

NAR Settlement

Changes and Updates



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What The NAR Settlement Agreement Means For Wisconsin REALTORS®

TOM LARSON

President and CEO

Wisconsin REALTORS® Association

The settlement agreement



NAR SETTLEMENT TIMELINE*

MAR 22

NAR filed Notice of Settlement / withdrew pending motions and sought to stay litigation

APR 23

Preliminary Approval granted

JUNE 18 - ACTION REQUIRED

- Deadline for REALTOR® MLSs to execute Appendix B (to be included as a Released Party)
- Deadline for brokerages to execute Appendix C (to be included as a Released Party)
- Deadline for non-REALTOR® MLSs to execute Appendix D (to be included as a Released Party)

~SEP

Anticipated Motion in Support of Final Approval

NOV 26

Hearing for Final Approval

MAR

APR

MAY

JUNE

JULY

AUG

SEPT

OCT

NOV

DEC

MAR 15

Settlement Agreement signed

APR 19

Plaintiffs filed Motion for Preliminary Approval

AUG 17 - ACTION REQUIRED

- Earliest date for Plaintiffs to issue class notice
- New NAR MLS Policy takes effect to implement practice changes
- Deadline for REALTOR® MLSs to implement policy changes pursuant to mandatory NAR policy**

SEP 16

Deadline for REALTOR® MLSs and opting-in non-REALTOR® MLSs to implement practice changes to be a Released Party under the settlement agreement

*As of May 7, 2024. Please refer to the settlement agreement for detailed information on deadlines.

**NAR encourages all MLSs to implement the practice changes by August 17, 2024.

More information on the effective date of practice changes can be found in our FAQ at facts.realtor.

Liability Protection

Sitzer/Burnett v. NAR – class-action, antitrust case brought on behalf of home sellers (Missouri)

- **Jury verdict** October 31, 2023
- **\$1.78 billion damages** (\$5.4 billion treble damages)

Copycat lawsuits -- Over 20 copycat lawsuits were filed across the country

Settlement Agreement – Entered into on March 15, 2024

- NAR agrees to pay \$418 million (over 4 years) and make various practice changes.
- Attorneys agree to resolve all existing and future copycat lawsuits involving sellers.

Summary -- If NAR pays the money and practice changes are followed, REALTORS® cannot be sued by sellers on this issue.

Liability protection is conditional

Protection -- To be protected from copycat lawsuits from sellers on the issue of offers of compensation, REALTORS[®] must do the following:

- Pay the \$418 million
- Perform the practice changes

No Protection -- If you fail to follow the requirements specified in the settlement agreement, you may lose your liability protection.

Agreement is voluntary

Settlement agreement is between two private parties (REALTORS[®] and Home Sellers)

- Not federal or state law

MLSs have the choice to opt in to practice changes

Practice changes are optional for all REALTORS[®], except those in Wisconsin

- Wisconsin requires ALL real estate licensees to use WB forms
- Most practice changes were incorporated into WB forms
 - Several practice changes were incorporated into WRA forms

Parties to the agreement

- **Parties to the Settlement Agreement**
 - REALTORS® (NAR, state and local associations, MLSs (who opt in), most REALTORS®)
 - Home sellers
- **Not Parties to the Settlement Agreement**
 - Non-REALTORS®
 - Department of Justice (federal and state)
 - Home buyers

The DOJ believes the agreement should go further

- DOJ does not like offers of compensation
- DOJ has been very active filing Statements of Interest (SOI) in antitrust cases (not just real estate cases)
 - DOJ has the authority to file an SOI in any pending federal court case - like a “friend of the court” (or amicus) brief
- DOJ may file SOI regarding the NAR Settlement, but not a foregone conclusion.
 - DOJ filed a SOI in *Nosalek v. MLS PIN* case settlement b/c offers of compensation on MLS were still allowed
 - The NAR Settlement practice changes go further than *Nosalek* and monetary remedy is much larger
- If DOJ does file a SOI, Court is not required to accept DOJ’s recommendation

Home Buyer lawsuits continue

- ***Batton I* (N.D. Ill.)**
 - In February, Court dismissed federal claims but allowed state claims to proceed
 - New schedule: Class certification motion due June 2025; discovery to close May 2026; trial in 2027?
- ***Batton v. Compass et al. (“Batton II”)* (N.D. Ill.)**
 - Amended complaint filed 5/6/24
 - Seeks injunctive relief under federal law (even though dismissed in *Batton I*)
 - Seeks damages under **28 state antitrust laws** and **25 state consumer protection laws**

CORI LAMONT

Vice President of Legal & Public Affairs

Wisconsin REALTORS® Association



NAR
practice
changes

**NAR
practice
Change #1**

**EFFECTIVE
8.17.24**

Offers of compensation

- **MLS will no longer include offer of compensation**
- This prohibition includes showing platforms, MLS associated documents, and other shared tools for REALTORS[®] created by MLS participants and REALTOR[®]-owned MLSs, etc.

Most Wisconsin MLSs will make changes in Mid-August

NAR practice Change #1

**EFFECTIVE
8.17.24**

Settlement agreement allows

- Listing firms may display offers of compensation on their website for their own listings
- Seller concessions may be offered on MLS if MLS rules permit, but it cannot be conditioned on the payment to the buyer's firm
 - Listing contract – may indicate the concessions including what it will be used for, which may include payment to the buyer's firm
 - MLS – may indicate concessions, but cannot condition it on payment to buyer's firm
 - Offer to purchase – may indicate concessions including what it will be used for, which may include payment to the buyer's firm

NAR practice Change #1

EFFECTIVE
8.17.24

Settlement agreement prohibits

- Blanket compensation agreements or policy letters will be prohibited
- All offers of compensation require seller approval and must:
 - be in writing
 - provided in advance of any payment or agreement to pay cooperating firm
 - specify the amount or rate of any such payment

Communicating offers of compensation from listing firm to cooperating firm may vary, but there should be evidence of an agreement

WRA Compensation Agreement is one way to evidence the agreement between the firms

WRA Compensation Agreement – Revised 2024

13 **COOPERATION AND COMPENSATION AGREEMENT TERMS**

14 The Listing Firm hereby offers cooperation and compensation in the above referenced transaction involving the property
15 and firms stated above. The Listing Firm represents and confirms that Seller approved the Listing Firm's offer of
16 compensation stated on lines 19-22 to cooperating firms working with buyers, such as the Cooperating Firm.

17 ■ Cooperation: The Cooperating Firm accepts the offer of compensation and agrees to cooperate as (subagent of the
18 Listing Firm) (buyer's firm) (other relationship: _____) STRIKE AND COMPLETE AS APPLICABLE .

19 ■ Compensation: The Compensation offered by the Listing Firm shall be: _____
20 _____

21 _____ (state the specific amount or the method for computing the cooperative commission,
22 e.g., percentage of the purchase price, list price, lease commission; percentage of commission received, etc.).

23 ■ Standard of Performance: Compensation is earned by the Cooperating Firm when the Cooperating Firm: _____
24 _____

25 _____ COMPLETE AS APPLICABLE (e.g., drafts the offer that successfully closes, is procuring cause, etc.).

26 ■ Definitions:

27 "Procuring cause," for the purpose of this Agreement, is the uninterrupted series of events, based on all facts and
28 circumstances, that results in a successful transaction. _____

29 "Successful transaction" means a sale that closes or a lease that is executed.

**NAR
practice
Change #2**

**EFFECTIVE
8.17.24**

Buyer written agreements

- MLS participants working with buyers **must enter written agreements with buyers before touring a home**
- Written agreement must include specific language as stated in the settlement

When is a written agreement with a buyer required before touring a home in WI?*

Role	Written agreement before touring
Listing agent or subagent*	No.
Buyer's Agent	Yes.
Pre-agency (not a listing agent, subagent or buyer's agent)*	Yes.

* as provided in NAR's FAQs

buyer relationships in WI

WI law, 3 different options (each varies by level of service)

1. Pre-agency

- Buyer is neither a client nor a customer
- Optional - can skip right to customer or client
- **Cannot negotiate (e.g., write an offer) in pre-agency. Must have a client or customer relationship to negotiate**

2. Customer

- Agent is either with
 - Cooperating firm, not listing firm (subagent) or
 - Listing firm (agent of seller) or
 - Firm representing buyer and seller is for sale by owner (FSBO)
- Agent owes duties to all parties and loyalty to seller (if subagent or agent of seller) loyalty to buyer (if seller is FSBO)
- Required state written disclosure

3. Client

- Agent has provided a WB Buyer Agency Agreement
- Agent owes duties to all parties and duties to client
- Required to use WB form(WB 36, 38 or 39)

New WRA's Pre-agency Showing Agreement

- Created to meet the settlement agreement requiring written agreement before touring a home
- To be provided in pre-agency (buyer is neither a client or customer)
- Can skip pre-agency and go right to customer or client and provide those disclosures/agreements
- **Cannot negotiate (e.g., write an offer) in pre-agency**
- Must have a client or customer relationship to negotiate
- The form educates buyer about pre-agency, what agents can or cannot do in pre-agency, etc.
- Emphasizes it is not an agency agreement
- Incorporates the settlement language
- WRA will be providing separate education on this form and others

WRA Pre-Agency Showing Agreement

Created 2024

WISCONSIN REALTORS® ASSOCIATION
4801 Forest Run Road, Madison, Wisconsin 53704

PRE-AGENCY SHOWING AGREEMENT FOR WISCONSIN PROPERTIES

- 1 Under Wisconsin law, buyers have choices in their relationship with an agent. There are essentially three agency options
2 available for buyers under Wisconsin law: pre-agency, subagency, and buyer agency. Each agency type varies by what
3 level of brokerage services may be provided.
- 4 A buyer can sign a buyer agency agreement with a firm and be the firm's client with all the services and duties that come
5 with being a firm's client. A buyer could work with the firm that has the property listed or another firm and not sign a buyer
6 agency agreement. The buyer would be a customer of the firm with some services and duties but not client-level duties.
7 When the buyer is a customer of either the listing firm or another firm, the agent working with the buyer cannot put the
8 buyer's interests ahead of the seller's interests. A buyer and a firm also can operate for a limited time in what is known
9 as pre-agency where the buyer is not yet a customer nor a client. During pre-agency, the agent cannot put the buyer's
10 interests ahead of the seller's interests and cannot engage in any negotiation on behalf of the buyer.

WRA Pre-Agency Showing Agreement Continued

34 **PRE-AGENCY AGREEMENT**

35 The undersigned Prospective Buyer and the Firm hereby enter this Pre-Agency Showing Agreement on the following
36 terms and conditions:

37 **THIS IS NOT AN AGENCY AGREEMENT. THIS AGREEMENT DOES NOT AUTHORIZE AN AGENT TO DRAFT AN**
38 **OFFER TO PURCHASE** This is an agreement that authorizes the Firm and its agents to help the Prospective Buyer
39 identify and locate properties and to show homes to the Prospective Buyer in a pre-agency relationship. The Firm and
40 agents may show properties and provide information, as requested. Either the Prospective Buyer or the Firm may
41 discontinue working together under pre-agency at any time, upon informing the other, and it is agreed and understood
42 that whether to proceed with any further or additional brokerages services, whether under subagency or under buyer
43 agency, is a choice between the Prospective Buyer and the Firm and agents.

44 **Compensation.** A firm may receive compensation for showing properties to a Prospective Buyer during pre-agency. The
45 Prospective Buyer and the Firm agree the Firm shall be paid \$ _____

46 _____
47 (insert amount, if any) for showing properties. The fee cannot be paid to the agent directly and must be paid to the Firm.

48 **Real estate commissions and compensation are not set by law and are fully negotiable. A firm working with a**
49 **buyer for services covered by this Agreement cannot receive compensation or fees from any source that**
50 **exceeds the amount specified in this Agreement, unless agreed to in writing.**

51 **The compensation paid under a Pre-Agency Agreement to the Firm does not prohibit the Firm from receiving**
52 **other compensation as an agent working with a buyer as a client or customer in the purchase of a property.**

Revised
WRA's
Disclosure
to
customers

Revised WRA's Disclosure to Customers form to ensure buyer receives the spirit of the settlement when they are not presented a

- Pre-agency Showing Agreement or
- Buyer Agency Agreement

Conservative approach

Maintains current disclosure language

Includes certain settlement agreement language and other clarification

WRA Disclosure to Customers Form

Revised 2024

61 **COMPENSATION**

62 **The Firm does not charge compensation to show homes to a customer under this disclosure.**

63 **Real estate commissions and compensation are not set by law and are fully negotiable. A firm may not represent**
64 **that the firm's services are free or available at no cost to their clients, unless they receive no financial**
65 **compensation from any source for those services.**

66 **The Firm may receive compensation from the listing firm as an agent working with a buyer as customer in the**
67 **purchase of a property.**

Existing Listing and buyer Agency Agreements

- **Use with listing or buyer agency agreements that are not on the mandatory use 8.15.2024 WB form.**
- **Compensation Disclosure for Wisconsin Agency Agreements**
 - Provide for any agency agreement that is not the new WB form to include settlement language
 - Unlikely that existing listings will need to be amended
 - Unlikely that existing buyer agency agreements will need to be amended
 - Except buyer agency agreements that state the compensation as “**MLS offer of compensation**” or “**whatever the listing firm is offering**” will need to be amended

Compensation Disclosure for Wisconsin Agency Agreements

Created 2024

COMPENSATION DISCLOSURE FOR WISCONSIN AGENCY AGREEMENTS

- 1 **Commissions are not set by law and are fully negotiable.** A Firm and the party agree upon the amount
- 2 or rate of the Firm's commission, which must be stated in a specific and conspicuous manner. This
- 3 agreement is documented in the agency agreement.

- 4 This Compensation Disclosure is for use with any WB listing contract or WB buyer agency agreement that
- 5 has a mandatory use date before August 15, 2024. For listing contracts and buyer agency agreements with
- 6 a mandatory use date of August 15, 2024, or later, this Compensation Disclosure is not needed.

Compensation Disclosure for Wisconsin Agency Agreements

continued

For Sellers

7 The Firm has disclosed, and Seller approves offers of compensation to cooperating firms working with
8 buyers such as subagents and buyer's firms: _____
9 _____
10 (Exceptions if any): _____.

For Buyers

11 The Firm cannot receive compensation from any source that exceeds the amount or rate agreed to in the
12 buyer agency agreement. The amount of compensation agreed to in the buyer agency agreement must be
13 objectively ascertainable and may not be open ended such as "whatever is being offered by the listing firm"
14 or "whatever the seller is offering to the buyer's firm." If the amount of compensation agreed to in the buyer
15 agency agreement is open ended, Buyer and the Firm agree to amend the compensation section of the
16 buyer agency agreement before August 17, 2024, to make the amount of compensation objectively
17 ascertainable.

Compensation Disclosure for Wisconsin Agency Agreements

18 _____

19 Seller's/Buyer's Signature ▲ Print Name Here ► Date ▲

20 _____

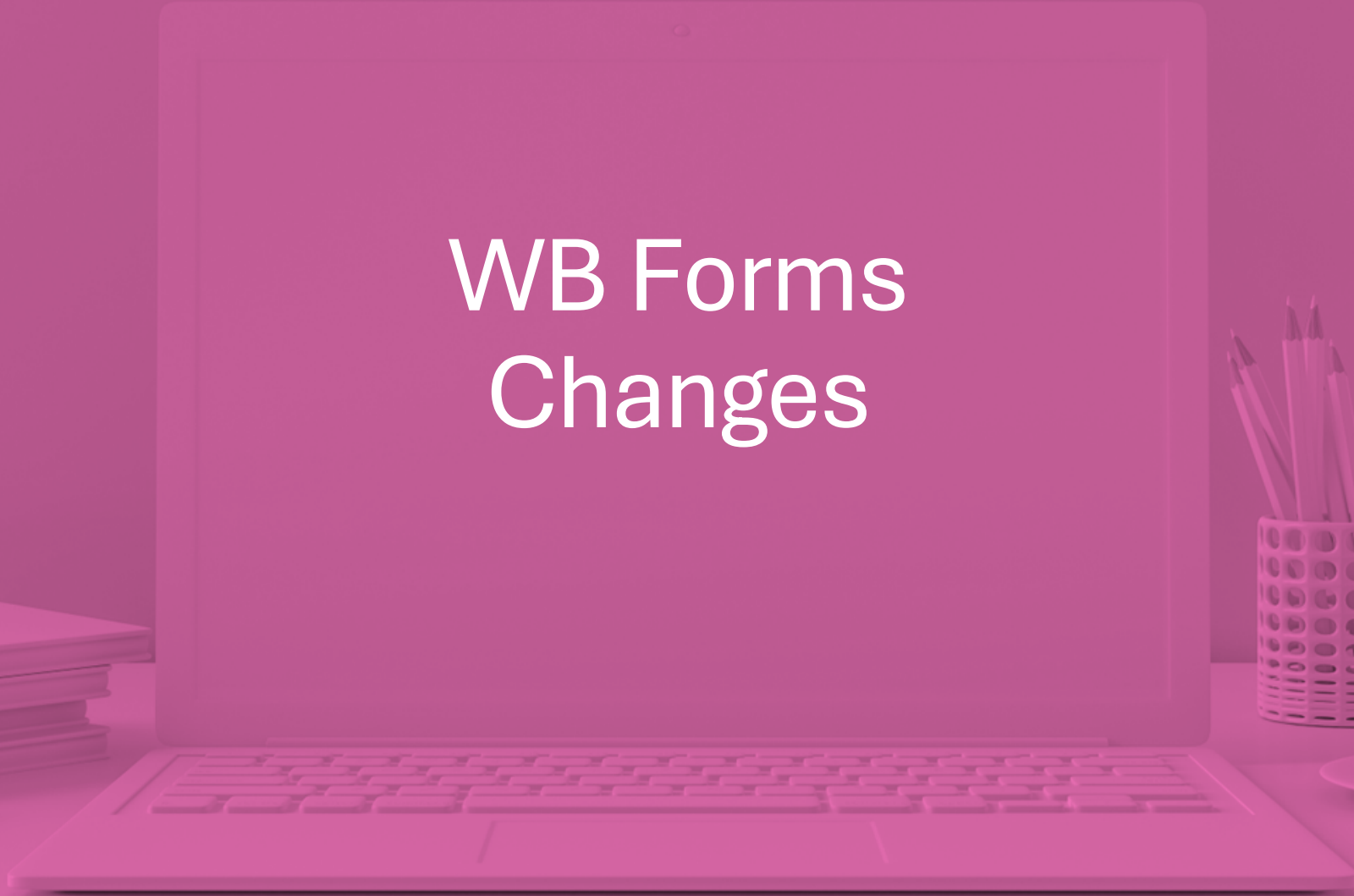
21 Seller's/Buyer's Signature ▲ Print Name Here ► Date ▲

22 This Disclosure was presented to Seller/Buyer by [Licensee and Firm] _____

23 _____ on _____

24 _____ Date ▲

WB Forms Changes



WB forms Changes

- WB Listing Contracts (1, 2, 3, 4, 5, 6, 37)
- WB Buyer Agency Agreements (36, 38)
- WB Tenant Representation Agreement (39)
- WB Offers to Purchase (11, 12, 13, 14, 15, 16, 17)
- WB Option to Purchase (24)

Optional use July 1, 2024

Mandatory use August 15, 2024

WB Listing Contract changes

Added a referenced to concessions in the marketing section

The Firm and its agents may advertise the following concessions, incentives, or special financing offered by Seller: _____ which are in addition to and separate from Compensation to Others. See lines xxx-xxx.
NOTE: Concessions offered in the multiple listing service cannot be limited to or conditioned on the retention of or payment to a cooperating firm, buyer's firm or other buyer's representative.

COMPENSATION TO OTHERS The Firm has disclosed and Seller approves offers of compensation to cooperating firms working with buyers such as subagents and buyer's firms: _____.
(Exceptions if any): _____.
There is no standard market commission rate. Commissions and types of service may vary by firm. Commissions are not set by law and are fully negotiable.

WB Buyer Agency & Tenant Rep Changes

NOTE: A Firm may not represent that the firm's services are free or available at no cost to their clients, unless they will receive no financial compensation from any source for those services.

NOTE: The specific amount or rate of compensation must be objectively ascertainable (e.g., specific percentage of purchase price, flat dollar amount, hourly rate, etc.) Compensation may not be open-ended (e.g., buyer's firm compensation shall be whatever the seller is offering to the buyer).

There is no standard market commission rate. Commissions are not set by law and are fully negotiable. Commissions and types of service may vary based on the firm you hire.

NOTE: The Firm cannot receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in this Agreement.

WB Offers to Purchase Changes

SELLER PAYMENT OF COMPENSATION TO BUYER'S FIRM:
Seller agrees to pay to Buyer's Firm the amount of _____ (e.g., dollar amount, % of purchase price, etc.), toward Buyer's brokerage fees at closing. Payment made under this provision represents an economic adjustment only and does not create any agency relationship between Buyer's Firm and Seller, and the Parties agree Buyer's Firm is a direct and intended third party beneficiary of this contract.

WB and WRA form resources

- **Where can you find the new forms?**
 - DSPS Real Estate Contractual Forms Library (WB)
 - WRA PDF Forms Library WRA Forms Library - www.wra.org/accessformslibrary (WRA and WB)
 - Transactions zipForm Edition (there may be a delay in seeing the forms on zipForm due to the volume of forms) (WRA and WB)
- **Where can you find new form information?**
 - www.wra.org/formsupdate
 - www.wra.org/antitrust

Practice change resources

Where can the forms be found?

- DSPS
- zipForm – very soon
- WRA Forms Library -
www.wra.org/accessformslibrary

Practice change resources

www.wra.org/antitrust

CONTACT

THE WRA LEGAL HOTLINE

SUBMIT QUESTIONS ONLINE OR CALL

Monday - Friday
8:30 a.m. to 4:30 p.m.
toll-free at 800-799-4468 or at 608-242-2296

https://www.wra.org/Legal/Hotline/Hotline_Question_Form/



***“If I had asked people what they wanted,
they would have said faster horses.”***

**-Henry Ford, the American industrialist and founder of the Ford Motor Company.
The quote relates to Ford's vision for the first mass-market motor car and is cited
when debating the merits of innovation based on customer feedback vs
innovation by singular visionaries who ignore customers altogether.**



What Does the Settlement Change in the MLS?

- **Removal of offered compensation through the MLS (Procuring Cause)**
 - **Buyer's representation**
- 



KEY DATES

August 1: *Remove 6 compensation fields from data feeds.*

August 14: *Remove 6 fields. Enable 3 new fields in Flexmls.*





Flexmls Field Updates

Fields Removed

- **Sub Agent Commission**
- **Sub Agent Commission Type**
- **Buyer Agent Commission**
- **Buyer Agent Commission Type**
- **Var. Comm.**
- **Concession Remarks (Change Sold Status screen)**



New Fields: Listing Input

- **Seller Offers Concession (Y/N)**



New Fields: Listing Input

Add Listing – Single-Family

GENERAL

ADDRESS


MAIN FIELDS

DETAILS

ROOMS

BROKER DISTRIBUTION

Lot Description

Est. Acreage* 

5330.0

ACRES

Tip: Acres = lot sq footage

Source Est. Acreage*

Public Records



Zoning*

RES

Listing Date*

03/05/2024



Must match TERM OF THE COM

Expiration Date*

12/31/2024



Must match TERM OF THE COM

Office/Agent Information

Team Listing Contact

Listing Information

Seller Offers Concession

No





New Fields: Sold Status

- **Seller Final Concession Amount**
 - **Seller Final Concession Type: (% or \$)**
- 

New Fields: Sold Status

Change Status To: Sold

123 Main St, Adams, WI 53072

Listing Member: Fake Agent (awmmlm@gmail.com) of Nancy Realtors (nancy) Entry Date: 06/22/2023 Status: Active w/Offer List Price: \$38,000

Selling Member*

Name or Short ID

Sold Date*

Select a date...

Sold Price*

Terms of Sale*

Adj Rate Mtg

Transaction Type

Seller Final Concession Type

Select One

Choose \$ or %

If there are seller or lender concessions they should be noted below in the Concession Remarks.

Seller Final Concession Amount

Enter Numeric value

Pending Date* Pending Date is the Accepted Offer Date

Select a date...

Back

Save



Rules & Procedures Updates

Commission Rules Updates

SECTION 1.8 - NO CONTROL OF COMMISSION RATES OR FEES CHARGED PARTICIPANTS: ~~The MLS shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by Participant. Further, the MLS shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating Participants or between Participants and non-Participants.~~ Commission or incentives offered by the Seller to a cooperating agent may not be displayed anywhere within the MLS compilation. Any offer of Commission or Incentives entered will be removed and a sanction levied based upon the current assessed amount.

Commission Rules Updates

within 7 days of listing (refer to paragraph three, Section 1.2)

19) Inclusion of Commission or Incentives

Inclusion of commissions or incentives displayed in any part of a listing

\$1000

20) Delayed/Any

regardless of its status where showings and/or ability to submit offers are not being

*TBD

Buyer Rules Updates

SECTION 1.17-Written Agreements-All MLS participants working with a buyer must have a written agreement prior to touring a property, unless state law requires an agreement earlier in time.

Preagency-New written agreement

Subagency-Provide the disclosure to customer form

Buyer Agency-Provide the appropriate WB buyer agency agreement

Note: agreement is to be made available to the MLS upon request for the purposes of audit.

Procedures Updates

~~**Compensation to a Subagent** Enter either a percentage of the sale price or a specific dollar amount.~~

~~**Compensation to a Buyer's Agent** Enter either a percentage of the sale price or a specific dollar amount.
Note: Both fields are required. You may not enter anything other than a percentage of the sale price or a dollar amount. (SLB, CALL, YES, etc are not allowed in this field)~~

~~**Bonus To Broker** If you are offering any type of a bonus you would indicate that here. Bonuses can only be offered to a cooperating broker, not to an agent.~~



METROMLS

Aligned Showings Buyer Rep Agreement

Review & Send

July 18th Thu



Select Date



Select Time



Review & Send

1717 Arthurs Pass, Oconomowoc, WI 53066

ACTIVE

4 beds 2.5 baths 2,034 sqft



Showing Type: Showing
\$499,900
MLS# 1883855

Enter a message (optional).

Add Buyer



By clicking SEND, You represent and warrant that You are in compliance with Your MLS Rules as well as all State and Local Laws governing the showing of properties. You also represent and warrant that if you are required to have a buyer broker agreement in place prior to showing this property, said agreement has been executed prior to this appointment.

Close

Previous

Send



“We believe offers of compensation should not be made anywhere, but certainly not on the MLS.”


DOJ attorney Jessica Leal’s comments during a status hearing in Massachusetts.





[METROMLS.COM/SETTLEMENT](https://www.metromls.com/settlement)

**Access up-to-date information on the NAR settlement
and the rule changes, new fields and FAQs via our
information page.**





The Value of the MLS

- **Cooperation Endures**
 - **Comprehensive Property Information**
 - **Reliable Data Accuracy**
 - **Cutting-Edge Technology**
 - **Collaboration with Industry Partners**
 - **Community-Centric Approach**
- 