



# LEGAL UPDATE

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

### WRA Addenda A and B 2021

The time has come to freshen the content of the WRA Addendum A to the Offer to Purchase and the WRA Addendum B to the Offer to Purchase to complement recent changes to the WB offer forms. The latest round of updates to the various WB offers to purchase has been substantially completed by the Real Estate Examining Board (REEB) at the Department of Safety and Professional Services (DPS), so it is time to get out the scrub brush, wash away the old and revise the WRA Addenda A and B.

The WRA Addendum A is a general, all-purpose addendum that may be used in an offer with any property type, whereas the Addendum B may most often be used with a rural property because of its focus on wells, well water and sanitary systems. To let members know what to expect in these updated addenda, both of which are available in zipForm and the WRA forms subscription service, this *Legal Update* overviews the various addenda provisions and explains a bit of the reasoning for the changes made.

### Addendum A to the Offer to Purchase

The revisions to the Addendum A are designed to better supplement the content of the offers. Addendum A was reorganized to loosely follow the sequence of provisions and topics in the various offers to purchase and has grown from two to three pages.

Despite this expansion, two major provisions have been removed from the WRA Addendum A. The Radon Testing contingency was removed because there now is a Radon Testing contingency in the residential, residential condominium and farm offers. The provision for Underground Storage Tanks and Basement Fuel Oil Tanks was removed and a new Underground or Aboveground Fuel Storage Tank(s) Currently Not in Use contingency was added to WRA Addendum B.

### Closing

The Closing provision in the WB-11 Residential Offer to Purchase establishes when the closing will occur and indicates the seller will indicate the place “unless otherwise agreed to by the Parties in writing.” However, there is no universal method for choosing the location of the closing, which may occur at the place selected by the lender in some markets, or at the title company in other markets. Those who are unhappy putting the closing location selection in the hands of the seller may use the Closing provision on lines 6-8 of Addendum A. There the parties can choose to have the closing location at (1) the place selected by the buyer’s

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lender, (2) the place selected by the buyer or (3) another place written in the blank on line 7 of Addendum A.

### CAUTION regarding testing and inspection contingencies

Lines 9-11 of Addendum A remind the parties they need to have seller permission to conduct inspections and testing, which comes in the form of a contingency.

A testing contingency should be separately stated and should specifically state who will conduct the test, when and where it will be conducted, what standards will trigger the buyer’s ability to terminate the offer, whether the seller will have the right to cure, as well as other relevant terms and conditions for the specific test. Without a contingency, unanswered questions are raised regarding qualifications, sampling without seller permission, proper testing methodologies, expertise necessary to interpret and evaluate test results, and specificity regarding what the seller may do to rectify the situation that will be acceptable to the buyer. A testing contingency is needed.

Persons who exceed the authorization of the contract are technically trespassers because they are on the seller’s property without the seller’s permission. Complaints may be filed with the DPS when contractors credentialed by that agency exceed their authority.

The REALTOR® Code of Ethics also addresses access to property. Standard of Practice 1-16 provides, “REALTORS® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller. (Adopted 1/12).” Similarly Standard of Practice 3-9 indicates, “REALTORS® shall not provide access to listed property on terms other than those established by the owner or the listing broker. (Adopted 1/10).” Licensees who allow inspectors, testers or other third parties to have access to the property without seller permission violate the Code of Ethics and may be the subject of an ethics complaint at the local association.

## Contractors for Inspections, Tests and Opinions

The provision at lines 12-20 of the WRA Addendum A was given a new, more accurate name as it informs the parties that the licensees in the transaction can provide lists of qualified contractors to conduct inspections, testing and investigations requested in various offer contingencies.



### REALTOR® Practice Tip

When helping parties find professional inspectors, contractors and testers, licensees should carefully follow these steps:

- **Prepare a list of professional inspectors and contractors.** Do not recommend or endorse one particular contractor because a recommendation that does not present the party with options may result in liability. Instead, maintain a list with the names of at least three professionals in each field, and include any available references from past users. Any contractor included on a list should be certified in his or her field and hold all applicable credentials for the type of work being performed. Any firm or agent affiliations with any listed contractors should be stated on the list or disclosed when the list is distributed. Include a disclaimer that the firm's agents cannot personally endorse these professionals.
- **Avoid referral fees.** It is wise to not ask for or accept a referral fee from any name on the referral list. Earning a fee just for referring business (except to other real estate brokers) violates the Real Estate Settlement Procedures Act (RESPA) if the contractor or company is a RESPA settlement service provider like a home inspector, appraiser or title company.
- **Let inspectors and contractors do their jobs.** Licensees may wish to be careful about accompanying an inspector through the house, because this may imply that the licensee is supervising the inspector. Reinforce that the party hired the inspector and let the party deal directly with the inspector. Similarly, do not volunteer to inspect work performed on the house unless you wish to be considered the contractor's supervisor.

## Testing

The Testing contingency on lines 21-48 of Addendum A is a generic testing contingency that was reformatted to mirror the procedures and format employed with inspection and testing contingencies in the offers such as the Inspection contingency and the Radon Testing contingency. This creates comfort and familiarity for licensees using the form. The contingency can be completed to require testing for various substances or compounds, written in on line 24, such as asbestos or other chemicals that the buyer would like to have tested.

In the contingency either the buyer obtains, or the seller provides, as indicated on lines 21-22, a written report from a qualified independent expert documenting the test results. When setting the deadline for obtaining the test report on line 26, the licensee drafting the offer can choose a deadline measured after acceptance or before closing. If it is missed, the default is 20 days after acceptance. The WRA Addendum A has a safety valve stated on lines 140-141 that fills in timeframes as 20 days in the absence of a specific default stated within a particular provision.

There is a blank on line 19 where the parties may specify any protocols, testing contractors, labs, standards/levels constituting a defect, financial limits, acceptable repair methodologies, or other parameters they want to apply to the testing. The testing will be at the buyer's expense per the default unless line 27 is marked to indicate the seller will pay. The parties indicate on line 37 whether the seller has the right to cure. The right to cure section on lines 37-48 is the same as the right to cure section found in the Inspection contingency in the residential and other offers.

## Hazardous Substances

This provision on lines 49-56 warns of the dangers of hazardous substances and chemicals in our environment that may present health risks. The seller represents to the best of the seller's knowledge that the hazardous substances and situations listed in the provision are not contained or present in the property. This is a fairly broad assertion for a seller to make. Many sellers may sign Addendum A without realizing they are making such a broad representation. Buyers who do not wish to have their offers countered may consider lining out substances listed in this provision if the seller has already disclosed information regarding a listed substance.

## Buyer's Responsibility to Ascertain Condition of Property

The disclaimer provision at the top of the second page of Addendum A puts the responsibility on the buyer to make sure the property is acceptable to the buyer. The provision squarely puts the onus on the buyer to conduct all inspections, investigations, evaluations, tests and inquiries the buyer finds necessary so that the buyer is satisfied with the condition of the property. The provision limits the buyer's reliance on information provided by the seller or the licensees in the transaction to the written information in the seller's real estate condition report (RECR), the offer and other information provided in writing.

## Map of the Property

The Map of the Property contingency is the same as the map provision in the vacant land offer. The Map of the Property contingency allows the buyer to select desired map components. If a significant encroachment, material inconsistency with prior representations or failure to meet other stated map requirements is revealed, the buyer may deliver a copy of the map and notice outlining the map's shortcomings to the seller, and the offer will be null and void.

The contingency starts with an important choice: whether the buyer will obtain or whether the seller will provide the map for the transaction. The default is for the seller to provide the map. The updated Map of the Property contingency has a 30-day default with regard to the deadline for the delivery of the surveyor's map dated after the date of acceptance of the offer.

There are blanks in the contingency for insertion of minimum or maximum acreage. The contingency also states the map must include the legal description of the property, the property boundaries and dimensions, visible encroachments, the location of improvements and any other features written in on the blank line. The buyer may ask for staking of all property corners, identification of streets and easements, and other features. The buyer is invited to customize the contingency by striking unwanted items and writing in additional information that the buyer wants.

The buyer's deadline for providing a notice objecting to the map is five days after the deadline for delivery of the map. There is a new mechanism that applies if the seller fails to provide a map by the contingency deadline:

Once the deadline for delivery has passed, if Seller was responsible to provide the map and failed to timely deliver the map to Buyer, Buyer may terminate this Offer if Buyer delivers a written notice of termination to Seller prior to Buyer's Actual Receipt of said map from Seller.

This language is similar to the Seller Termination provision under the Financing Commitment contingency in the WB offers.

#### ① MORE INFO

See "Vacant Land Mapping: Tailoring the survey to benefit the buyer" in the September 2013 *Wisconsin Real Estate Magazine* at [www.wra.org/WREM/Sept13/LandMapping](http://www.wra.org/WREM/Sept13/LandMapping).

## Buyer's Financing Pre-Approval

The 2021 version of the WRA Addendum A adds an optional provision for a Buyer's Financing Pre-approval on lines 83-87. The buyer must provide a financial institution's verification, within five days of acceptance if the default is followed, that the buyer is pre-approved for financing. A different timeframe may be filled in the blank. The seller may terminate the offer if the seller delivers a written notice of termination to the buyer prior to the seller's actual receipt of a copy of the buyer's written financing pre-approval, but in no event later than 15 days after acceptance.

## Federal VA and FHA Mortgage

On lines 88-90, the parties are reminded that if the offer is contingent upon the buyer obtaining an FHA or Federal VA loan, then the parties will need to execute an FHA or Federal VA amendment that gives the buyer the right to terminate the offer if the appraisal is not equal to or greater than the purchase price. The offer is contingent upon the parties executing the amendment.

## Federal VA Mortgage

Lines 91-93 contain an optional provision that allows the parties to use the [STRIKE ONE] feature to indicate whether the seller or the buyer will pay the funding fee in a federal Veterans Administration loan, up to a stated percentage cap.

## Association Fee

The optional Association Fee provision was changed to make it more straightforward, indicating there is a fee the buyer will be required to pay going forward.

## Seller's Contribution

The Seller's Contribution provision may be completed if the seller will provide a closing credit to the buyer. The language was revised and simplified so the buyer can use the credit for closing costs, pre-pays, escrows and other fees allowed by the buyer's lender. The buyer's lender or underwriter becomes the judge who determines if a fee is not allowable under this provision. Any funds for costs that are not approved by the buyer's lender or underwriter prior to closing shall be credited back to the seller at closing. It is wise for the buyer to check with the lender to make sure the credit does not disrupt their ability to obtain the loan they applied for and to see what costs they can use the credit for so they can plan what other funds they need to close.

## Home Warranty Plan

As stated on the Wisconsin Commissioner of Insurance website ([www.oci.wi.gov/pub\\_list/pi-221.htm](http://www.oci.wi.gov/pub_list/pi-221.htm)), a home warranty is:

An insurance policy covering the mechanical breakdown of specific major systems, components, or appliances in a home. Coverage extends over a specific time period and does not cover the home's structure. Typically, the warranty will cover the electrical and plumbing systems, the furnace, range, roof, and other items, for one year from the date of closing. Home warranties have exclusions and limitations, so it is important to read your policy carefully.

The typical home warranty is a one-year service contract that protects a homeowner against the cost of unexpected repairs or replacement of major systems and appliances that break down due to normal usage, such as the heating system, water heater, plumbing, electrical, garage door opener, washer, dryer, oven, refrigerator, garbage disposal, central air conditioning or evaporative cooler, and even the doorbell. The optional Home Warranty Plan provision in the WRA Addendum at lines 100-105 is the same as the provision in the prior version of Addendum A. The parties fill in the maximum cost of the home warranty, indicate whether the seller or the buyer will pay for it, and which firm will order and provide the home warranty.

#### ① MORE INFO

The Home Warranty Plan provision does not reference any possible fees that the listing or cooperating firm might be paid by home warranty companies. Care should be taken that any such fees do not violate Section 8 of RESPA. Marketing performed by a licensee to sell a home warranty to particular home buyers or sellers may constitute a referral if it is directed at one person, and a payment for such services may be an illegal kickback. See Welcome Clarity on RESPA at <https://magazine.realtor/law-and-ethics/feature/article/2021/03/welcome-clarity-on-respa> and CFPB Rescinds 2015 RESPA Bulletin on MSAs at [www.nar.realtor/washington-report/cfpb-rescinds-2015-respa-bulletin-on-msas](http://www.nar.realtor/washington-report/cfpb-rescinds-2015-respa-bulletin-on-msas).



## Insurance Issues

In the Insurance Issues provision on lines 106-108, the seller agrees to allow representatives of the buyer's insurer to have access to the property for required insurance inspections, and both parties are advised to address questions regarding insurability and costs to their insurance agents.

## Flood Plains/Wetlands/Shoreland

In the Flood Plains/Wetlands/Shoreland provision on lines 109-110, it is recommended the buyer seek professional assistance in interpreting any flood plain, wetlands and shoreland maps pertinent to the transaction.

## Flood Insurance

This provision on lines 111-116 of the WRA Addendum A advises the buyer their mortgage lender may require them to purchase flood insurance. The National Flood Insurance Program (NFIP) ([www.floodsmart.gov](http://www.floodsmart.gov)) provides for the availability of flood insurance and establishes flood insurance premiums based on the risk of flooding. Because flood insurance premiums can vary substantially, a buyer should consult with one or more flood insurance carriers regarding flood insurance coverage and current and future premiums. The buyer may wish to determine whether they may assume the seller's flood insurance policy.

### ① MORE INFO

Valuable information about flood insurance may be found in the WRA Floodplain Resources at [www.wra.org/Resources/EnviroLand/Floodplains\\_Resource](http://www.wra.org/Resources/EnviroLand/Floodplains_Resource), the DNR Floodplain Management and Mapping information at <https://dnr.wisconsin.gov/topic/FloodPlains> and the DNR Flood Insurance Information for Realtors at <https://dnr.wisconsin.gov/topic/FloodPlains/insurance.html>.

The parties may wish to take advantage of Flood Factor™, the new tool from NAR that provides a property search that includes comprehensive flood data, including the FEMA flood zone and a risk score between 1 (minimal risk) and 10 (extreme risk).

### ① MORE INFO

See the Flood Factor™ information at [www.nar.realtor/national-flood-insurance-program/flood-factor-faq](http://www.nar.realtor/national-flood-insurance-program/flood-factor-faq) and the additional information and resources at [www.nar.realtor/national-flood-insurance-program/nar-member-information-packet-realtor-com-home-flood-factor-data](http://www.nar.realtor/national-flood-insurance-program/nar-member-information-packet-realtor-com-home-flood-factor-data) as well as the flood insurance resources at [www.nar.realtor/flood-insurance](http://www.nar.realtor/flood-insurance).

## Flood Insurance Premiums

The simplified Flood Insurance Premiums contingency on lines 117-123 allows the buyer to explore available flood insurance policies and associated premiums with insurance agents and determine whether their annual flood insurance premium would exceed the amount stated in the contingency, which might be the amount they have learned the seller presently pays.

It may be advisable for a buyer to conduct this investigation before making an offer, but this contingency provides an option when this is not feasible due to timing or other circumstances. In the Flood Insurance

Premiums contingency, the buyer has the opportunity to secure insurance company documentation indicating what flood insurance premiums the buyer will face in the buyer's initial year of ownership if the buyer purchases the property. The contingency is satisfied unless the buyer delivers written notice to the seller indicating the contingency has not been satisfied and documentation of the flood insurance premiums available to buyer. The deadline for this delivery is set on lines 120-121; the default is 20 days after acceptance. At that point, the buyer may wish to negotiate an amendment with the seller if there are measures that will alleviate the flood insurance premium situation, for example, a price reduction or a requirement that the seller secure an elevation certificate or contribute to the cost of elevating the structure. The buyer can also provide a written notice of termination to the seller that will terminate the offer.

## Zoning and Building Restrictions, Comprehensive Plans and Non-Conforming Structures

The Zoning and Building Restrictions, Comprehensive Plans and Non-Conforming Structures provision on lines 124-131 of the WRA Addendum A explains the municipality in which the property is located may have zoning and building restrictions that may affect the use of the property. The municipality may also have a comprehensive plan that may affect the future use or value of the property by influencing future development. The buyer is also advised that some properties may not conform to current zoning if municipal zoning regulations have changed since the structure was built. These non-conforming properties (grandfathered properties) may be subject to restrictions that limit the property owner's ability to build, rebuild, remodel, replace or enlarge a structure on the property, or to change the nature of the owner's use of the property. The buyer is encouraged to consult with local municipal zoning officials concerning applicable zoning, building and use restrictions and any comprehensive plan that may affect the property.

### ① MORE INFO

See the "REALTORS® Guide to Wisconsin's New Nonconforming Structures Laws" in the June 2012 *Wisconsin Real Estate Magazine* at [www.wra.org/WREM/Jun12/NonconformingLegislation](http://www.wra.org/WREM/Jun12/NonconformingLegislation) for further discussion.

## Municipal Report/Code Compliance

In the Municipal Report/Code Compliance provision on lines 132-136, the seller agrees to obtain a written statement from the municipality where the property is located. This statement, if available, should verify that the real estate taxes have been paid and indicate any current and planned special assessments and any unpaid municipal charges applicable to the property. This statement shall be furnished to the buyer prior to closing. The seller must also provide a Certificate of Code Compliance, an Occupancy Permit or any other similar government documentation or permit required under local laws and ordinances at or before closing. All such documentation is furnished at the seller's cost.

## Municipality Discrepancy

Lines 137-139 point out that while the property mailing address may be within one municipality, the property may be physically located in an adjoining municipality. This may have multiple consequences. It may affect the applicable property taxes, the school district, the fire district and the zone that the property is in on the lender's or the insurance carrier's rating maps.

## Number of Days

The WRA Addendum A contains default provisions in most situations where the parties are to make a choice. Lines 140-141 indicate that for any line where a number of days is needed and there is no specific default stated within the provision, the default will be 20 days.

## Contact Information for Closing Disclosure

The most obvious addition to the WRA Addendum A comes near the end, on the bottom half of page 3, where the parties may fill in their Contact Information for Closing Disclosure.

In the Contact Information table on page 5 of the Closing Disclosure, contact information for the lender, mortgage broker, the real estate brokers in the transaction and the title insurance company/settlement agent must be provided, including individual and entity license numbers. The table requires the name, address, company license number, contact name of an individual and the individual's license number, and an email address and telephone number. This section in the WRA Addendum A allows the early collection of this information for the real estate licensees in the transaction.

### ① MORE INFO

See page 10 of the May 2015 *Legal Update*, "New RESPA/TILA Disclosure Forms," at [www.wra.org/LU1505](http://www.wra.org/LU1505) and the Closing Disclosure resources at [www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/tila-respa-integrated-disclosures](http://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/tila-respa-integrated-disclosures).

## Additional Provisions

One benefit of adding a third page to the WRA Addendum A is that there was room to include numerous Additional Provisions lines at the end of the form.



## Addendum B to the Offer to Purchase

The 2021 WRA Addendum B to the Offer to Purchase in large part adopts the Well Inspection, Well Water Testing and POWTS contingencies from the WB-12 Farm Offer to Purchase. This helps achieve consistency for the contractors performing the inspections and tests and for the licensees and parties who utilize those provisions. The additional benefit is those provisions have been approved by the DSPS for use with farm properties which makes them perfect for transactions involving rural properties and other properties not served by municipal sanitary and water systems.

## Grouping of Well Water, Well System, POWTS and Environmental Site Assessment contingencies

Just like in the farm offer, the contingencies for Well Water Testing, Well System(s) Inspection and Private Sanitary System(s) (POWTS) Inspection are grouped together and share the same Contingency Satisfaction / Right to Cure subsection that appears on lines 52-70. A separate election is made in each individual contingency regarding whether the seller will have a right to cure. This configuration creates a uniform process for the implementation of these different contingencies once the deadline for delivery or receipt of the respective applicable report(s) is reached. The buyer then has five days in which to deliver a Notice of Defects to the seller stating why the respective contingency standard has not been met, along with a copy of the respective report. The right to cure is modeled after the procedure used in the inspection contingencies in the offers and should be familiar to licensees and the parties.

## Well Water Testing

There are no major changes to the Well Water Testing contingency on lines 9-22 of the WRA Addendum B. The offer is contingent upon the buyer receiving a report from a state-certified or other qualified lab by the deadline on lines 9-10, indicating the tested substances are at safe levels. The default for the deadline is 30 days prior to closing. The Well Water contingency automatically calls for bacteria (total Coliform and E.coli), nitrate and arsenic testing, and the parties may designate other substances the water should be tested for on the blank line. The DNR website at <https://dnr.wisconsin.gov/topic/DrinkingWater/contaminants.html> provides information regarding other contaminants for which they may wish to test. In some cases, FHA, VA and other government loan programs may require well water testing for lead, nitrites and other substances.

The default on lines 18-19 states the buyer is responsible to obtain and pay for the reports. The parties specify in this contingency whether the seller has the right to cure on line 21. The parties are then referred to the Contingency Satisfaction/Right to Cure provision on lines 52-70.

The provision from the 2014 Addendum B whereby the parties could indicate in advance whether the seller may cure using a point of use versus a point of entry remedy was removed as the parties are more likely to want to decide such issues when and if they are confronted with a well water contaminant. It may be more beneficial for the parties to research a specific contaminant in a particular situation and negotiate for a suitable mitigation measure.

## Well System(s) Inspection

The Well System Inspection contingency that will be on lines 23-35 is also substantially the same as in the prior version, making the offer

contingent upon the buyer receiving a current report, that will be on the DNR Inspection Form (DNR Form #3300-221), from a Wisconsin licensed well driller or a Wisconsin licensed pump installer, indicating the well conforms to code. The default for the deadline is 30 days prior to closing. The licensed well professional will conduct a visual inspection of the well and pressure systems and look for specific features that do not comply with the state well regulations in Wis. Admin. Code chapter NR 812.

The inspector will search for any wells that may be on the property, even if they are unused. The inspector is required to inspect and complete a separate report form for each potable and each nonpotable well found on the property.

Although not required, the inspector may note observations regarding the condition, capacity or performance of the well and pressure system, including well or pump yield. The party ordering the well inspection(s) should request that information on the well capacity and water yield be included if the box on line 30 has been checked.

The contingency indicates if the well is inspected, the Well Water Testing contingency is automatically selected and included in the offer because the well water will be sampled and tested for coliform bacteria (includes E. coli), nitrate and arsenic, as required by state law, regardless of whether the parties otherwise make that request in the offer. Line 32 indicates that *“If the well is inspected, the Well Water Testing Contingency is automatically selected and included in this Offer.”*

The default on lines 28-29 states the buyer is responsible to obtain and pay for the reports. The parties specify in this contingency whether the seller has the right to cure on line 34. The parties are then referred to the Contingency Satisfaction/Right to Cure provision on lines 52-70.

#### ① MORE INFO

For more information about the well inspection and water testing rules, see “Buying or Selling a Home or Property with a Private Well” on the DNR website at <https://dnr.wisconsin.gov/topic/Wells/RETransfer.html> and the DNR Property Transfer Well Inspections fact sheet at <https://dnr.wi.gov/files/pdf/pubs/dg/DG0091.pdf>.

## POWTS

The Private Sanitary System (POWTS) Inspection contingency, or POWTS contingency, is different from the contingency in the 2014 Addendum B. The check boxes for the standards the POWTS was to meet have been eliminated and the contingency no longer includes verification of vertical separation.

The POWTS Inspection contingency on lines 36-51 of the revised Addendum B makes the offer contingent upon the buyer receiving, by the deadline indicated at line 37, a current written report regarding the POWTS on the property. The report must be from either a county sanitarian, licensed master plumber, licensed master plumber-restricted service, licensed plumbing designer, registered engineer, certified POWTS inspector, certified septage operator, and/or a certified soil tester. The professional’s report should indicate the POWTS conforms to the code in effect when the POWTS was installed, is not disapproved for current use, and is hydraulically functional and structurally sound.

Wis. Admin. Code § SPS 383.03 provides that an existing POWTS installed prior to July 1, 2000, must conform to rules in effect when it was permitted and installed. New POWTS, on the other hand, must conform to

current code. A POWTS that does not conform to code (time of installation or current) could be subject to repair or removal if discovered by the local code administrator. Indicating the POWTS is not disapproved for current use and is hydraulically functional and structurally sound, is a statement of hydraulic functionality, that the POWTS works in a suitable manner. Unless the inspector is the county sanitarian, the inspector would not have the authority to disapprove the system and have it removed from service.

Although Wis. Admin. Code § SPS 383.03 continues to require that the POWTS maintain a minimum vertical separation from limiting conditions such as groundwater or bedrock, that is not a component of the standards the inspector is asked to address in the contingency in Addendum B. The standard for an operating POWTS is a three-foot separation, except a POWTS installed before December 1, 1969, is permitted to have only a two-foot separation. This can be determined in some cases from the county records or by having a certified soils tester make soil borings to determine separation. In other cases where the system is old and deep in the ground, some POWTS inspectors report they cannot determine vertical separation without excavation, which they do not do. As a result, the inspectors generally do not include any reference to vertical separation in their reports unless it is indicated in the county’s written records. There are no statutes or rules setting standards for POWTS inspections and inspection reports, as there are for wells and well water, so POWTS inspectors have discretion as to the content of their reports and the standards they employ in reaching their conclusions.

If the POWTS does not have the required vertical separation there are risks that the POWTS will contaminate the groundwater, their own well or wells on neighboring properties, or the owner will be required to replace the system should the county inspect in conjunction with the owner’s request for improvements or the county’s efforts to establish missing records and it is discovered the POWTS is noncompliant.

The POWTS contingency includes a note on lines 42-44 stating:

This may include a records review to confirm installation date and specifications observed by the installer. Different professionals may be needed to inspect different system components. This contingency does not authorize soil testing.

If required by the inspector, the POWTS is to be pumped at the time of inspection. The default on lines 47-48 states the buyer is responsible to obtain and pay for the reports, including pumping the POWTS if requested by the inspector. The parties specify in this contingency whether the seller has the right to cure on line 49. The parties are then referred to the Contingency Satisfaction/Right to Cure provision on lines 52-70.

#### ① MORE INFO

See “Is the Grass Greener over your Septic System?” at <https://dsps.wi.gov/Documents/Programs/POWTS/GrassGreener.pdf>.

## Contingency Satisfaction / Right to Cure

When the parties have selected the contingency for Well Water Testing, Well System(s) Inspection or Private Sanitary System(s) (POWTS) Inspection on lines 9-51, the Contingency Satisfaction/Right to Cure provision on lines 52-70 applies. In each contingency the buyer has five days after the deadline for delivery or receipt of the respective applicable report(s), to deliver to the seller a copy of the written inspection/testing report(s) and a written notice listing the defect(s) identified in those report(s) to which the buyer objects or stating why the report(s) do(es) not satisfy the standard set forth in the contingency(ies) selected.

As is the case in most other inspection and testing contingencies, a proposed amendment is not a Notice of Defects and will not satisfy the notice requirement.

The seller's right to cure is substantially the same as in the Inspection contingency found in the offers.

If the seller has the right to cure, the seller satisfies the contingency if the seller (1) delivers to the buyer, within 10 days (the default) after the buyer's delivery of the Notice of Defects, a written notice indicating the seller's election to cure, (2) cures the defects in a good and workmanlike manner and, (3) no later than three days prior to closing, delivers to the buyer a written report detailing the work done. The offer becomes null and void, as stated on lines 63-67, if the buyer delivers the appropriate notice and copy of the report(s) to the seller on time, and the seller does not have a right to cure. The offer also becomes null and void if the buyer delivers the notice and copy of the report – on time – to a seller with the right to cure, who either delivers written notice to the buyer stating that the seller will not cure or fails to deliver a written notice of the seller's election to cure within the allotted 10 days.

Lines 68-70 indicate if the seller is providing the reports, the offer will be null and void if the buyer delivers notice to the seller, within five days of the deadline for delivery of the reports, stating the seller failed to deliver the reports by the applicable deadline.

## Wells and Well Water

The Wells and Well Water provisions on lines 71-81 address required well water testing, well water chlorination and well water mediation.

### Required Well Water Testing

The connection between having the well inspected and mandatory testing of well water for bacteria, nitrate and arsenic is emphasized on lines 72-74: "Per Wis. Admin. Code § NR 812.44, if a property transfer well inspection is conducted the licensed well driller or a licensed pump installer conducting the inspection is required to collect well water samples for bacteria (total Coliform and E.coli), nitrate, and arsenic testing."

### Well Water Chlorination

A process and time frames for disinfecting a well where the water test report indicates bacteriological contamination, where the seller has the right to cure, is set forth in lines 75-78. After a report of bacteriological contamination, the seller must produce two safe water reports to satisfy the Well Water contingency, unless otherwise agreed in writing. If the initial well water report indicates bacteriological contamination, the seller may "shock" or chlorinate the well and retest up to two times, with the deadlines for the buyer's receipt of the report and for closing extended for up to 14 days. If the parties wish to establish different standards or parameters, they may do so in the Additional Provisions section at the end of Addendum B.

### Well Water Mediation

If the water testing results show a high level of a contaminant in the well water, lines 79-81 suggest that the parties confer with the licensed well driller or pump installer who conducted the well inspection and took the water samples regarding possible remediation techniques and whether a new well could provide safer water for the long term. Questions may also be posed to other well drillers or pump installers as the DNR considers that they all have sufficient training and knowledge to be helpful to the parties in a real estate transaction.

## Abandoned Well(s)

The 2021 WRA Addendum B includes a new provision on lines 82-86 for Abandoned Well(s) making the seller responsible to close any abandoned wells if the seller has notice or knowledge or is made aware of abandoned wells.

**ABANDONED WELL(S):** If Seller has notice or knowledge of an abandoned well(s) on the Property, or any other well(s) required to be closed per applicable law, or Seller is made aware of such a well(s) prior to closing, Seller shall, prior to closing, close the well(s) at Seller's expense and provide Buyer with documentation of closure in compliance with applicable codes or provide Buyer with documentation evidencing the well(s) was previously closed in compliance with the applicable codes in effect at the time of closure.

The seller also is to provide the buyer with documentation pertaining to wells closed earlier.

### ① MORE INFO

See the DNR publication Answers to Your Questions on Well Filling and Sealing at <https://dnr.wi.gov/files/pdf/pubs/DG/DG0016.pdf> and the well filling and sealing information at <https://dnr.wisconsin.gov/topic/Wells/FillingSealing.html>.

## POWTS

Since POWTS is not a familiar term to consumers, the WRA Addendum B includes a short definitional section on lines 87-92 explaining that Private Onsite Wastewater Treatment Systems, or POWTS, is the terminology used by the DSPS and sanitary system professionals, as well as in applicable code, Wis. Admin. Code Chapter SPS 383, when referring to a private sanitary or septic system. It is also explained that modification of an existing POWTS, including the replacement, alteration or addition of material or components, must conform to current code in Wis. Admin. Code chapter SPS 383. Modification of one part of a POWTS may affect the performance or the operation of other components of the POWTS thereby necessitating further modifications for the other parts to remain compliant.

## Utility Service

Lines 93-94 make the seller responsible for providing electricity, water service or any other utility service necessary for any inspection or testing, unless otherwise designated in the Additional Provisions on lines 137-157 of Addendum B or in another part of the offer.

## Sanitary District

The Sanitary District provision informs the buyer that the property may be located in a sanitary district that may impose taxes, special assessments or other charges for sewer planning and construction, user fees or other costs upon the owner of the property. The buyer is encouraged to contact the sanitary district officials to inquire about such potential charges.

## Shared Well Agreement

In the optional Shared Well Agreement contingency on lines 98-110, if the well serving the property is shared with other property owners, the offer is made contingent upon the seller, at the seller's expense, providing the buyer with an acceptable shared well agreement by the stated deadline (default is 20 days after acceptance). The shared well agreement will be acceptable if it provides an equal allocation of all

operation and maintenance expenses to each property sharing the well, limits use of the well to residential purposes, allows reasonable access to the well as needed for necessary maintenance and repairs, and prohibits use for filling a swimming pool, except for “topping off” for loss from evaporation.

This contingency is satisfied unless the buyer, within five days of the deadline for the seller’s delivery of the agreement, delivers to the seller a written notice listing the terms and conditions of the agreement to which the buyer objects. The seller has 10 days to cure said objections and provide the buyer with written evidence of same, and the time for closing shall be extended accordingly. If the shared well agreement has not yet been recorded, the agreement is to be in recordable form so that the seller can record it at closing at the seller’s expense. If the seller is unable to cure, the buyer can deliver a notice of termination and the offer will be null and void. This offer also will be null and void if the buyer delivers notice within five days of the delivery deadline stating the seller failed to timely deliver the shared well agreement.

## Shared Driveway Agreement

The contingency on lines 111-122 for a shared driveway agreement is structured similarly to the contingency for the shared well agreement. The seller, at the seller’s expense, delivers a copy of the shared driveway agreement by the deadline (default is 20 days after acceptance). The agreement shall provide appurtenant rights for ingress and egress benefitting the parties and equal sharing of the rights, expenses and obligations relating to use and maintenance. This contingency is satisfied unless the buyer, within five days of the deadline for the seller’s delivery of the agreement, delivers to the seller a written notice listing the terms and conditions of the agreement to which the buyer objects. The seller has 10 days to cure said objections and provide the buyer with written evidence of same, and the time for closing shall be extended accordingly. If the seller is unable to cure, the buyer can deliver a notice of termination and the offer will be null and void. This offer also will be null and void if the buyer delivers notice within five days of the delivery deadline stating the seller failed to timely deliver the shared well agreement.

## Underground or Aboveground Fuel Storage Tank(s) Currently Not in Use

A new contingency in the 2021 WRA Addendum B on lines 123-134 addresses underground (UST), aboveground (AST) or basement fuel tank(s) on the property not currently in use and allows the parties to choose which of them shall be responsible for tank closure or removal. If the seller is responsible, they must accomplish the tank closure, abandonment or removal by the deadline (default is five days before closing) and deliver written confirmation thereof at least five days before closing, or the buyer can deliver notice making the offer null and void.

### ① MORE INFO

For tank closure information, see: <https://datcp.wi.gov/Documents/AbandonedTanksFactSheet.pdf> and <https://datcp.wi.gov/Documents/PermanentClosureStorageTanksFactSheet.pdf>. For closure of basement tanks, see Wis. Admin. Code § ATCP 93.315 at [https://docs.legis.wisconsin.gov/code/admin\\_code/atcp/090/93/iii/315](https://docs.legis.wisconsin.gov/code/admin_code/atcp/090/93/iii/315).

## Default Number of Days

The WRA Addendum B contains default provisions in most situations where the parties are to make a choice. Lines 135-136 indicate that for any line where a number of days is needed and there is no specific default stated within the provision, the default will be 20 days.

## Additional Provisions

One benefit of adding a third page to the WRA Addendum B is that there was room to include numerous Additional Provisions lines at the end of the form.

### ① MORE INFO

For further discussion of WRA Addenda A and B issues, see the October 2014 *Legal Update*, “WRA Addendum A and Addendum B Revisions,” at [www.wra.org/LU1410](http://www.wra.org/LU1410).

## EDITORIAL STAFF

### Author

Debbi Conrad

### Production

Emily Zampardi

## ASSOCIATION MANAGEMENT

### Chairman

Mary Duff

### President & CEO

Michael Theo, CAE

## CONTACT INFORMATION

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

## LEGAL HOTLINE

Ph: 608-242-2296  
Fax: 608-242-2279  
Web: [www.wra.org](http://www.wra.org)

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4801 Forest Run Road,  
Madison, WI 53704-7337

608-241-2047  
800-279-1972  
[www.wra.org](http://www.wra.org)





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