand existing operations. § 93.90 requires the DATCP to establish local approval standards for use by local units of government. These standards are found in ch. ATCP 51. The goal is to permit local governments to better plan for and manage large livestock operations while ensuring that these operations do not harm the environment or negatively impact the value of neighboring property.

Ch. ATCP 51 establishes the framework for issuing local permits for new or expanding livestock facilities with more than 500 animal units that are required to obtain local approval from a city, village, town or county. A “livestock facility” is defined as a feedlot, dairy farm or other operation where livestock are or will be fed, confined, maintained or stabled for a total of 45 days or more in a 12-month period. A “new” livestock facility is one that will be used for the first time or for the first time in at least five years. An “expanded” facility is one where there is an increase in the largest number of animal units kept at the facility on at least 90 days in any 12-month period.

For additional information, see “Livestock Facility Siting Rules” in the June 2007 edition of the *Wisconsin Real Estate Magazine*, online at news.wra.org/story.asp?a=760, and the DATCP Livestock Siting Fact Sheets and Information, found at www.datcp.state.wi.us/arm/agriculture/land-water/livestock_siting/factsheets_information.jsp.

Manure Storage Facilities

Many storage facilities raise numerous concerns in terms of preventing groundwater contamination, as well as unpleasant odor. Many local units of government have manure storage facility ordinances that must be read and applied in tandem with the livestock siting regulations as described at www.datcp.state.wi.us/arm/agriculture/land-water/livestock_siting/pdf/EffectonExistingManureStorageOrd.pdf. Information about the requirements of local ordinances is available online at www.datcp.state.wi.us/arm/agriculture/land-water/conservation/local_ordinances_maps.jsp.

Manure storage facilities must be constructed according to applicable standards (NRCS Technical Standard 313). Owners must divert clean water around feedlots in water quality management areas 300 feet from streams and 1,000 feet from lakes (NRCS Clean Water Diversions Technical Standard 362).

Manure management prohibitions include:

- No overflow of manure storage structures.
- No unconfined manure stacks near water bodies.
- No direct runoff from feedlots or stored manure into state waters.
- No trampled streambanks or shorelines from livestock.

There also are state restrictions governing manure spreading on fields. See the summary of various applicable state regulations at <http://dnr.wi.gov/runoff/pdf/rules/GeneralRulesPub.pdf>.

The EPA and the Wisconsin DNR regulate Concentrated Animal Feeding Operations (CAFOs), generally defined as farm operations with 1,000 animal units of livestock. Manure and wastewater from CAFOs have the potential to contribute pollutants such as phosphorus and nitrogen to the environment,

and can lead to the contamination of private wells and early aging of rivers, lakes and other waterways. Visit http://cfpub.epa.gov/npdes/home.cfm?program_id=7 (EPA) and http://dnr.wi.gov/runoff/pdf/rules/nr243/Fact_SheetNR243.pdf and <http://dnr.wi.gov/runoff/rules/nr243/NR243.htm> (DNR).

Significant Odor, Noise, Water or Other Irritants Emanating from Neighboring Property

Encroachments by substances or elements, such as smoke, noise, wind or sunlight blockages, water and electricity may also unreasonably interfere with the owner’s right to use and enjoy the land. This right to be free from unreasonable encroachments may be defended in many different ways. The following case law summaries provide some examples of irritants that may emanate from neighboring property in a rural setting and the private nuisance lawsuits that may be employed to seek a remedy.

Smoke as Nuisance to Mink Farm

In *Kellogg v. Village of Viola*, 67 Wis. 2d 345, 227 N.W. 2d 55 (1975), smoke damage suffered by the mink on Kellogg’s mink ranch was found to be an actionable nuisance. Kellogg was awarded over \$10,000 in his 1970 action for damages because of the smoke coming from the adjacent village dump where garbage was regularly burned. The fact that Kellogg knew about the dump when he purchased the property and therefore “came to the nuisance,” did not bar the action. The court refused to find that mink are unusually sensitive creatures.

Water Diversion Causes Farm Flooding; Right to Farm

In *Zink v. Khwaja*, 2000 WI App. 58, 233 Wis. 2d 233, 608 N.W.2d 394 (2000), cranberry farmers had constructed a system of dikes and dams around the cranberry farm for collecting ground and surface water. In 1964, a new dike structure was built, and Zink purchased the 280 acres to

the west of the cranberry marsh for grazing and crops. Years later, Zink began to experience flooding that prevented him from grazing cattle and growing crops. Zink asked the cranberry farmer to reduce the cranberry bog water level so the flooding would stop, but he refused. Zink then filed an action for a private nuisance.

To establish a claim for a private nuisance, the court required Zink to prove that the cranberry bog owner's conduct was the legal cause of an invasion of his interest in the private use and enjoyment of his land. The invasion must be intentional and unreasonable – the water levels admittedly were maintained intentionally, so all that was left to prove was the unreasonable element. The court found that there was no change in the cranberry bog operation and evidence was presented of other potential causes of the increased flooding of Zink's land. Therefore Zink failed to meet his burden of proving that the cranberry bogs caused the flooding damage to his property.

The Court of Appeals held that Wis. Stat. § 823.08(4)(b) entitled the cranberry farmer to recover his actual attorneys fees. § 823.08(4)(b) provides that the Court shall award litigation expenses to the defendant in any action in which an agricultural use or practice is alleged to be a nuisance if the agricultural use or agricultural practice is not found to be a nuisance.

Stray Voltage

In *Vogel v. Grant-Lafayette Electric Cooperative*, 201 Wis. 2d 416, 548 N.W.2d 829 (1996), the Wisconsin Supreme Court held that nuisance law is applicable to stray voltage claims because excessive levels of stray voltage may invade a person's private use and enjoyment of land. The Vogels were dairy farmers and were members of the Grant-Lafayette Electric Cooperative, which distributes electricity to its members. Shortly after the Vogels built a new

milking facility, there were problems with the herd. Cows behaved violently and erratically, the herd suffered from excessive, chronic mastitis, and the Vogels experienced an overall decline in milk production. When the Vogels brought their suspicions about stray voltage to the attention of GLEC, they responded by installing an isolator on the transformer at the Vogel farm. The problems with the herd began to improve immediately.

The Vogels sued GLEC, alleging that GLEC was negligent with respect to maintenance of its electric facilities by permitting high levels of stray voltage to afflict the dairy herd. The Vogels were awarded \$200,000 on their negligence claim and \$60,000 on their nuisance claim.

Egg Farm as Public Nuisance

In *State v. Quality Egg Farm*, 104 Wis.2d 506, 311 N.W.2d 650 (1981), the Wisconsin Supreme Court examined the definition of a public nuisance. In 1967 the Quality Egg Farm, Inc., started its egg farm operation in Bristol, Wisconsin. The egg farm was near homes and a grade school, and by 1974 it had 140,000 chickens. The attorney general sued for the abatement of the odor emanating from the egg farm, which was alleged to be a public nuisance, caused by the combination of manure odors and the normal body odors of the chickens. This odor was being forced on the community by the fans that ventilated the birds and by the agitation of the manure during its removal from the chicken house and deposit on the land. A further problem was the flies attracted to the site. The resulting odor was described as nauseating, pungent and unbearable.

The state sought abatement of the emission of chicken and chicken manure odors caused by the operation of the defendant's egg industry. The Court issued a preliminary injunction against the Quality Egg Farm, Inc., ordering it to properly dispose of the

chicken manure and to conduct its operations in a sanitary and nuisance-free manner. When this failed to happen, the Court issued its final decision, granting a permanent injunction abating the public nuisance caused by the egg farm. The interference created by the egg farm was found to be both substantial and unreasonable in that it had for many years prevented the neighbors from the normal use and enjoyment of their property and had some effect on their health.

PROPERTY CONDITION STATEMENTS, C.27.A – Conservation Programs

The owner is asked to indicate whether any portion of the property is enrolled in or in violation of a Farmland Preservation Agreement or a Forest Crop, Managed Forest, Conservation Reserve or comparable program. These programs are overviewed on Pages 4-6 of this *Update*.

PROPERTY CONDITION STATEMENTS, C.27.B – Crop, Livestock and Tree Disease

The owner is asked to indicate any awareness of substantial crop damage from disease, insects, soil contamination, wildlife or other causes, diseased trees, or substantial injuries to or disease in livestock on the property or neighboring properties. These are conditions that the owner will be aware of, but that may be difficult to discern by inspection alone.

This brings to mind the *Green Springs Farms v. Spring Green Associates Ltd. Partnership* case. Two years into a land contract purchase of a dairy farm there was a salmonella outbreak in the purchaser's dairy herd that resulted in the destruction of some of the purchaser's livestock, as well as considerable veterinarian bills and financial losses. When the land contract purchaser defaulted and the vendor sued for specific performance, the purchaser counter claimed, alleging

that the vendor's failure to disclose that there had been a salmonella outbreak three years prior to the sale caused the outbreak experienced by the purchaser. The Court of Appeals found that the seller had a duty to tell the buyer that the property was contaminated with salmonella, basing its decision, in part, upon the Wisconsin Supreme Court's decision in *Ollerman v. O'Rourke Co.* In that case, the Court held that a subdivider seller of residential lots has a duty to "noncommercial" buyers to disclose facts that are known to the seller, material to the transaction, and not readily discernible to the buyer. In the *Green Spring Farm* case, the Court held that a seller has a duty to tell buyers in general about conditions material to the buyer's decision of whether to buy the property if the buyer is in a poor position to discover the condition for himself.

PROPERTY CONDITION STATEMENTS, C.27.C – Unsafe Levels of Mold

This item asks the owner to disclose the presence of unsafe levels of mold; roof, basement, window or plumbing leaks; overflow from sinks, bathtubs or sewers; and other water or moisture intrusions or conditions that might initiate the growth of unsafe levels of mold. Note that this applies to all farm buildings, not just the farmhouse.

To review mold prevention and remediation resources, review Pages 1-8 of the May 2005 *Legal Update*, "Environmental Update 2005," online at www.wra.org/LU0505, *Legal Update 02.06*, "Managing Mold Issues in a Real Estate Transaction," online at www.wra.org/LU0206, and the WRA REALTOR® Resource Page for Existing Mold, online at www.wra.org/mold.

PROPERTY CONDITION STATEMENTS, D.I.A-C – Use-Value Assessments


Under the use-value assessment

method, Wisconsin farmland is assessed for property tax purposes based upon its agricultural productivity rather than its fair market value or potential for development. If the use of land assessed under the use-value system is changed to a non-agricultural use, the then-current owner must pay a "conversion charge" (previously referred to as a penalty). In other words, if a buyer changes the use of the land assessed under the use-value system, the buyer may have to pay a conversion charge that captures between 5 and 10 percent of the property tax savings that occurred when the land was taxed as agricultural land in the year before the conversion. If the use changed before the sale, the seller would be responsible for the conversion charge.

A conversion charge is assessed when agricultural land is converted to a residential, commercial or any other non-agricultural use. The statutes do not define when a "change of use" occurs. Rather, the local assessors are given the authority to make this determination.

With respect to real estate sales, Wis. Stat. § 74.485 requires sellers to notify the buyer of three things:


1. that the land has been assessed as agricultural land under the use-value law;
2. whether the seller has been assessed a conversion charge; and
3. if so, whether the conversion charge has been deferred.

 **REALTOR® Practice Tips:** Although not specifically required by the use-value law, sellers and REALTORS® should also disclose that buyers who purchase and change the use of agricultural property assessed under the use-value system may be subject to a potentially substantial conversion charge, given that such a penalty would likely be considered a defect or material adverse fact. The WRA has updated its RECR forms to include this recommended disclosure.

These disclosures are included in Items D.I.A – C and the following Notice. The importance of these disclosures cannot be underestimated, as was illustrated in the *Pringle* case.

The Wisconsin Court of Appeals issued an unpublished opinion in *Thomas v. Pringle* (Case No. 2006AP697), confirming that a seller/developer has a duty to disclose a "potential" real estate tax penalty (now conversion charge) under Wisconsin's use-value law to a prospective buyer. In the *Pringle* case, a property owner subdivided a parcel of farmland into a nine-lot residential subdivision. The property was assessed under the use-value law and the property was not charged a penalty after the land was subdivided because it continued to be actively farmed. When one lot was sold to a purchaser he was told the land would continue to receive favorable use-value tax treatment as long as it was actively farmed. The seller provided the buyer with a completed 2001 version of the RECR. Shortly after the purchase, the buyer stopped farming the land and was assessed a penalty because the local assessor determined that a "change of use" had occurred.

The Court concluded the seller failed to provide the buyer with sufficient notice of a potential penalty by using the outdated and incomplete version of the RECR (that did not include the three-part disclosure plus explanatory notice). The Court reasoned that the seller should have disclosed the possible penalty because the seller knew the buyer was going to build a house on the lot and that a penalty would be imposed upon the issuance of the building permit.

 **REALTOR® Practice Tips:** REALTORS® should make sure they are always using the most current RECR forms and encouraging sellers to provide information about potential conversion charges under Wisconsin's Use-Value Law.

For further discussion of use-value issues, read "Full Disclosure – Real Estate Tax Penalties," in the February 2007 edition of the *Wisconsin Real Estate Magazine*, online at www.news.wra.org/story.asp?a=663, and the June 2008 *Broker Supervision Newsletter*, "Use Value Assessment of Agricultural Land," online at www.wra.org/online_pubs/broker_supervision/2008/br0806.asp.

Hotline Questions and Answers – Rural Issues

An agent has a property listed that is partially zoned as agricultural. This zoning is very old and the area is obviously in commercial use. The property is being sold for potential development. Does this affect the current seller in regard to Wis. Stat. § 70.32? Or does this affect the person who changes the use? When this property sells does the seller need to disclose that the land may be subject to a conversion charge?

Under the original use-value assessment law, sellers were required to disclose only whether the land was assessed under the use-value law (Wis. Stat. Sec. 70.32(2r)). Now, Wis. Stat. § 74.485(7) requires sellers of agricultural land to notify buyers of ALL of the following:

1. that the land has been assessed as agricultural land under Wis. Stat. Sec. 70.32(2r);
2. whether the seller has been assessed a conversion charge related to the land per Wis. Stat. § 74.485(2); and
3. whether the seller has been granted a deferral related to the land under Wis. Stat. § 74.485(4).

Although not specifically required by the use-value law, sellers and REALTORS® should also disclose that a subsequent change of use by a buyer may result in conversion charge under the law, given that such a conversion charge would likely be considered a material adverse fact.

The definition of "agricultural land," for purposes of use-value, excludes land with farm buildings located on it. Therefore, the land under farm buildings, such as barns and silos, is valued at fair market value, rather than use-value.

A conversion charge is assessed any time agricultural land is converted to another use, including residential, commercial or any other non-agricultural use that is not specifically exempted by statute. A change in zoning does not necessarily mean that the property is no longer being farmed. A piece of land may be zoned as commercial or residential, but still used for active farm production. While the statutes do not define when a "change of use" occurs, local assessors are given the authority to make this determination. This creates the greatest challenge of the law. In some communities assessors do not assess a conversion charge until a buyer of a subdivision lot pulls a building permit. Therefore, prudent brokers would contact the assessor's office ASAP if there is a possibility that the property was in the use-value program even though it is no longer being used for agricultural production.

The current law also includes some exceptions to the use-value conversion charge. A conversion charge is not owed for land that is converted to:

1. swamp or waste land, per the definition of "undeveloped land" under Wis. Stat. § 70.32(2)(c)4;
2. "productive forest land," as defined under Wis. Stat. § 70.32(2)(c)2; and
3. land classified as "other," as defined under Wis. Stat. § 70.32(2)(c)1m (includes farm residences, buildings and improvements, and the land necessary for those buildings and improvements).

No conversion charge is owed if the amount is less than \$25 per acre for land that is converted. A person is also exempt from the conversion charge if the person stops farming

the land for a year, but then commences farming the land in the subsequent year. The conversion charge may be deferred for a year (with interest) if the person stops farming the land for a year, intends to commence farming the land in the subsequent year, but actually fails to farm it.

Does rezoning vacant land from A-1 to A-2 result in a use-value conversion charge?

A change in zoning will not result in a use-value conversion charge. What causes a use-value conversion charge is a change in the actual use of the land.

A listing is on a rural property with a private well and septic. The buyers are from the city and do not have any experience with rural properties. Should the broker advise the buyers to have the well and septic tested?

Yes. The broker should suggest tests and inspections regarding the well and septic. License law dictates that licensees be knowledgeable regarding laws, public policies and current market conditions on real estate matters and assist, guide and advise the buying or selling public based upon these factors. Failing to do so may be deemed incompetent practice by the DRL. Once the buyers are informed about well and septic matters, if they decline to have well testing and/or septic inspections, it is best practice for the broker to get the customer's declination in writing for the agent's file.

The following resources are available:

You and Your Well: www.dnr.state.wi.us/org/water/dwg/pubs/YouAndYourWell.pdf

Groundwater: www.wnrmag.com/supps/1999/aug99/drink.htm/care

UW Extension publication: Care and Maintenance of Residential Septic Systems: learningstore.uwex.edu/pdf/B3583.pdf

What should a buyer consider when buying property that was formerly used as an orchard?

In the past, certain pesticides used in fruit orchards contained lead and arsenic. Although soils naturally contain traces of these compounds, the application of pesticides for agricultural purposes has resulted in some soils containing contamination that could result in health risks. Soil lead and arsenic concentrations vary considerably in former orchard sites because applicators using hand-held sprayers applied lead arsenate individually to trees. Higher concentrations tend to occur where the former trees stood; lower concentrations appear between the former tree sites. The possibility of long-term human exposure to residual lead and arsenic in the soil in play areas and gardens can become a health concern. Chemical analysis of soil will determine if there are any elevated concentrations of lead or arsenic.

Information about orchards and lead arsenate soil contamination issues is available at http://datcp.state.wi.us/arm/agriculture/pest-fert/pesticides/accp/lead_arsenate/index.jsp.

A broker is going to list a 40-acre parcel. It has been under a verbal year-to-year lease between the owner and a farmer. The farmer believes he has rights to plant crops again. Is the farmer correct?

Many farm or crop leases are not written, but rather are verbal “handshake” agreements. Because nothing is in writing, the parties may have different recollections of their agreement, making disputes more difficult to resolve. These verbal leases will typically be year-to-year periodic tenancies that renew automatically on an annual basis and require 90 days’ written notice by either party for termination per Wis. Stat. § 704.19(3). The 90 days’ notice is designed to give the tenant an opportunity to

locate a new farm and/or the landlord time to find a new tenant. Prior to drafting an offer, the broker and the seller may work to ascertain the farmer’s rights prior to negotiating the offer to purchase because the buyer will take the property subject to the farmer’s rights unless the farmer and owner negotiate otherwise. See Page 7 of *Legal Update 99.07*, online at www.wra.org/LU9907, for further discussion of farm and crop leases.

A broker has a rural property listed that is on a shared well. The seller has the electrical components and the expansion tank on his property and the neighbor has the well. The seller has always paid the electric bill for the whole system and recently upgraded the electrical and put in a new tank at his own expense. Recently, there was a problem with the well and the pump required replacement. The neighbor made the repairs and the seller offered to help with the cost. The neighbor refused the offer and told the seller he wanted him off the well. Can he legally do this? The well has been shared by the same properties for approximately 35 years. The agreement is current and always has been verbal.

Unless the parties have a written shared well agreement that represents the agreement between them, the neighbors will need to rely on the verbal agreement. If they do not agree on the terms of the agreement, they will need to negotiate, or, if that is not possible, litigate to reach a solution regarding the shared well. The broker must refer the seller to legal counsel to negotiate, or litigate if necessary, to find resolution to the issue. Legal counsel may also draft documents to represent the agreement between the neighbors. The seller will need to disclose the shared well and, arguably, the dispute with the neighbor as well. For the protection of the buyer and seller, any offer to purchase that is drafted should address the shared well issues.

If a fence between farmers needs repairs does each party have to pay for half?

Wis. Stat. Chap. 90 (www.legis.state.wi.us/statutes/Stat0090.pdf) requires the owners of adjoining land used for farming or grazing to jointly construct and maintain fences between their lands. If one owner fails to build or maintain his or her share of the fence, the neighboring landowner may complain to the fence viewers, who are the town supervisors, city aldermen or village trustees. If the fence viewers determine that the fence has not been properly built or maintained, they direct the delinquent owner to repair or rebuild the fence within a reasonable time. If the owner does not comply, the neighboring owner may repair or rebuild the fence and have the fence viewers determine the delinquent owner’s share of the costs. If the delinquent owner does not pay, the neighboring owner can then file a certificate of the fence viewers’ determination with the town clerk and receive payment from the town treasury. The town will then place a tax lien on the delinquent owner’s property to reimburse the fence repair costs.

General Farm Resources

Wisconsin Real Estate Magazine – June 2007 edition – “There’s More to Farm Sales than Meets the Eye: Do You Know What to Look for?” (www.news.wra.org/story.asp?a=761)

NAR Field Guide to Agricultural/Farm Land (www.realtor.org/libweb.nsf/pages/fg814)

Field Guide to Wind Farms and their Effect on Property Values (www.realtor.org/library/library/fg509)

WB-2 FARM LISTING CONTRACT - EXCLUSIVE RIGHT TO SELL

1 SELLER GIVES BROKER THE EXCLUSIVE RIGHT TO SELL THE PROPERTY ON THE FOLLOWING TERMS:

2 **■ PROPERTY DESCRIPTION:** Street address is: _____
3 _____ in Section _____
4 in the _____ of _____, County of _____, Wisconsin. (Total acreage and
5 breakdown of tillable, pasture or wood lot acreage, etc, may be stated at lines 272-283, or attached as an addendum
6 per lines 284-287.) Insert additional description, if any, at lines 272-283 or attach as an addendum per lines 284-287.

7 **■ LIST PRICE:** _____ Dollars (\$ _____).

8 **■ INCLUDED IN LIST PRICE:** Seller is including in the list price the Property, all Fixtures not excluded on lines 13-17,
9 and the following items: _____
10 _____
11 _____

12 **■ NOT INCLUDED IN LIST PRICE:** CAUTION: Identify Fixtures to be excluded by Seller or which are rented and will
13 continue to be owned by the lessor. (See lines 219-236): _____
14 _____
15 _____
16 _____
17 _____

18 **■ ZONING:** Seller represents that the property is zoned: _____

19 **■ GOVERNMENTAL AND CONSERVATION PROGRAMS:** Seller represents that all or some of the Property is
20 enrolled in the following governmental conservation, farmland, environmental, land use or use restricting programs,
21 agreements or conservation easements (county, state or federal): _____
22 _____
23 _____

24 **■ USE VALUE ASSESSMENT:** Seller represents that (all or some of the Property) (none of the Property) [STRIKE
25 ONE] has been assessed as agricultural property under use value law.

26 **■ MARKETING:** Seller authorizes and Broker agrees to use reasonable efforts to procure a buyer for the Property.
27 Seller agrees that Broker may market Seller's personal property identified on lines 9-11 during the term of this Listing.
28 Broker's marketing may include: _____
29 _____

30 Broker may advertise the following special financing and incentives offered by Seller: _____
31 _____
32 Seller has a duty to cooperate with Broker's marketing
33 efforts. See lines 91-97 regarding Broker's role as marketing agent and Seller's duty to notify Broker of any potential
34 buyer known to Seller. Seller agrees that Broker may market other properties during the term of this Listing.

35 **■ OCCUPANCY:** Unless otherwise provided, Seller agrees to give buyer occupancy of the Property at time of closing.
36 Unless otherwise agreed, Seller agrees to have any residential dwelling in broom swept condition and the Property
37 free of all debris and personal property except for personal property belonging to current tenants, sold to buyer or left
38 with buyer's consent. Should Seller or Seller's tenant occupy the Property after closing or retain ownership of crops,
39 consider a special agreement regarding an occupancy escrow, insurance, utilities, maintenance, responsibility for and
40 rights to unharvested crops, farm operations and government programs, etc.

41 **■ COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION:** The parties agree that Broker will work
42 and cooperate with other brokers in marketing the Property, including brokers from other firms acting as subagents
43 (agents from other companies engaged by Broker - See lines 155-158) and brokers representing buyers. Cooperation
44 includes providing access to the Property for showing purposes and presenting offers and other proposals from these
45 brokers to Seller. Note any brokers with whom Broker shall not cooperate, any brokers or buyers who shall not be
46 allowed to attend showings, and the specific terms of offers which should not be submitted to Seller: _____
47 _____

47 CAUTION: Limiting Broker's cooperation with other brokers may reduce the marketability of the Property.

48 **■ EXCLUSIONS:** All persons who may acquire an interest in the Property as a Protected Buyer, (see definition at lines
49 247-259) under a prior listing contract are excluded from this Listing to the extent of the prior broker's legal rights,
50 unless otherwise agreed to in writing. Within seven days of the date of this Listing, Seller agrees to deliver to Broker a
51 written list of all such prospective buyers. The following other buyers are excluded from this Listing until
52 _____ [INSERT DATE] _____. These
53 other buyers are no longer excluded from this Listing after the specified date unless, on or before the specified date,
54 Seller has either accepted an offer from the buyer or sold the Property to the buyer.

55 **■ COMPENSATION TO OTHERS:** Broker offers the following commission to cooperating brokers: _____
56 _____ (Exceptions if any): _____
57 **■ COMMISSION:** Broker's commission shall be _____

58 Seller shall pay Broker's commission, which shall be earned, if, during the term of this Listing:

- 59 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the
- 60 Property;
- 61 2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;
- 62 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;
- 63 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property; or
- 64 5) A buyer is procured for the Property by Broker, by Seller, or by any other person, at no less than the price and on
- 65 substantially the same terms set forth in this Listing and in the standard provisions of the current WB-12 FARM
- 66 OFFER TO PURCHASE, even if Seller does not accept this buyer's offer. (See lines 241-245 regarding
- 67 procurement.)

68 A percentage commission, if applicable, shall be calculated based on the purchase price if commission is earned
69 under 1) or 2) above, or calculated based on the list price under 3), 4) or 5). A percentage commission shall be
70 calculated on the fair market value of the Property exchanged under 3) if the exchange involves less than the entire
71 Property or on the fair market value of the Property to which an effective change in ownership or control takes place,
72 under 4) if the transaction involves less than the entire Property. Once earned, Broker's commission is due and
73 payable in full at the earlier of closing or the date set for closing, unless otherwise agreed in writing. Broker's
74 commission shall be earned if, during the term of the Listing, one owner of the Property sells, conveys, exchanges or
75 options an interest in all or any part of the Property to another owner, except by divorce judgment.

76 NOTE: A sale, option, exchange or procurement of a buyer for a portion of the Property does not terminate the Listing
77 as to any remaining Property.

78 ■ **EXTENSION OF LISTING:** The Listing term is extended for a period of one year as to any Protected Buyer. Upon
79 receipt of a written request from Seller or a broker who has listed the Property, Broker agrees to promptly deliver to
80 Seller a written list of those buyers known by Broker to whom the extension period applies. Should this Listing be
81 terminated by Seller prior to the expiration of the term stated in this Listing, this Listing shall be extended for Protected
82 Buyers, on the same terms, for one year after the Listing is terminated.

83 ■ **TERMINATION OF LISTING:** Neither Seller nor Broker has the legal right to unilaterally terminate this Listing absent
84 a material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the
85 Broker (firm). Agents (salespersons) for Broker (firm) do not have the authority to enter into a mutual agreement to
86 terminate the Listing, amend the commission amount or shorten the term of this Listing, without the written consent of
87 the agent(s)' supervising broker. Seller and Broker agree that any termination of this Listing by either party before the
88 date stated on line 292 shall be indicated to the other party in writing and shall not be effective until delivered to the
89 other Party in accordance with lines 213-218. CAUTION: Early termination of this Listing may be a breach of contract,
90 causing the terminating party to potentially be liable for damages.

91 ■ **SELLER COOPERATION WITH MARKETING EFFORTS:** Seller agrees to cooperate with Broker in Broker's
92 marketing efforts and to provide Broker with all records, documents and other material in Seller's possession or control
93 which are required in connection with the sale. Seller authorizes Broker to do those acts reasonably necessary to
94 effect a sale and Seller agrees to cooperate fully with these efforts which may include use of a multiple listing service,
95 Internet advertising or a lockbox system on Property. Seller shall promptly notify Broker in writing of any potential
96 buyers with whom Seller negotiates during the term of this Listing and shall promptly refer all persons making inquiries
97 concerning the Property to Broker.

98 ■ **LEASED PROPERTY:** If Property is currently leased and lease(s) will extend beyond closing, Seller shall assign
99 Seller's rights under the lease(s) and transfer all security deposits and prepaid rents (subject to agreed upon
100 prorations) thereunder to buyer at closing. Seller acknowledges that Seller remains liable under the lease(s) unless
101 released by tenants. CAUTION: Seller should consider obtaining an indemnification agreement from buyer for
102 liabilities under the lease(s) unless released by tenant(s), and should address any crop rights and carryovers.

103 ■ **BROKER DISCLOSURE TO CLIENTS:**

104 **UNDER WISCONSIN LAW, A BROKER OWES CERTAIN DUTIES TO ALL PARTIES TO A TRANSACTION:**

- 105 (a) The duty to provide brokerage services to you fairly and honestly.
- 106 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 107 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request
108 it, unless disclosure of the information is prohibited by law.
- 109 (d) The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the
110 information is prohibited by law. (See Lines 237-240)
- 111 (e) The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential
112 information or the confidential information of other parties. (See Lines 164-179)
- 113 (f) The duty to safeguard trust funds and other property the broker holds.
- 114 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the
115 advantages and disadvantages of the proposals.

116 ■ **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A BROKER, YOU ARE THE**
117 **BROKER'S CLIENT. A BROKER OWES ADDITIONAL DUTIES TO A CLIENT:**

- 118 (a) The broker will provide, at your request, information and advice on real estate matters that affect your transaction,
119 unless you release the broker from this duty.
- 120 (b) The broker must provide you with all material facts affecting the transaction, not just adverse facts.
- 121 (c) The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are
122 within the scope of the agency agreement.
- 123 (d) The broker will negotiate for you, unless you release the broker from this duty.
- 124 (e) The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by law,

125 give information or advice to other parties who are not the broker's clients, if giving the information or advice is
126 contrary to your interests.

127 (f) If you become involved in a transaction in which another party is also the broker's client (a "multiple representation
128 relationship"), different duties may apply.

129 **■ MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY:**

130 **■ A multiple representation relationship exists if a broker has an agency agreement with more than one client who is a
131 party in the same transaction. In a multiple representation relationship, if all of the broker's clients in the transaction
132 consent, the broker may provide services to the clients through designated agency.**

133 **■ Designated agency means that different salespersons employed by the broker will negotiate on behalf of you and the
134 other client or clients in the transaction, and the broker's duties will remain the same. Each salesperson will provide
135 information, opinions, and advice to the client for whom the salesperson is negotiating, to assist the client in the
136 negotiations. Each client will be able to receive information, opinions, and advice that will assist the client, even if the
137 information, opinions, or advice gives the client advantages in the negotiations over the broker's other clients. A
138 salesperson will not reveal any of your confidential information to another party unless required to do so by law.**

139 **■ If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship.
140 If you authorize a multiple representation relationship the broker may provide brokerage services to more than one
141 client in a transaction but neither the broker nor any of the broker's salespersons may assist any client with
142 information, opinions, and advice which may favor the interests of one client over any other client. If you do not
143 consent to a multiple representation relationship the broker will not be allowed to provide brokerage services to more
144 than one client in the transaction.**

145 **INITIAL ONLY ONE OF THE THREE LINES BELOW:**

146 _____ I consent to designated agency.

147 _____ I consent to multiple representation relationships, but I do not consent to designated agency.

148 _____ I reject multiple representation relationships.

149 **NOTE: YOU MAY WITHDRAW YOUR CONSENT TO DESIGNATED AGENCY OR TO MULTIPLE
150 REPRESENTATION RELATIONSHIPS BY WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS
151 REQUIRED TO DISCLOSE TO YOU IN YOUR AGENCY AGREEMENT THE COMMISSION OR FEES THAT YOU
152 MAY OWE TO YOUR BROKER. IF YOU HAVE ANY QUESTIONS ABOUT THE COMMISSION OR FEES THAT YOU
153 MAY OWE BASED UPON THE TYPE OF AGENCY RELATIONSHIP YOU SELECT WITH YOUR BROKER YOU
154 SHOULD ASK YOUR BROKER BEFORE SIGNING THE AGENCY AGREEMENT.**

155 **■ SUBAGENCY:** The broker may, with your authorization in the agency agreement, engage other brokers who assist
156 your broker by providing brokerage services for your benefit. A subagent will not put the subagent's own interests
157 ahead of your interests. A subagent will not, unless required by law, provide advice or opinions to other parties if doing
158 so is contrary to your interests.

159 **PLEASE REVIEW THIS INFORMATION CAREFULLY. A broker or salesperson can answer your questions
160 about brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact
161 an attorney, tax advisor, or home inspector. This disclosure is required by section 452.135 of the Wisconsin
162 statutes and is for information only. It is a plain language summary of a broker's duties to you under section
163 452.133 (2) of the Wisconsin statutes.**

164 **■ CONFIDENTIALITY NOTICE TO CLIENTS:** Broker will keep confidential any information given to Broker in
165 confidence, or any information obtained by Broker that he or she knows a reasonable person would want to be kept
166 confidential, unless the information must be disclosed by law or you authorize Broker to disclose particular information.
167 Broker shall continue to keep the information confidential after Broker is no longer providing brokerage services to you.
168 The following information is required to be disclosed by law:

- 169 1) Material adverse facts, as defined in section 452.01 (5g) of the Wisconsin statutes (lines 237-240).
- 170 2) Any facts known by the Broker that contradict any information included in a written inspection report on the
171 property or real estate that is the subject of the transaction.

172 To ensure that the Broker is aware of what specific information you consider confidential, you may list that information
173 below (see lines 175-176). At a later time, you may also provide the Broker with other information you consider to be
174 confidential.

175 **CONFIDENTIAL INFORMATION:** _____

176 _____

177 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by Broker): _____

178 _____

179 _____

180 **■ REAL ESTATE CONDITION REPORT:** Wisconsin Administrative Code Chapter RL 24 requires listing brokers to
181 make inquiries of the Seller on the condition of the Property and to request that Seller provide a written response to
182 Broker's inquiry. Seller agrees to complete a real estate condition report to the best of Seller's knowledge. Seller
183 agrees to amend the report should Seller learn of any defect(s) after completion of the report but before acceptance of
184 a buyer's offer to purchase. Seller authorizes Broker to distribute the report to all interested parties and agents
185 inquiring about the Property. Seller acknowledges that Broker has a duty to disclose all material adverse facts as
186 required by law.

187 **■ SELLER REPRESENTATIONS REGARDING DEFECTS:** Seller represents to Broker that as of the date of this
188 Listing, if a real estate condition report or other form of written response to Broker's inquiry regarding the condition of
189 the Property has been made by the Seller, the Seller has no notice or knowledge of any defects affecting the Property
190 other than those noted on Seller's real estate condition report or written response.

191 **WARNING: IF SELLER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, SELLER MAY BE LIABLE FOR
192 DAMAGES AND COSTS.**

193 **■ OPEN HOUSE AND SHOWING RESPONSIBILITIES:** Seller is aware that there is a potential risk of injury, damage
 194 and/or theft involving persons attending an "individual showing" or an "open house." Seller accepts responsibility for
 195 preparing the Property to minimize the likelihood of injury, damage and/or loss of personal property. Seller agrees to
 196 hold Broker harmless for any losses or liability resulting from personal injury, property damage, or theft occurring
 197 during "individual showings" or "open houses" other than those caused by Broker's negligence or intentional
 198 wrongdoing. Seller acknowledges that individual showings and open houses may be conducted by licensees other
 199 than Broker, that appraisers and inspectors may conduct appraisals and inspections without being accompanied by
 200 Broker or other licensees, and that buyers or licensees may be present at all inspections and testing and may
 201 photograph or videotape Property unless otherwise provided for in additional provisions at lines 272-283 or in an
 202 addendum per lines 284-287.

203 **■ DEFINITIONS:**

204 **ADVERSE FACT:** An "adverse fact" means any of the following:

205 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

- 206 1) Significantly and adversely affecting the value of the Property;
- 207 2) significantly reducing the structural integrity of improvements to real estate; or
- 208 3) presenting a significant health risk to occupants of the Property.

209 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her
 210 obligations under a contract or agreement made concerning the transaction.

211 **DEADLINES – DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day
 212 the event occurred and by counting subsequent calendar days.

213 **DELIVERY:** Delivery of documents or written notices related to this Listing may only be accomplished by:

- 214 1) giving the document or written notice personally to the party;
- 215 2) depositing the document or written notice postage or fees prepaid or charged to an account in the U.S. Mail or a
 216 commercial delivery system, addressed to the party, at the party's address (See lines 298, 304 & 310.);
- 217 3) electronically transmitting the document or written notice to the party's fax number (See lines 300, 306 & 312.); or,
- 218 4) as otherwise agreed in additional provisions on lines 272-283 or in an addendum to this Listing.

219 **FIXTURES:** A "fixture" is an item of property which is physically attached to or so closely associated with land or
 220 buildings so as to be treated as part of the real estate, including, without limitation, physically attached items not easily
 221 removable without damage to the premises, items specifically adapted to the premises, and items customarily treated
 222 as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and
 223 windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and
 224 cooling units and attached equipment; water heaters and treatment systems; sump pumps; attached or fitted floor
 225 coverings; awnings; attached antennas, garage door openers and remote controls; installed security systems; central
 226 vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans;
 227 fences; storage buildings on permanent foundations and docks/piers on permanent foundations; perennial crops;
 228 perennial plants; in-ground and above ground crop irrigation systems; ventilating fans; barn cleaners; silo unloaders;
 229 augers; feeding equipment; bulk tanks and refrigeration systems; pipeline milking systems; vacuum lines; vacuum
 230 pumps and attached motors; and aboveground and underground fuel tanks.

231 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other**
 232 **water conditioning systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines 13-**
 233 **17 and in the offer to purchase. Address annual and perennial crops, livestock, rented fixtures not owned by**
 234 **Seller, fixtures owned by Seller but which will not be included in the list price (e.g., irrigation systems) and**
 235 **equipment which may be personal property but will be included in the list price. Annual crops are not part of**
 236 **the purchase price unless otherwise agreed.**

237 **MATERIAL ADVERSE FACT:** A "material adverse fact" means an adverse fact that a party indicates is of such
 238 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable
 239 party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction
 240 or affects or would affect the party's decision about the terms of such a contract or agreement.

241 **PROCURE:** A buyer is procured when, during the term of the Listing, an enforceable contract of sale is entered into
 242 between the Seller and the buyer or when a ready, willing and able buyer submits to the Seller or the Listing Broker a
 243 written offer at the price and on substantially the terms specified in this Listing. A buyer is ready, willing and able when
 244 the buyer submitting the written offer has the ability to complete the buyer's obligations under the written offer. (See
 245 lines 64-67)

246 **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 2-6.

247 **PROTECTED BUYER:** Means a buyer who personally or through any person acting for such buyer:

- 248 1) delivers to Seller or Broker a written offer to purchase, exchange or option on the Property during the term of this
 249 Listing;
- 250 2) negotiates directly with Seller by discussing with Seller the potential terms upon which buyer might acquire an
 251 interest in the Property; or
- 252 3) attends an individual showing of the Property or discusses with Broker or cooperating brokers the potential terms
 253 upon which buyer might acquire an interest in the Property, but only if Broker delivers the buyer's name to Seller,
 254 in writing, no later than three days after the expiration of the Listing. The requirement in 3), to deliver the buyer's
 255 name to Seller in writing, may be fulfilled as follows:
 - 256 a) If the Listing is effective only as to certain individuals who are identified in the Listing, by the identification of
 257 the individuals in the Listing; or,
 - 258 b) if a buyer has requested that the buyer's identity remain confidential, by delivery of a written notice identifying
 259 the broker with whom the buyer negotiated and the date(s) of any showings or other negotiations.

260 ■ **NON-DISCRIMINATION:** Seller and Broker agree that they will not discriminate against any prospective
261 buyer on account of race, color, sex, sexual orientation as defined in Wisconsin Statutes, Section 111.32
262 (13m), disability, religion, national origin, marital status, lawful source of income, age, ancestry, familial
263 status, or in any other unlawful manner.

264 ■ **EARNEST MONEY:** If Broker holds trust funds in connection with the transaction, they shall be retained by Broker in
265 Broker's trust account. Broker may refuse to hold earnest money or other trust funds. Should Broker hold the earnest
266 money, Seller authorizes Broker to disburse the earnest money as directed in a written earnest money disbursement
267 agreement signed by or on behalf of all parties having an interest in the trust funds. If the transaction fails to close
268 and the earnest money is disbursed to Seller, then upon disbursement to Seller the earnest money shall be paid first to
269 reimburse Broker for cash advances made by Broker on behalf of Seller and one half of the balance, but not in excess
270 of the agreed commission, shall be paid to Broker as Broker's full commission in connection with said purchase
271 transaction and the balance shall belong to Seller. This payment to Broker shall not terminate this Listing.

272 ■ **ADDITIONAL PROVISIONS:** _____
273 _____
274 _____
275 _____
276 _____
277 _____
278 _____
279 _____
280 _____
281 _____
282 _____

283 _____
284 ■ **ADDENDA:** The attached addenda _____
285 _____
286 _____
287 _____ is/are made part of this Listing.

288 ■ **NOTICE ABOUT SEX OFFENDER REGISTRY:** You may obtain information about the sex offender registry and
289 persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at
290 <http://www.widocoffenders.org> or by telephone at (608)240-5830.

291 ■ **TERM OF THE CONTRACT:** From the _____ day of _____,
292 up to and including midnight of the _____ day of _____.

293 ■ **READING/RECEIPT: BY SIGNING BELOW, SELLER ACKNOWLEDGES RECEIPT OF A COPY OF THIS**
294 **LISTING CONTRACT AND THAT HE/SHE HAS READ ALL FIVE PAGES AS WELL AS ANY ADDENDA AND ANY**
295 **OTHER DOCUMENTS INCORPORATED INTO THE LISTING.**

296 (x) _____
297 Seller's Signature ▲ _____ Print Name Here: ▲ _____ Date ▲ _____

298 _____
299 Seller's Address ▲ _____ Seller's Phone # ▲ _____

300 _____
301 Seller's Fax # ▲ _____ Seller's E-Mail Address ▲ _____

302 (x) _____
303 Seller's Signature ▲ _____ Print Name Here: ▲ _____ Date ▲ _____

304 _____
305 Seller's Address ▲ _____ Seller's Phone # ▲ _____

306 _____
307 Seller's Fax # ▲ _____ Seller's E-Mail Address ▲ _____

308 (x) _____
309 Agent for Broker ▲ _____ Print Name Here: ▲ _____ Broker/Firm Name ▲ _____ Date ▲ _____

310 _____
311 Broker/Firm Address ▲ _____ Broker/Firm Phone # ▲ _____

312 _____
313 Broker/Firm Fax # ▲ _____ Broker/Firm E-Mail Address ▲ _____

REAL ESTATE CONDITION REPORT — FARM

DISCLAIMER

A. THIS CONDITION REPORT CONCERNS THE REAL PROPERTY LOCATED AT _____ (STREET ADDRESS) IN THE _____ (CITY) (VILLAGE) (TOWN) OF _____, COUNTY OF _____, STATE OF WISCONSIN. THIS REPORT IS A DISCLOSURE OF THE CONDITION OF THAT PROPERTY IN COMPLIANCE WITH SECTION 709.02 OF THE WISCONSIN STATUTES AS OF _____ (MONTH) _____ (DAY), _____ (YEAR). IT IS NOT A WARRANTY OF ANY KIND BY THE OWNER OR ANY AGENTS REPRESENTING ANY PRINCIPAL IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT THE PRINCIPALS MAY WISH TO OBTAIN.

OWNER'S INFORMATION

B.1. In this form, "am aware" means to have notice or knowledge. In this form, "defect" means a condition that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises. **"Property", as used in this report, includes: 1) the land; 2) dwellings; 3) barns and outbuildings and 4) any other real or personal property included in the transaction. The Property Condition Statements below apply to all property, not just dwellings.**

B.2. The owner discloses the following information with the knowledge that, even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the property. The owner hereby authorizes any agent representing any principal in this transaction to provide a copy of this statement, and to disclose any information in the statement, to any person in connection with any actual or anticipated sale of the property.

B.3. The owner represents that to the best of his or her knowledge the responses to the following statements have been accurately noted as "yes", "no" or "not applicable" to the property being sold. If the owner responds to any statement with "yes", the owner shall provide, in the additional information area of this form, an explanation of the reason why the response to the statement is "yes".

B.4. If the transfer is of a condominium unit, the property to which this form applies is the condominium unit, the common elements of the condominium and any limited common elements that may be used only by the owner of the condominium unit being transferred.

PROPERTY CONDITION STATEMENTS* (See B.1 above defining "Property")

	Yes	No	N/A	See Expert's Report
C.1. I am aware of defects in the roof.	_____	_____	_____	_____
C.2. I am aware of defects in the electrical system.	_____	_____	_____	_____
C.3. I am aware of defects in part of the plumbing system (including the water heater, water softener and swimming pool) that is included in the sale.	_____	_____	_____	_____
C.4. I am aware of defects in the heating and air conditioning system (including the air filters and humidifiers).	_____	_____	_____	_____
C.5. I am aware of defects in the well, including unsafe well water <i>due to contaminants such as coliform, nitrates and atrazine, and out-of-service wells and cisterns not closed/abandoned according to applicable regulations.</i>	_____	_____	_____	_____
C.6. I am aware that this property is served by a joint well.	_____	_____	_____	_____
C.7. I am aware of defects in the septic system or other sanitary disposal system, <i>including an out-of-service system not closed/abandoned according to applicable regulations.</i>	_____	_____	_____	_____
C.8. I am aware of underground or aboveground fuel storage tanks on <i>or previously located</i> on the property. (If "yes", the owner, by law, may have to register the tanks with the Department of Commerce at P.O. Box 7970, Madison, Wisconsin, 53707, whether the tanks are in use or not. Regulations of the Department of Commerce may require the closure or removal of unused tanks).	_____	_____	_____	_____
C.9. I am aware of an "LP" tank on the property. (If "yes", specify in the additional information space whether the owner of the property either owns or leases the tank).	_____	_____	_____	_____
C.10. I am aware of defects in the basement or foundation (including cracks, seepage and bulges).	_____	_____	_____	_____
C.11. I am aware that the property is located in a floodplain, wetland or shoreland zoning area.	_____	_____	_____	_____

	Yes	No	N/A	See Expert's Report
C.12. I am aware of defects in the structure of the property.	_____	_____	_____	_____
C.13. I am aware of defects in mechanical equipment included in the sale either as fixtures or personal property.	_____	_____	_____	_____
C.14. I am aware of boundary or lot line disputes, encroachments or encumbrances (including a joint driveway) or noncompliance with fence laws (See Wis. Stat. ch. 90).	_____	_____	_____	_____
C.15. I am aware of a defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, lead in paint, lead or arsenic in soil, lead in water supplies or plumbing system or other potentially hazardous or toxic substances on the premises.	_____	_____	_____	_____
C.16. I am aware of the presence of asbestos or asbestos-containing materials on the premises.	_____	_____	_____	_____
C.17. I am aware of a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic substances on neighboring properties.	_____	_____	_____	_____
C.17.a I am aware of dumpsites on the property where pesticides, herbicides, fertilizer or other toxic or hazardous materials or containers for these materials were disposed of in violation of manufacturer's or government guidelines or other laws regulating said disposal.	_____	_____	_____	_____
C.18. I am aware of current or previous termite, powder-post beetle or carpenter ant infestations.	_____	_____	_____	_____
C.19. I am aware of defects in a wood burning stove or fireplace or of defects caused by a fire in a stove or fireplace or elsewhere on the property.	_____	_____	_____	_____
C.20. I am aware either that remodeling affecting the property's structure or mechanical systems was done or that additions to this property were made during my period of ownership without the required permits.	_____	_____	_____	_____
C.21. I am aware of federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.	_____	_____	_____	_____
C.22. I have received notice of property tax increases, other than normal annual increases, or am aware of a pending property reassessment.	_____	_____	_____	_____
C.23. I am aware that remodeling that may increase the property's assessed value was done.	_____	_____	_____	_____
C.24. I am aware of proposed or pending special assessments.	_____	_____	_____	_____
C.24.m I am aware that the property is located within a special purpose district, such as a drainage district, that has the authority to impose assessments against the real property located within the district. (effective 11/1/08)	_____	_____	_____	_____
C.25. I am aware of the proposed construction of a public project that may affect the use of the property.	_____	_____	_____	_____
C.26. I am aware of subdivision homeowners' associations, common areas co-owned with others, zoning violations or nonconforming uses, conservation easements, restrictive covenants, rights-of-way, easements or another use of a part of the property by nonowners, other than recorded utility easements.	_____	_____	_____	_____
C.27. I am aware of other defects affecting the property including, without limitation, lack of legal access; livestock siting violations (Wis. Admin. Code ch. ATPC 51); existing or abandoned manure storage facilities; production of methamphetamine (meth) or other hazardous chemicals on the property; or significant odor, noise, water diversion or other irritants emanating from neighboring property.	_____	_____	_____	_____
C.27.a I am aware of a portion of the property being subject to, enrolled in or in violation of a Farmland Preservation Agreement or a Forest Crop, Managed Forest, Conservation Reserve or comparable program.	_____	_____	_____	_____

	Yes	No	N/A	See Expert's Report
--	-----	----	-----	---------------------------

C.27.b *I am aware of substantial crop damage from disease, insects, soil contamination, wildlife or other causes, diseased trees, or substantial injuries or disease in livestock on the property or neighboring properties.* _____

C.27.c *I am aware of the presence of unsafe levels of mold, or roof, basement, window or plumbing leaks, or overflow from sinks, bathtubs or sewers, or other water or moisture intrusions or conditions that might initiate the growth of unsafe levels of mold.* _____

ADDITIONAL INFORMATION

D.1. I am aware that a structure on the property is designated as a historic building or that part of the property is in a historic district. _____

Use Value Assessments:

Notice: The use value assessment system values agricultural land based on the income that would be generated from its rental for agricultural use rather than its fair market value. When a person converts agricultural land to a non-agricultural use (e.g., residential or commercial development), that person may owe a conversion charge. To obtain more information about the use value law or conversion charges, contact the Wisconsin Department of Revenue's Equalization Section at 608-266-2149 or visit <http://www.revenue.wi.gov/faqs/slf/useassmt.html>.

D.1.a *All or part of the land has been assessed as agricultural land under Wis. Stat. § 70.32 (2r).* _____

D.1.b *The owner has been assessed a use-value conversion charge under Wis. Stat. § 74.485(2).* _____

D.1.c *The payment of a use-value conversion charge has been deferred under Wis. Stat. § 74.485(4).* _____

D.2. The owner has lived on the property for _____ years.

D.3. Explanation of "yes" responses. (See B.3.) _____

Notice: You may obtain information about the sex offender registry and persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.widocoffenders.org> or by phone at 608-240-5830.

OWNER'S CERTIFICATION

E. The owner certifies that the information in this report is true and correct to the best of the owner's knowledge as of the date on which the owner signs this report.

Owner _____ Date _____ Owner _____ Date _____

CERTIFICATION BY PERSON SUPPLYING INFORMATION

F. A person other than the owner certifies that he or she has supplied information on which the owner relied for this report and that information is true and correct to the best of that person's knowledge as of the date on which the person signs this report.

Person _____ Items _____ Date _____ Person _____ Items _____ Date _____

Person _____ Items _____ Date _____ Person _____ Items _____ Date _____

NOTICE REGARDING ADVICE OR INSPECTIONS

G. THE PROSPECTIVE BUYER AND THE OWNER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTIONS, DEFECTS OR WARRANTIES.

BUYER'S ACKNOWLEDGMENT

H.1. The prospective buyer acknowledges that technical knowledge such as that acquired by professional inspectors may be required to detect certain defects such as the presence of asbestos, building code violations and floodplain status.

H.2. I acknowledge receipt of a copy of this statement.

Prospective Buyer _____ Date _____ Prospective Buyer _____ Date _____

Prospective Buyer _____ Date _____ Prospective Buyer _____ Date _____

*NOTE: All information appearing in italics in this REAL ESTATE CONDITION REPORT is purely of a supplemental nature and is not part of the REAL ESTATE CONDITION REPORT content required by Wis. Stat. § 709.03.
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Drafted by: Attorney Debra Peterson Conrad

No representation is made as to the legal validity of any provision or the adequacy of any provision in any specific transaction.

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