

WB-36 BUYER AGENCY/TENANT REPRESENTATION AGREEMENT

Except for exchanging the word “buyer” for “seller,” several sections of the WB-36 Buyer Agency Agreement are the same as the WB-1 Listing Contract. Due to the similarities, only sections that differ from the Listing Contract are covered. This agreement can be used as a buyer or tenant representation agreement or both.

Approved by the Wisconsin Real Estate Examining Board
7-1-17 (Optional Use Date) 10-1-17 (Mandatory Use Date)

Wisconsin REALTORS Association

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General Provisions (Lines 1-10, 59-257, and 306-357), Purchase Provisions (Lines 12-58), and Rental Provisions (Lines 259-305)

The WB-36 Buyer Agency/Tenant Representation Agreement is divided into three sections: General Provisions; Purchase Provisions; and Rental Provisions. General Provisions apply regardless of whether the client is a buyer, a tenant, or both. The word “client” is used throughout the General Provisions part of the form to refer to a buyer, a tenant, or both. Purchase Provisions apply when the client is a buyer and the Rental Provisions apply when the client is a tenant. Rental Provisions will not be reviewed as they mirror the Purchase Provisions except that the firm’s commission may be a percentage of total rent for a rental agreement and that commission may be due upon the execution of a rental agreement rather than a closing. There will not be any licensing exam questions related to the Rental Provisions in the WB-36 Buyer Agency/Tenant Representation Agreement. Thus, the WB-36 Buyer Agency/Tenant Representation Agreement will be reviewed in the context of a buyer agency agreement.

Lines 1-6 Exclusive Authority to Act for Buyer as a Buyer’s Agent

1 ■ **EXCLUSIVE AUTHORITY TO ACT AS (BUYER’S AGENT) (TENANT’S REPRESENTATIVE)** **STRIKE IF NOT**
2 **APPLICABLE** (if neither is stricken both apply): Client (see lines 188-189) gives the Firm and its agents the exclusive
3 right to act as Buyer’s Agent and/or Tenant’s Agent to Locate an Interest in Property and to Negotiate the Acquisition of an
4 Interest in Property for Client, except as excluded under lines 17-32 or 264-279. Client agrees that during the term of this
5 Agreement, Client will not enter into any other agreements to retain any other buyer’s agent(s) or tenant’s agent(s), except
6 for the excluded properties described in lines 17-32 or 264-279.

A buyer gives a firm the exclusive right as the buyer’s agent to locate and negotiate the acquisition of an interest in property. No other party can act as the buyer’s agent for properties covered by a WB-36 Buyer Agency agreement.

For example, a client can use one WB-36 Buyer Agency agreement to hire a firm to look for residential properties in the Fox Valley and another WB-36 Buyer Agency agreement to hire a different firm to look for vacation properties in Door County or for a commercial property in Milwaukee.

Modifying the WB-36 Agency Agreement to Create Different Business Models

1. Exclusive Right-to-Locate-and-Negotiate: Strike “to act as Buyer’s Agent and/or Tenant’s Agent” on line 3.
2. Exclusive Right-to-Locate: Strike “and to Negotiate the Acquisition of an Interest in Property” on lines 3-4.
3. Exclusive Right-to-Negotiate: Strike “to Locate an Interest in Property and” on line 3.

Lines 7-10 Note

7 If Client has contact, or has had previous contact with an owner, a firm or its agents in locating
 8 and/or negotiating the acquisition of an Interest in Property and Client's contact with those parties
 9 results in the Firm not collecting full compensation under this Agreement from the owner or the
 10 owner's agent, Client shall be responsible to pay any uncollected amount.

A client will owe the firm's compensation if the client acquires an interest in a property covered by the agreement even if the client works directly with the owner, a firm, or its agents in acquiring an interest in property. Essentially this is warning a client that if the client's contact with the owner or the owners' agents prevents the firm from obtaining compensation from the owner or owner's agents, the client will be responsible for payment of the uncollected amount.

A seller lists a property with a firm that is an MLS participant. The listing firm is offering cooperating firms compensation of 3% of the purchase price. A buyer contacts the listing firm directly to schedule a showing. The buyer tours the property, expresses interest, and ultimately writes an offer using the buyer's agent to draft the offer. The transaction is successful. The listing firm does not pay the 3% of the purchase price to the buyer's firm because the buyer's firm was not "procuring cause" as it is used in MLS offers of compensation. The note at lines 7-10 is informing a buyer that in this scenario, the buyer will still be obligated to pay buyer's firm's commission earned under the terms of the WB-36 Buyer Agency/Tenant Representation Agreement.

Lines 12-16 Purchase Price

12 ■ **PURCHASE PRICE RANGE:** _____
 13 The purchase price range provides initial search parameters, but the Firm's authority under this Agreement extends to all
 14 property within the state of Wisconsin except for those properties excluded as Excluded Properties on lines 17-20, and
 15 applies to any properties under Excluded Properties Subject to a Prior Agreement on lines 21-29 and under Limited
 16 Exclusion Properties on lines 30-32 after the applicable time for the exclusion has ended.

Because a buyer does not usually know the exact price of a property that the buyer will eventually purchase, this information is usually stated as a range. The purchase price range is not limiting on the firm or the client. The client can purchase properties outside of the range and the firm can earn a commission for properties purchased outside of the range. The purchase price range is to provide initial search parameters. The firm's authority extends to all properties in the state of Wisconsin except excluded properties.

Lines 17-20 Excluded Properties

17 ■ **EXCLUDED PROPERTIES:** Identify any specific properties or limitations on the scope of this Agreement, including
 18 geographic limitations or limitations on types of properties included under this Agreement, by excluding the following from
 19 this Agreement: _____
 20 _____.

A buyer can use a WB-36 Buyer Agency agreement to apply to all properties, except those excluded by the buyer in the Excluded Properties section. If a buyer acquires an interest in a property listed in the Excluded Properties section, the buyer does not owe the firm's commission and the firm does not act as an agent for the buyer in that transaction. To exclude specific properties from a WB-36, the buyer and the firm should list the property's address or a legal description if the address is not sufficient to identify the property.

Properties seen with a subagent of a listing firm: If a buyer previously looked at a property with an agent of the listing firm or subagent of the listing firm, the buyer might exclude those properties to avoid paying a commission to a buyer's firm for properties that the buyer located without the assistance of a firm.

Properties under contract: If a buyer negotiated an option with another agent or is involved in some other transaction transferring property, the buyer should exclude those properties to avoid paying a commission for a transaction that is already underway.

IDENTIFYING THE PROPERTIES COVERED BY THE BUYER AGENCY AGREEMENT

Describing the Property by Exclusions

A buyer and a firm can use the exclusion section to create absolute limits for the scope of the buyer agency agreement and use separate search parameters to refine the search over time. The buyer and firm could use addenda to address specific search parameters and amend the parameters as the buyer's focus or needs change. Including search parameters in the Excluded Properties section sets search guidelines and the scope of the agreement.

Parties can also establish specific search parameters with a separate document used as a supplement to the WB-36 but not incorporated as an addendum.

For example, a buyer could include that the buyer wants a three-bedroom home in the Eau Claire area. If the buyer wanted to use the Excluded Properties section to establish the search parameters, the buyer could exclude any properties more than 50 miles from Eau Claire and all properties that are not or cannot be used as a dwelling unit where at least five persons may reside. This would set basic limits, naming a property type but leaving room for the characteristics such as the style of house, number of bedrooms, or whether the buyer wants to purchase new construction or a lot for building. A buyer could also include more specific search parameters such as school district, number of bedrooms, and whether the property needs to have a finished basement.

One Specific Property

When a buyer knows the specific property that the buyer wants to purchase, the buyer can use the Excluded Properties section to exclude all other properties.

A buyer wants to write an offer on 2323 Ripple Road. A buyer could write "all properties other than 2323 Ripple Road" in the Excluded Properties section. If the buyer acquires any other property during the term of the buyer agency agreement, the buyer will not owe a success fee to the buyer's firm. If the buyer acquires an interest in 2323 Ripple Road, the buyer will owe the firm a success fee.

A buyer and a firm could also include the specific property information in the additional provisions and include that the firm will not earn any fees or compensation under the agreement if the buyer acquires an interest in any other property.

Lines 21-29 Excluded Properties Subject to Prior Agreement

21 ■ **EXCLUDED PROPERTIES SUBJECT TO A PRIOR AGREEMENT:** The following properties are subject to an
 22 extension of agreement term under a prior buyer agency agreement and the exclusion period shall run until the
 23 expiration of the prior firm's legal rights: _____
 24 _____
 25 **CAUTION: If Buyer does not want this Agreement to apply to properties subject to a prior agency agreement,**
 26 **Buyer should identify such properties on lines 23-24. Buyer's failure to exclude from this Agreement a property**
 27 **protected under a prior buyer agency agreement(s) may result in Buyer owing commissions under each buyer**
 28 **agency agreement. Buyer should consult prior firm(s) or Buyer's legal counsel regarding obligations under any**
 29 **prior buyer agency agreement.**

Much like how a listing firm can protect buyers, a buyer's firm can protect properties. This section prompts the buyer and the buyer's licensee to discuss whether the buyer has a previous buyer agency agreement and if so, were there protected properties under that agreement. A buyer can use this section to exclude properties that were protected under a previous buyer agency agreement. Properties identified in this section are excluded under this agreement until the expiration of the prior firm's legal rights. If a buyer is including a former firm's "protected property," the exclusion period is for one year from the date the previous agency agreement expired. If a buyer is listing more than one

firm's protected properties, they will have different deadlines for the exclusion and the buyer and firm could consider including this information in an addendum to the agency agreement. A buyer who fails to exclude another firm's protected property from a subsequent buyer agency agreement may owe two commissions if the buyer purchases one of the protected properties.

Lines 30-32 Limited Exclusion Properties

30 ■ **LIMITED EXCLUSION PROPERTIES:** The following properties are excluded from this Agreement until
 31 [Insert Date]: _____. Insert additional
 32 addresses, descriptions, or date limitations, if any, at lines 329-331 or attach as an addendum per lines 332-333.

A buyer can use this section to exclude other properties. Perhaps these are properties owned by friends, family, or neighbors on which the buyer has previously engaged in some negotiations. Unlike the other two categories of excluded properties, these properties are not excluded for the duration of the contract but are excluded only until the date on line 31.

Lines 33-53 Compensation

33 **COMPENSATION** The Firm's compensation for purchase, option, exchange or an effective change in ownership or
 34 control shall be: **COMPLETE AS APPLICABLE**
 35 COMMISSION: _____
 36 _____
 37 ■ **COMMISSION EARNED:** The Firm has earned the Firm's commission if during the term of this Agreement (or any
 38 extension of it), Buyer or any Person Acting on Behalf of Buyer acquires an Interest in Property or enters into an enforceable
 39 written contract to acquire an Interest in Property, at any terms and price acceptable to owner and Buyer, regardless of the
 40 purchase price range.
 41 ■ **COMMISSION DUE AND PAYABLE:** Once earned, the Firm's commission is due and payable at the earlier of closing or
 42 the date set for closing, even if the transaction does not close, unless otherwise agreed in writing.
 43 ■ **COMMISSION CALCULATION:** A percentage commission shall be calculated based on the following if earned above:
 44 (i) for a purchase or option, the total consideration in the transaction, or (ii) for an exchange or an effective change in
 45 ownership or control, the fair market value of the Property in the transaction.
 46 ■ **OTHER COMPENSATION:** _____
 47 _____
 48 [INSERT AMOUNTS AND TYPES OF FEES (E.G., RETAINER, ADVANCE, HOURLY, ETC. AND INDICATE WHEN
 49 DUE AND PAYABLE.)
 50 ■ **PAYMENT BY OWNER OR OWNER'S AGENT:** The Firm is hereby authorized to seek payment of commission from the
 51 owner (e.g., seller) or the owner's agent (e.g., listing firm) provided that all parties to the transaction give prior written
 52 consent. Buyer shall pay the Firm's compensation, reduced by any amounts the Firm receives from the owner or the owner's
 53 agent.

The buyer and the firm negotiate the amount of commission to be earned on a purchase, option, exchange, or an effective change in ownership or control. The parties use a buyer agency agreement to determine the fees a buyer will pay to a firm for successful performance under the agreement. A firm should help the buyer understand compensation amounts and collection strategies before writing an offer for the buyer. The commission amount is stated on lines 35-36.

The firm earns a commission if the buyer or any person acting on behalf of the buyer acquires an interest in property or enters into an enforceable written contract to acquire an interest in property at any terms and price acceptable to the buyer regardless of the purchase price range. The commission is due and payable at closing or the date set for closing, even if the transaction does not close. If the transaction involves a purchase or an option, a percentage commission is calculated based on the total consideration in the transaction. If the transaction involves an exchange or an effective change in ownership or control, a percentage commission is calculated based on the fair market value of the property in the transaction. Lines 46-49 provide the buyer and the firm blank lines to address other compensation that may be due instead of or in addition to a commission.

Payment by Owner or Owner's Agent

The WB-36 authorizes the firm to seek payment of commission from the owner (seller) or the owner's agent (listing firm). All parties to the transaction must provide written consent. An easy way to obtain that consent would be to include a provision in the offer to purchase authorizing the buyer's firm to seek and accept compensation from the seller or the listing firm. The buyer is responsible for payment of the buyer's firm's compensation, which is reduced by any amounts received from the owner (seller) or the owner's agent (listing firm).

Often, a buyer's agent receives a share of the listing firm's commission as compensation and the buyer does not end up paying the success fee contained in the agency contract. When a listing firm is going to pay a buyer's firm's fee, the firms will have a compensation agreement. The compensation agreement may be an offer of cooperation and compensation for firms participating in the MLS or it could be a separate policy letter between the firms. Payment is dependent upon the firm meeting the standard of performance. For MLS transactions, the standard of performance is procuring cause.

Lines 60-62 Firm's Duties

60 **FIRM'S DUTIES** In consideration for Client's agreements, the Firm and its agents agree to use professional knowledge
 61 and skills, and reasonable efforts, within the scope of Wis. Stat. Ch. 452 and in accordance with applicable law, to assist
 62 Client to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as applicable.

The firm's duties set the standards for performance by the client's firm such as using professional knowledge, skill, and reasonable effort to locate an interest in property for the client and negotiating the procurement of the interest in property desired by the client. Because this and following provisions are General Provisions and thus applicable to both buyers and tenants, "client" rather than "buyer" or "tenant" is used to preserve the universality of these provisions.

Lines 159-163 Non-Exclusive Relationship

159 **NON-EXCLUSIVE RELATIONSHIP** Client acknowledges and agrees that the Firm and its agents may act for other buyers
 160 or tenants in connection with the location of properties and may negotiate on behalf of such buyers or tenants with the owner or
 161 owner's agent. In the event that the Firm or its agents undertake to represent and act for other buyers or tenants, the Firm and
 162 its agents shall not disclose to Client, or any other buyer or tenant, any confidential information of any buyer or tenant, unless
 163 required by law.

A buyer acknowledges that the firm may be acting for other buyers in the same or other transactions. For example, a buyer's firm may represent two buyers who are both writing offers on the same property. The buyer's firm cannot disclose information about one buyer to another.

Lines 173-177 Property Dimensions

173 **PROPERTY DIMENSIONS** Client acknowledges that real property dimensions, total square footage and total acreage
 174 information provided to Client may be approximate due to rounding and may vary due to different formulas which can be
 175 used to calculate these figures. Unless otherwise indicated, property dimension figures have not been verified by survey.
 176 **CAUTION: Client should verify any property dimension or total square footage/acreage calculation which is**
 177 **material to Client.**

A client should recognize that property dimensions are approximate due to rounding or different calculation formulas. If dimensions of a property or total square footage are material to a buyer, the buyer should purchase a survey or use some other method to verify measurements.

Lines 219-229 Protected Properties

219 ■ **PROTECTED PROPERTY:** "Protected Property" means any Property that during the term of this Agreement is:
 220 1) The subject of a written proposal by Buyer, Tenant, Person Acting on Behalf of Buyer or Person Acting on Behalf of
 221 Tenant, submitted to the Property owner or owner's agent;
 222 2) Viewed by Buyer, Tenant, Person Acting on Behalf of Buyer or Person Acting on Behalf of Tenant with the owner or
 223 owner's agent, or directly negotiated for by Buyer, Tenant, Person Acting on Behalf of Buyer or Person Acting on
 224 Behalf of Tenant. Direct negotiation means communicating with the owner or owner's agent regarding any potential
 225 terms on which Buyer or Tenant might acquire an Interest in Property; or
 226 3) Located or negotiated for by the Firm or its agents, but only if the Firm or its agents deliver the description of the
 227 Property to Buyer or Tenant, in writing, no later than three days after the earlier of expiration or termination (lines
 228 243-251) of this Agreement. No written notice shall be required if the Buyer or Tenant viewed the Property with the
 229 Firm or its agents.

A buyer's firm can protect properties in the same manner as a listing firm can protect buyers. A firm can protect properties for which the buyer or buyer's firm submits an offer to purchase on a property and properties that were viewed by the buyer or a person acting on behalf of the buyer. A firm can also protect properties for which the buyer did not submit an offer if the firm or its agents, the buyer, or someone acting on behalf of the buyer located or negotiated for the properties during the term of the agency agreement. To protect these properties, the firm must submit written descriptions of the properties to the buyer within three days after the expiration of the agency agreement. A written notice is not needed if the firm was with the buyer when viewing the properties. The buyer's firm must deliver the list by one of the methods listed in the delivery section of the WB-36.

Lines 252-257 Extension of Agreement Term

252 **EXTENSION OF AGREEMENT TERM** The Agreement term is extended for a period of one year as to any Protected
 253 Property under this Agreement. Upon receipt of written request from Client or a firm that has a new buyer agency or
 254 tenant representation agreement with Client, the Firm agrees to promptly deliver to Client a written list of those Protected
 255 Properties known by the Firm and its agents to which the extension period applies. Should this Agreement be terminated
 256 by Client prior to the expiration of the term stated in this Agreement, this Agreement shall be extended for Protected
 257 Properties, on the same terms, for one year after the Agreement is terminated (lines 243-251).

If a buyer acquires an interest in a "protected property" during the one-year extension period, the buyer's firm would represent the buyer during the transaction and would earn the commission. Unlike protected buyers and the WB-1 Residential Listing Contract, protected properties are not automatically excluded from a subsequent buyer agency agreement. If a buyer's agent is executing an agency agreement with previously represented buyer, the firm can ask the buyer for information on the former firm's protected properties. If the buyer does not have that information, the new firm can contact the former firm. These properties can be excluded under Excluded Properties Subject to Prior Agreement at lines 21-29.

Lines 334-337 Term of the Agreement

334 **TERM OF THE AGREEMENT** From the _____ day of _____, _____ up
 335 to and including midnight of the _____ day of _____, _____.
 336 Notwithstanding lines 334-335, the Firm and Client agree that this Agreement (shall)(shall not) **STRIKE ONE** end ("shall" if
 337 neither is stricken) when Client acquires an Interest in Property.

A client and a firm can decide whether the buyer agency agreement terminates when the buyer finds a property or whether it continues by striking "shall" or "shall not" on line 336. If a buyer is looking for just one property, the buyer and firm would strike "shall not" so that the agreement reads that "this Agreement shall end when Client acquires an Interest in Property" and the agreement would end once the client acquires an interest in property even if that is before the date on line 335. If a buyer is hiring the firm to locate multiple properties, the parties would strike "shall" and the agency agreement would not end until the date on line 335.