

4 Disclosure Obligations

Chapter Overview *Real estate licensees have very strict disclosure obligations. Unfortunately, determining what needs to be disclosed in a real estate transaction takes on several shades of gray. This chapter creates an understanding of disclosure obligations and provides guidelines for determining the information that must be disclosed in a transaction.*

Important Terminology

0-bedroom dwelling
asbestos
lead-based paint hazard
misrepresentation
mold
radon
real estate condition report
target housing
underground storage tank

DISCLOSURE

Licensees need to take extreme care that they do not misrepresent material information in a transaction. Many licensees have difficulty determining when they are misrepresenting facts in a transaction versus emphasizing the benefits of a property, also known as “puffing.”

“The house has rustic charm” may easily be puffing if, for example, the property had chipping exterior paint, slanted porch stairs and tilted shutters. However, an example of misrepresentation is if the licensee knows the house has a poor foundation but states, “The home needs a little TLC, but the foundation is in great shape.”

Puffing or emphasizing the benefits of a property is permissible. **Misrepresentation** is a false statement or concealment of a material fact made with the intention of inducing some action by another party.

The law considers a licensee to have superior knowledge and a buyer/seller may potentially interpret a statement of opinion to be a statement of fact. It is very important that agents pay attention to the statements they make and that the public is properly interpreting them.

Take a look at the following scenario. A buyer and licensee are standing outside a home looking at the exterior. The buyer says, “The roof looks good.” The agent responds, “Sure does.” What if the buyer was referring to the condition of the roof and the agent was referring to the color of the shingles? Buyers and sellers tend to believe that salespeople who deal with houses every day are experts on everything from zoning law to construction standards. This is not the case.

Buyers and sellers need to understand the real estate company’s role in the transaction and they need to understand the limits of a licensee’s expertise. Real estate licensees are not authorized to practice law, give tax advice, or are authorities on environmental or health issues, or even building construction. Real estate licensees need to partner with experts who can provide the buyers and sellers with the information they need to complete the real estate transaction.

LIABILITY

The main broker of the real estate company is responsible for all actions of his salespeople. Brokers are responsible for brokerage services provided on behalf of the broker by any salesperson who is an employee of the broker. The listing broker is liable for the misrepresentations of other brokers (subagents to the principal broker) if the listing broker knew, or should have known, of the other broker's misrepresentations. A licensee should not be held liable for latent defects. In cases of latent defects, where the seller is aware of a defect and does not disclose it to the licensee and the defect is not discoverable by an ordinary inspection, only the seller is liable.

ADVERTISING

Licensees also need to ensure they are making accurate statements when creating marketing and promotional pieces. Licensees are not able to advertise in a manner that is false, deceptive or misleading.

Also it is required that the broker's name be mentioned in all advertisements. This includes everything from brochures about a listing to advertisements placed on a web site. The only exception to this rule is a licensee advertising for a tenant in a personally owned rental property. Lastly, all advertisement of listings must occur with the seller's consent.

Increasing concerns about health and safety as well as the structural and mechanical conditions of properties have added a complex dimension to real estate transactions. Consumers are demanding complete and accurate representations of the condition of properties. Licensees and property owners are being held liable if a buyer is financially or physically harmed. Lenders are concerned about the condition of the properties they accept as collateral. Appraisers are challenged to identify a broader range of conditions that affect the value of real estate. Making an improper statement as well as the lack of proper disclosure can damage a buyer or seller.

DISCLOSURE OBLIGATIONS

This next section focuses on seller and licensee disclosure obligations. There are several questions a licensee needs to consider regarding the obligation to disclose information:

1. Will the seller disclose the information on the Real Estate Condition Report?
2. If the seller does not disclose the information, must the licensee disclose it as a material adverse fact?
3. Is this information suggesting the possibility of a material adverse fact that the licensee must disclose?

Licensees in a real estate transaction are required to inspect a property for observable material adverse facts. This inspection duty holds true for both licensees who are listing a property and licensees drafting offers on properties. The only way a licensee can avoid this inspection duty is if they are denied access to the property. Otherwise, the inspection duty is required. Wisconsin administrative rules don't necessarily define a licensee's inspection duties. The rules do state, however, that licensees are not required to have the technical knowledge, skills or training possessed by competent third-party inspectors and investigators of real estate and related areas.

Again, a material adverse fact is defined as an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the terms of such a contract or agreement.

In addition to inspecting the real estate, a listing agent is required to ask a seller about the condition of their property and request a written response to the inquiry. Often this written response is given on the Real Estate Condition Report (RECR) which is discussed below.

DISCLOSURE BY OWNERS OF RESIDENTIAL REAL ESTATE

The seller in a real estate transaction is asked to disclose property condition information and other information affecting the transaction several times throughout the process of listing and selling a property. Typically, the first disclosure request occurs when the seller is asked to represent to the listing broker whether he has any notice or knowledge of the items listed in the definition of “conditions affecting the property or transaction” as of the date of the listing contract. Another disclosure request occurs when the seller is asked to represent to the buyer whether the seller, as of the date of the offer to purchase, has any notice or knowledge of the same list of items comprising the definition of “conditions affecting the property or transaction.” Each of the DRL-approved offers to purchase contain this definition, which varies a bit depending upon the type of property being sold.

In each of these cases, the seller’s response to these inquiries may take the form of a **Real Estate Condition Report** (RECR). The RECR serves two purposes. First, it provides the basis for the seller’s disclosures to the prospective buyer. Second, it is used by the listing broker to determine whether there are any problem areas that need to be discussed with the seller and possibly repaired before the property is put on the market.

Statute Chapter 709, the Seller Disclosure Law, establishes the seller disclosure obligations relating to real estate. Generally, sellers, whether broker-assisted or For Sale By Owner (FSBO), must complete the RECR or risk rescission of the offer to purchase. The RECR is NOT a warranty but rather a statement of the seller’s knowledge and awareness of the property offered for sale.

The seller disclosure law generally applies to all persons who sell or otherwise transfer Wisconsin real estate containing one to four dwelling units. A dwelling unit is defined as a structure or a part of a structure that is presently used or is intended to be used in the future as a home, residence or sleeping place by a person or by two or more persons maintaining a common household. Dwelling units include, without limitation, condominium units, time-share property, living quarters in a commercial property and summer cottages.

The seller disclosure law does NOT apply to:

1. **Personal representatives, trustees, conservators and other fiduciaries appointed by or subject to supervision by the court, but only if those persons have never occupied the property.**

For example, if a personal representative lived in the property 20 years ago that personal representative is not exempt and must complete a RECR.

This exemption for fiduciaries does NOT apply to persons holding powers-of-attorney because this relationship is created by contract, not by court appointment, and is not subject to direct court supervision. The court is not involved in the drafting of a power-of-attorney document and therefore the exemption does not apply and the RECR would be required.

2. **Real estate that has NOT been inhabited.**

Examples: New construction, vacant land and properties converted to residential from another use, i.e. a commercial warehouse converted to residential condominiums.

3. **Transfers exempt from the Wisconsin real estate transfer fee.**

Example: Gifts between spouses, tax sales, condemnations and transfers by will. There is a fee or tax charged when a property is sold or transferred (the transfer fee [tax] is discussed in detail later). As previously stated, there are some exemptions to this tax.

There is not an exemption from the seller disclosure law based solely on the fact that the seller does not live in the property or is not familiar with the condition of the property.

The owner of a rental duplex or a bank that has acquired a home by foreclosure, for example, is still expected to complete the RECR. A seller in this position can either complete the RECR to the best of his knowledge, retain a professional or expert to provide an inspection report to be used as the basis for completing the RECR or refuse to complete the RECR and sell the property “as is.” “As is” properties are discussed later in this chapter.

Seller Completion of the RECR

By completing the RECR, the seller is indicating his notice or knowledge of the listed property conditions. A “defect,” as used in the RECR, means a condition that has a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that, if not repaired, removed or replaced, would significantly shorten or adversely affect the expected normal life of the premises. Information that indicates that a party to a transaction is not able to or does not intend to meet the obligations under a contract or agreement, is also considered to be an adverse fact and must be disclosed.

For example, a licensee learns that their buyer is not going to apply for financing as per the terms of their offer to purchase. The buyer has decided they don't want to purchase the property and decide to tell the seller they were unable to obtain financing. The licensee is required to disclose this information.

If an agent is involved in the sale of a three-story property that includes retail space on the first floor, office space on the second floor and four apartments on the third floor, the RECR is required because this property includes four dwelling units. Also, the RECR must be completed with respect to the entire property. If the property to be transferred is a condominium unit, the RECR must be completed with respect to the condominium unit (the part of the condominium development that is intended for individual use), the common elements of the condominium (all real property in a condominium development that is not described as a unit—the grounds, parking lots, etc.) and any limited common elements (common elements that may be used exclusively by the condominium unit owner, such as storage spaces).

Sellers should complete the form themselves, preferably in their own handwriting. Licensees should never address and answer the RECR items for the seller. If a seller has difficulty writing, they should enlist the aid of a family member, attorney, friend or someone else to help. If a licensee helps a seller complete the RECR, it may look like the licensee was coaching the seller or answering for the seller. If sellers have questions about whether a specific item constitutes a defect, agents can tell sellers that they may explain the condition on the RECR, however if the seller wants a legal opinion, they need to contact an attorney.

If the seller obtains information or becomes aware of a condition that changes a response on the completed RECR and this occurs before acceptance of a buyer's offer to purchase, the RECR must be amended and submitted to the buyer. The seller does not have a duty to amend the RECR if the new information or condition arises after acceptance of the buyer's offer.

A seller completes a RECR at the time of listing according to their knowledge of the condition of the property. They eventually accept an offer to purchase. After the offer is accepted the seller discovers the roof is damaged in a storm. The seller's next step is dictated by the offer to purchase. The seller is not required to amend the RECR nor do they necessarily need to notify the buyer of the defect. The WB-11 Residential Offer to Purchase lines 208-217 states “If, prior to closing, the Property is damaged in an amount of not more than five percent (5%) of the selling price, Seller shall be obligated to repair the Property and restore it to the same condition that it was on the day of this Offer. No later than closing, Seller shall provide Buyer with lien waivers for all repairs and restoration. If the damage shall exceed such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds, if any, relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring the Property.”

If a seller refuses to complete the RECR, the agent should make sure that the seller understands that the RECR is a statement of what the seller knows about the condition of the property, not a warranty. The agent should also be sure that the seller understands that buyers may be able to rescind their offers if they do not receive a completed RECR in a timely manner.

The listing agent must ask the seller about the condition of the structure, mechanical systems and other relevant aspects of the property as applicable and ask that the seller provide a written response. The seller must also disclose any "condition affecting the property or transaction" as listed in the offer to purchase. A failure to disclose a condition or a misrepresentation by the seller may lead to a buyer's lawsuit based upon breach of contract or misrepresentation.

Licensees should not advise seller's that they do not need to complete the RECR. Advising sellers not to complete a RECR is telling them to do something contrary to the law. Licensees should always encourage sellers to speak with legal counsel regarding disclosing information in the RECR. Licensees are not permitted to dissuade sellers, or any other party, from seeking legal counsel.

Buyer Rescission

A buyer may not rescind an offer or option based upon a defect disclosed in the RECR if the buyer was aware, or had written notice, of the nature and extent of the defect at the time the offer or option was submitted to the owner or owner's agent. If a buyer receives the RECR that discloses a defect as defined in the RECR after the buyer submitted an offer to purchase, the buyer may rescind the contract. A buyer can also rescind upon receipt of an incomplete RECR, or incorrectly asserts that an item is not applicable, or if the RECR is not received within 10 days of acceptance.

All defects disclosed in the RECR prior to the time the buyer makes his offer cannot come back and harm the owner, provided the full nature and extent is adequately disclosed. Therefore, it may be in the seller's advantage to over-disclose and provide many details. A buyer's rescission must be in writing and delivered to the seller or the seller's agent within two business days after the buyer or the buyer's agent receives the RECR, or within two business days after the RECR was due.

"AS IS" SALES

The seller disclosure law does not prohibit a seller from using an as-is clause in an offer to purchase. The buyer, however, still has the same rescission rights as previously discussed. Generally, an "as is" clause alerts the buyer that he is responsible to determine the condition of the property being purchased. The use of an "as is" clause, however, does not necessarily mean that the seller is exempt from making disclosures about the property.

The following are other concerns for sellers selling property "as is." First, the seller has the duty to exercise ordinary care in refraining from any act may cause foreseeable harm to another, or create an unreasonable risk to others. Second, the seller may be liable for misrepresentation for actively concealing a defect or preventing a buyer from investigating the property and discovering the defect. Third, the seller may be liable for false affirmative statements about the property. Finally, the seller may be liable in an "as is" situation for failure to disclose material conditions that the buyer is in a poor position to discover. Thus the use of an "as is" clause is not going to be an escape for the seller from all disclosures.

From a licensee's standpoint, state law requires that licensees perform reasonably competent and diligent property inspections and disclose known material adverse facts and potential material adverse facts to the parties in writing. This is not waived in "as is" sales. In fact, when the buyer is purchasing an "as is" property it is very important for the buyer to know the condition of the property. Generally the buyer has expert inspectors inspect the property as a condition of the offer to purchase, but this does not excuse the licensee from the duty to assure that all material adverse facts are disclosed to the buyer in writing.

LICENSEE DISCLOSURE OBLIGATIONS

A real estate licensee has two primary disclosure obligations. The first obligation is to disclose all known material adverse facts that the party does not know or cannot discover through a reasonably vigilant observation. This disclosure must be in writing and must occur in a timely manner. In addition, a licensee is obligated to disclose the possibility of material adverse facts. This is often a difficult judgment call that the real estate licensee must make.

For example, during an inspection of a property a licensee sees a cloth-type wrapping insulating the water pipes in the basement of an older home. The licensee thinks this insulation may be asbestos. The seller is asked if they are aware of asbestos on the property and since the seller has never had an asbestos test, they answer no to the agent and answer the same on the RECR. The licensee now has to make a decision. Is the cloth-type insulation information suggesting the possibility of an adverse fact (asbestos on the property)? If the answer is yes, then the licensee must promptly disclose this information in writing to all parties.

There are situations where a licensee is NOT required to disclose information that may constitute a material adverse fact. The following are those situations:

- 1) **A written report, prepared by a qualified third-party, discloses the information and the report has been received by the parties.**

This exemption is demonstrated in a typical home inspection situation. A buyer hires a home inspector per the offer to purchase inspection contingency. The home inspector finds a defect and notes it on the home inspection report. The buyer receives a copy of this report and per the offer to purchase must submit a copy of the report to the broker and seller. A broker does not have an obligation to disclose to the buyer or seller any of the information found on the third-party inspection report, because the buyer and seller already have a copy of that information.

Licensees do receive some liability protection where a home inspector is involved in the transaction. Because licensees are not expected to have the same level of knowledge about the condition of a property that is expected of a home inspector, the licensee may rely on the results of a home inspection; provided they review a copy of the report and disclose any information that contradicts the inspection report. Any contradictory information must be disclosed in writing.

- 2) **Licensees are not required to disclose that a property is stigmatized.**

This is referring to a property that has been or is the site of a murder, suicide, a haunting or other notorious event that does not physically damage the property. This disclosure exemption does not necessarily extend to the seller. Arguably a stigmatized property may meet the definition of an adverse fact in which case the seller is obligated to disclose. A seller should consult with an attorney regarding their obligation to disclose this type of information.

- 3) **Licensees are not required to disclose the presence of certain family homes, community-based residential facilities and nursing homes.**

The law does not prohibit the disclosure of these types of properties but merely clarifies that the licensee does not have a duty to do so. A licensee considering disclosure of these types of properties should first determine whether that disclosure violates fair housing rules and thus be prohibited. When selling real estate it is always important to focus on the objective criteria of the property and not the people selling, buying, or living around the property. Fair Housing issues are covered at length in the next chapter.

- 4) **Licensees are not required to disclose the presence of any known sex offender if they give the party in writing the Department of Corrections contact information for the sex offender registry Web site or toll-free phone number.**

All WRA property condition reports and agency contracts include the sex offender notice language. If sellers or licensees are asked whether a particular person is required to register as a sex offender, the location of sex offenders in a neighborhood, or for any other information about the sex offender registry, the licensee must disclose whatever actual knowledge he has on the subject. However, a licensee has immunity relating to the disclosure of such information if he promptly gives, or has already given, the person requesting the information a written notice advising that the information about registered sexual offenders and the sex offender registry may be obtained by contacting the Department of Corrections. Instead of the licensee answering a question, the seller/licensee can refer the person to the Department of Corrections for the information. As part of the Sex Offender Apprehension and Felony Enforcement (SAFE) initiative, the Web site displays the current reported residence address of registered sex offenders in a community.

CONDOMINIUM DISCLOSURE REQUIREMENTS

Wisconsin Statute Chapter 703 requires owners of condominiums in Wisconsin or owners of condominiums being advertised in Wisconsin follow certain disclosure requirements. In 2003 Wisconsin Act 283 was enacted striking a balance between the unit owner and the rights of the condominium association. The condominium law encourages prudent reserve funds policies for the repair and replacement of common elements, such as roofs. The law also clearly defines the condominium disclosure materials to a prospective condominium purchaser for a better understanding of their rights and obligations prior to purchasing.

The following list comprises the required condominium disclosure materials.

1. A copy of the proposed or existing declaration, bylaws and any rules or regulations, together with an index of the contents.
2. A copy of the proposed or existing articles of incorporation of the association, if it is, or is to be, incorporated.
3. A copy of any proposed or existing management contract, employment contract or other contract affecting the use, maintenance or access of all or part of the condominium to which it is anticipated the unit owners or the association will be a party following closing.
4. A copy of the projected annual operating budget for the condominium including reasonable details concerning the estimated monthly payments by the purchaser for assessments, and monthly charges for the use, rental or lease of any facilities not part of the condominium.
5. A copy of any lease to which it is anticipated the unit owners or the association will be a party following closing.
6. A description of any contemplated expansion of the condominium with a general description of each stage of expansion and the maximum number of units that can be added to the condominium.
7. A copy of the floor plan of the unit, together with the information that is necessary to show the location of the common elements and other facilities to be used by the unit owners and indicating which facilities will be part of the condominium, and which facilities will be owned by other unit owners.
8. An executive summary set forth the disclosure materials in clear language.

Executive summary

Part of the Act 283 was the addition of the executive summary. The executive summary is a user-friendly index for the voluminous disclosure materials provided to condominium buyers. The executive summary helps unit purchasers understand what they are buying by creating an easy-to-read, consumer-friendly index to the disclosure documents and summary of the material disclosure information. A copy of the WRA form is in the Forms Appendix.

The declarant (developer) or the association prepares this executive summary and it must either explain the stated information in plain, clear language or specifically refer to where the information can be found in the condominium disclosure documents.

The executive summary includes:

- *Condominium identification* - the name of the condominium.
- *Governance* - the name and address of the condominium association, whether the association is self-managed or has delegated management and the name and contact information for the person that provides the general condominium information.
- *Parking* - a description of parking availability, restrictions and costs.
- *Pets* - a description of the rules relating to pets.
- *Unit rentals* - whether unit owners may rent their units and any restrictions on rentals.
- *Special amenities* - a description of special amenities like a golf course or athletic club, and any unit owner obligations to join or pay dues.
- *Unit repair and maintenance responsibilities* - a description of a unit owner's repair and maintenance responsibilities.
- *Common element and limited common element maintenance, repair and replacement* - identity of person responsible for the maintenance, repair, and replacement of the common elements and the limited common elements, and whether this is paid with unit assessments, reserve funds, or both.
- *Reserves* - whether the association has reserves for common element repairs and replacements and whether the reserves are in a statutory reserve account.
- *Fees on new units* - a description of any provisions exempting the declarant or modifying the declarant's obligation to pay condo maintenance fees on unsold units during the declarant control. Declarant control refers to that period of time when the declarant exercises the powers and responsibilities of the association while construction is completed and new units are sold (up to 10 years for expandable condominiums, up to three years for other projects).
- *Expansion plans* - description of any condominium expansion plans, the deadline for completion of any expansion, and responsibility for management during the expansion period.
- *Unit alterations* - description of the rules, restrictions and procedures for unit owners who want to alter their units or enclose limited common elements.
- *Amendments* - an indication that a unit purchaser's rights and responsibilities may be altered by amendment of the declaration or bylaws, and a description of the amendment process.
- *Other restrictions or features* - optional.

The executive summary is placed in two ways in condominium transactions:

- 1) In the condominium disclosure materials directly following the index.
- 2) A copy of the executive summary must be attached as an addendum to the RECR.

The declarant (developer) or the association (whichever is in control) is responsible for preparing the executive summary and revising it whenever a change in the disclosure materials necessitates a revision to the executive summary. Under no circumstances should an agent or seller attempt to prepare the executive summary- that is the association's responsibility. A "small condominium", up to 12 units may elect in the declarations of small condominiums to use abbreviated disclosure materials that do not include an executive summary.

Condominium Addendum to the RECR

Another condominium disclosure tool is the condominium addendum to the RECR. A copy of the condominium addendum to the RECR can be found in the Forms Appendix.

The condominium addendum supplements the RECR. The seller completes the condominium addendum to the RECR with very basic information that a unit owner should readily know, including the unit address and description, contact information for the seller or the listing agent, association management information, and budget and condo maintenance fee information. The condominium addendum to the RECR also instructs the seller to attach a copy of the executive summary to the RECR. Another helpful action is to attach a copy of the current budget to the addendum to the RECR as the owner's answer regarding current fees for the unit.

Condominium Documents

Just above the buyer's signature lines on the WRA Condominium Addendum to the RECR form is a small box that is to be checked if the buyer has already received the condominium disclosure materials at the time the condominium addendum to the RECR is acknowledged. Generally, disclosure materials are not distributed to a potential buyer until after the offer is accepted because sellers may have only one copy of the typically voluminous disclosure materials or are reluctant to pay for multiple copies. It may be beneficial to give at least serious prospects their copy of the disclosure materials, along with the RECR, early because it dramatically shortens the time frame for rescission by the buyer.

The condominium disclosure materials shall be delivered to a prospective purchaser with cover sheet, index and tables of contents as prescribed under state law. For example, a cover sheet and index shall precede all other materials required. The executive summary shall appear immediately following the index, and a table of contents shall precede the section to which it applies.

A condominium seller must furnish the buyer with a copy of the documents no later than 15 days prior to closing. Any buyer may rescind an offer to purchase a condominium unit, without stating any reason and without liability, within five business days following receipt of all information.

If the buyer receives all of the required condominium disclosure documents, the buyer has five business days to rescind the offer in writing, without stating any reason and without liability. If the buyer receives condominium disclosure documents that include the cover sheet but are missing one or more of the documents required, the buyer has five business days to either rescind the offer in writing, without stating any reason, or to request that the seller deliver the missing documents.

If the buyer neither rescinds nor requests missing documents within the five business days, then the delivered materials are deemed satisfactory and the buyer has no further right to rescind based upon those materials. The seller has five business days following receipt of the buyer's request to deliver the missing documents. The buyer may rescind the sale within five business days following the earlier of the buyer's receipt of the requested missing documents or the seller's deadline for delivering the documents.

ENVIRONMENTAL CONCERNS

Lead-Based Paint

As a result of past federal, state, and local efforts to reduce lead in the environment, the percentage of children with elevated levels of lead in their blood has declined considerably over the last 20 years. Approximately 1.7 million children, however, still have blood-lead levels high enough to raise health concerns. Studies suggest that lead exposure from deteriorated residential lead-based paint, contaminated soil, and lead in dust are among the major existing sources of lead exposure among children in the United States. Lead poisoning in young children may produce permanent neurological damage including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory.

The Residential Lead-Based Paint Hazard Reduction Act directs the Environmental Protection Agency (EPA) and Housing and Urban Development (HUD), to jointly issue regulations requiring disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phase out of residential lead-based paint use in 1978. Within this law, Congress recognized lead poisoning as a particular threat to children under age 6 and emphasized the needs of this vulnerable population. This legislation has specific disclosure requirements that must be met by a seller or lessor of real property as well as the agents involved in the transaction. Violators of the legislation may face civil and/or criminal penalties as well as triple damages in a private civil suit.

Prior to discussing the law in great detail, the following covers some terminology.

- (1) **“Agent”** means any party who enters into a contract with a seller or lessor (landlord) including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser’s representative who receives all compensation from the purchaser. This means that listing agents, selling agents, and buyer agents (if paid by the seller or through a cooperative brokerage agreement with the listing agent), are agents and are responsible for ensuring compliance under the rule.
- (2) **“Lead-based paint hazard”** means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present on accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency.
- (3) **“Target housing”** means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. If there was a building permit obtained or the construction was started prior to January 1, 1978 it is considered target housing.
- (4) **“0-bedroom dwelling”** means any residential dwelling in which the living area is not separated from the sleeping area. This term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.
- (5) **“Housing for the elderly”** means retirement communities or similar types of housing specifically designed for households composed of one or more persons 62 years of age or more at the time of initial occupancy.
- (6) **“Housing for persons with disabilities”** means communities or similar types of housing specifically designed for one or more persons with a physical or mental impairment which substantially limits one or more major life activities at the time of initial occupancy.

The following disclosure and acknowledgment elements apply to all target housing. Each contract to sell target housing must include an attachment containing these specific disclosure and acknowledgment elements:

- (1) A lead warning statement containing federally-approved language.
- (2) A statement disclosing the presence of any known lead-based paint and/or lead based paint hazards in the target housing, or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.
- (3) A statement affirming that the purchaser has received the information noted above and a copy of the required lead hazard information pamphlet, "Protect Your Family from Lead in Your Home."
- (4) A statement that the purchaser has received a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards (unless the parties have mutually agreed to a different period of time) before becoming obligated under the contract to purchase the housing. Alternatively a purchaser who chooses to waive the risk assessment or inspection opportunity must indicate so in writing.
- (5) A statement by any agent involved in the transaction that the agent has informed the seller of the seller's disclosure obligation and that the agent is aware of his/her duty to ensure compliance with the requirements of this rule.
- (6) The signatures of the seller(s), agent(s), and purchaser(s), certifying the accuracy of their statements on the attachment, along with their dates of signature.

The WRA created Addendum S to help meet the compliance requirement. A copy of Addendum S is in the Forms Appendix. The EPA pamphlet "Protect Your Family From Lead in Your Home" is sold separately. This pamphlet and the WRA Addendum S are also available in Spanish.

Other key points regarding this rule:

- (1) HUD and EPA have imposed record keeping requirements on brokers and sellers. The seller and any agents in the transaction are required to retain a copy of the completed disclosure and acknowledgment contract attachment for three years from the completion date of the sale. Similarly, the lessor and any agent are required to retain a copy of the completed lease or attachment for the same time frame.
- (2) Sellers must provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of LBP or LBP hazards before becoming obligated under a purchase contract. This means that the disclosure requirements must occur prior to the binding acceptance of a contract. The 10-day opportunity to conduct a risk assessment or inspection can be modified by mutual agreement of the parties.
- (3) Agents are required to ensure a seller or landlord's compliance with the law. Agents fulfill this requirement by informing sellers or lessors of their obligations and by making sure these activities are completed either by the seller or lessor or by the agent. What happens if the sellers or landlords do not comply with the law? The EPA may seek penalties from the seller or agents in the transaction if a violation of the law is committed knowingly and willfully and the purchasers in these situations may be provided with civil remedies. A seller or landlord's noncompliance with the law does not affect the validity of the contract.

Underground Storage Tanks (UST)

Underground storage tanks are used in the storage of fuel or heating oil for non-commercial purposes or consumptive use. The environmental, safety, economic and legal concerns resulting from underground storage tanks has raised increasing concerns for homeowners, home buyers, lenders, and real estate agents.

Fuel storage tanks can contaminate the soil and ground water. Some leaking tanks have affected multiple families and entire communities. The presence of fuel storage tanks has raised concerns over fire hazards and the possibility of the tanks collapsing. Owners of properties with fuel oil tanks may encounter costs not incurred by properties without the tanks. These costs can include general maintenance, tank system and soil testing, tank removal and potential contamination cleanup. In addition, there are legal concerns regarding the determination of responsibility for contamination and third-party damages. An excellent resource for underground and aboveground storage tank information is the Department of Commerce's (DCOMM) Web site <http://commerce.wi.gov/ER/ER-BST-RealEstatePage.html>

Wisconsin law requires that all UST storing a regulated product be registered with the Department of Commerce. For information on tanks registered with the Department of Commerce visit <http://commerce.wi.gov>. In addition to registering a tank, all residential underground heating fuel tanks 1,100 gallon capacity or larger must have a tightness test conducted every two years. If the tank does not successfully pass the tightness test, an investigation must be conducted and the problem must be corrected. This may involve the removal of the tank and remediation of any contamination.

All underground gasoline or diesel fuel tank systems used to supply fuel for vehicle or other combustion engines must be provided with corrosion protection and spill and overfill protection. Tanks that are no longer in use must have closure. Closure is a term for removal, although in specific situations the tank may be closed in place. The closure of a UST must be supervised by a neutral third-party and specific documents must be completed and submitted to the Department of Commerce. At least 30 days before permanent closure of a UST, Department of Commerce must be notified. Only when removal of a tank would damage the structural integrity of a building or where hardships would occur, is the removal waived in favor of abandonment.

Before a buyer purchases a home with a UST it is strongly recommended that buried tanks be tested. Once a property is purchased, the liability for a leaking tank becomes the responsibility of the new owner. Testing for a residential tank typically costs \$300 to \$500. If a homeowner wants to sell their home with a UST, the existence of the UST must be disclosed. The WRA's Addendum A to the Offer to Purchase has some good information regarding a seller's obligations when selling a home with a UST. Upon completion of a purchase of property the new owner must initiate a change of ownership to the tank registration.

In addition to checking Department of Commerce Web site there are signs to look for regarding the presence of a UST. All tanks must have a fill pipe and a vent pipe. The fill pipe is generally located directly above the tank. The vent pipe may be a distance from the tank, but usually at a location near a building where it can be supported as it is extended above grade. The copper tube fuel supply line is connected to a fuel oil tank and may run through the wall or under and up through the floor to the furnace.

Asbestos

Asbestos is a naturally occurring mineral found in soil and rock in some areas of the United States. The public has long been aware of risks surrounding asbestos and asbestos insulation when it is in a friable state. Inhalation of asbestos fibers is the method of exposure that is most likely to cause adverse health effects for people.

Generally, friable asbestos fibers are long, thin fibers too small to be seen; as they float in the air, and can easily be inhaled. According to the Environmental Protection Agency (EPA):

- 1) Asbestos can be identified under a microscope.
- 2) Asbestos is still mined in places such as Australia, Canada and South Africa.
- 3) Researchers have still not determined a "safe level" of exposure. However, they have determined the longer the exposure to asbestos, the greater the risk.

Health issues include:

- Asbestosis - a lung disease
- Mesothelioma - cancer of the chest cavity or abdominal wall lining
- Lung Cancer

Asbestos does not cause headaches, sore muscles, or other immediate symptoms. The effects can often go unnoticed for 15-40 years.

- 4) If asbestos can be maintained in good condition, the EPA recommends leaving it alone and monitoring its condition continuously. The EPA also says individuals do not need to be concerned, unless materials containing asbestos are disturbed or damaged because the fibers separate and become friable/airborne.
- 5) Asbestos is often used as an acoustic insulator, thermal insulator, fire proofing and in other existing building materials. Due to the fact that asbestos fibers are resistant to heat and incredibly strong, many products still contain asbestos. These products are most often used in flooring, roofing, fire proofing and acoustic insulation. Some products that commonly contain asbestos: cement siding, vinyl floor tile, textured paints, spray-applied insulation, fire blankets, roofing shingles, roofing felt, and cooling towers (a complete list can be found at www.epa.gov/asbestos).

Vermiculite and its Connection to Asbestos

There is a national concern for a product called vermiculite that may contain asbestos. Vermiculite is a naturally occurring mineral used in construction, insulation, and gardening products. It looks like shiny, small pieces of popcorn and comes in colors ranging from silver-gold to gray-brown.

Vermiculite in Insulation

Home insulation containing vermiculite was sold from 1963 to 1984 under the product name Zonolite. The EPA estimated in 1985 that 940,000 American homes contained, or had contained, Zonolite attic insulation. If disturbed, asbestos fibers in vermiculite insulation may get into the air.

Homeowners should consider the following:

1. Vermiculite used for residential insulation may contain asbestos.
2. If property owners are unsure whether the insulation in their homes contains vermiculite, they should avoid disturbing it until it can be confirmed it is vermiculite.
3. Owners should use personal protection when doing minor home projects and seek professional advice for large projects.

Vermiculite in Garden Products

Gardeners have used vermiculite for decades as a soil supplement. It is valued for its ability to hold water, nutrients, and pesticides in the soil, and to enhance aeration and drainage. The EPA warns that consumers should treat all garden products containing vermiculite as though they are contaminated with asbestos and take appropriate precautions when handling them. Packages of vermiculite and/or potting soil don't have labels warning of asbestos, which means consumers have no way of knowing which brands contain asbestos. The EPA specifically warned consumers not to handle Zonolite Chemical Packaging Vermiculite which is sold at several lawn and garden centers. To further reduce the low risk associated with the occasional use of vermiculite products during gardening activities, the EPA recommends that consumers do the following:

1. Use vermiculite outdoors or in a well-ventilated area.
2. Keep vermiculite damp while using it to reduce the amount of dust created.
3. Avoid bringing dust from vermiculite use into the home on clothing.
4. Use premixed potting soil, which usually contains more moisture and less vermiculite than a pure vermiculite product.
5. Use other soil additives such as peat, sawdust, perlite, or bark.

Radon

Radon is a cancer-causing, radioactive colorless gas. Radon comes from soil, rock, well-water, and building materials. Radon is derived from the radioactive decay of radium. Radon can be found all over the U.S. and it can get into any type of building—homes, offices, and schools where it can build up to high levels. The unfortunate fact is that when the air breathed contains radon, the risks for lung cancer increase significantly. The surgeon general has warned that radon is the second leading cause of lung cancer in the United States today. Only smoking causes more lung cancer deaths. The EPA estimated radon is responsible for about 21,000 lung cancer deaths per year. About 2,900 of those deaths were non-smokers.

Because radon is found in the ground it affects all types of homes, including new construction, existing homes, and homes with and without basements. Testing a building is the only way to know if occupants are at risk from radon. The EPA and the surgeon general recommend testing all homes below the third floor for radon. Testing is inexpensive and easy—it should only take a few minutes. Radon is a relatively simple condition to repair. In a new home, the cost to install passive radon-resistant features during construction is usually between \$350 and \$500. In some areas, the cost may be as low as \$100. A qualified radon mitigator will charge about \$300 to add a vent fan to a passive system, making it an active system and further reducing radon levels. In an existing home, it usually costs between \$800 and \$2,500 to install a radon mitigation system.

The EPA recommends the following for buyers and sellers.

1. Home buyers and sellers should have the home tested for radon.
2. For a new home, a buyer should ask if radon-resistant construction features were used and if the home has been tested.
3. Take action if the home radon level is four picocuries per liter or higher.

Mold

Mold is all around us and plays an important role in the ecology of our planet. Mold seems like a new-age epidemic with no reliable testing standards, no certain links to health symptoms, and often no insurance coverage. The worst cases are extensively covered in the media, creating a healthy new awareness as well as some irrational paranoia. To successfully handle mold issues in real estate transactions, licensees must stand ready to optimize awareness and refer extreme situations to qualified professionals.

Mold affects people in different ways. Some individuals have severe allergic reactions to mold, while others show no signs of being affected. For those that are sensitive to mold, symptoms can range from nasal stuffiness to skin irritation. Individuals that are hypersensitive to molds may experience even more severe reactions such as fever and shortness of breath.

The existence of mold in a home is not per se a defect. Mold is all around and presumably is in every house. Whether mold is a defect will depend upon location, quantity, relation to water or moisture sources, and other related circumstances.

In order to have mold there must be an organic food source such as wood, insulation, dry wall, ceiling tiles, other cellulose materials, or even dirt. Mold grows best in moderate temperature conditions and prefers low levels of light. Extreme temperatures put mold into a dormant condition, but do not kill it. Mold requires a moisture source. Mold colonies often begin growing within 24 to 48 hours after a source of water has been introduced—a leak, a flood, humidity, etc. Generally, if the moisture source is quickly eliminated within that time period, mold growth may be avoided or controlled.

The problem with mold is that it is different from other environmental hazards encountered in houses such as LBP, radon or asbestos. These substances are readily identified and there is a well-established body of scientific knowledge about how these substances are encountered and ingested, what levels are safe, and the expected health consequences of unsafe levels. Mold, on the other hand, is a naturally occurring, living organism that lives everywhere with no practical means for keeping it out of a property. At present there are no EPA standards or other authoritative sources of information regarding what constitutes a safe level for mold. Different “experts” and contractors may take samples using different testing methods, interpret data differently, and recommend different measures to address the problems they have found. A complete (and expensive) remediation may destroy or remove active mold colonies and reduce the levels of mold present indoors to match those found outside, but the potential for mold growth always exists because there usually is a baseline residual level of mold still present. If a new moisture source appears, then there will likely be mold.

The first place in a real estate transaction where mold issues may be encountered by licensees is during the pre-listing inspection. The wise listing agent will look for visible mold growth, the appearance or evidence of water intrusion or accumulation, and musty or other odors suggesting the presence of mold. The listing agent should also ask if there have been any indoor water or moisture problems and may also ask if any chronic allergies or adverse health conditions have been experienced by the property occupants. If there is a mildew smell, ask if there were ever any spills or leaks in that room and what steps were taken to rectify the problem.

The EPA outlines the mold cleaning procedure for homeowners as follows:

1. Fix plumbing leaks and other water problems as soon as possible. Dry all items completely.

2. Scrub mold off hard surfaces. Use non-ammonia soap or detergent, or a commercial cleaner in hot water, and scrub the entire area that is affected by the mold. Use a stiff brush or cleaning pad on cement-block walls or other uneven surfaces. Rinse cleaned items with water and dry thoroughly. A wet/dry vacuum cleaner is helpful for removing water and cleaning items.
3. Absorbent or porous materials, such as ceiling tiles and carpet, may have to be thrown away. Mold can grow on or fill in the empty spaces and crevices of porous materials and become difficult or impossible to remove completely.
4. Remove moldy materials that are porous and can't be effectively cleaned: paper, wallboard, rotten wood, carpet, drapes, upholstered furniture, ceiling tiles, sheetrock, and wood products. Wear gloves when handling moldy materials, and bag and discard moldy items. Solid materials such as glass, plastic, and metal can generally be kept after being thoroughly cleaned.
5. Do not paint or caulk over moldy surfaces. Clean up the mold and dry the surfaces before painting. Paint applied over moldy surfaces is likely to peel.
6. Sellers, who are unsure about how to clean an item, or who have an item that is expensive or of sentimental value, should consult a specialist.

If the seller discovered water previous to listing the property and chose to complete repairs, clean or remediate, they should be ready to fill out with the RECR. At this time the seller may consider gathering all reports relating to water and mold repairs, cleaning, and remediation and complete the RECR. Rather than answer in the affirmative to mold or water-related questions in the RECR, the seller may wish to check the "See Expert's Report" column and attach copies of appropriate contractor reports if repairs have been done and/or mold remediation has been performed.

To fulfill their legal duties and help protect themselves from potential liability, real estate licensees must disclose in writing any known moisture problems, mold problems or conditions associated with mold according to state law and provide the parties with consumer mold information. Licensees must, of course, never give opinions about the presence, extent, or toxicity of any suspected mold and should avoid any conversation or conduct suggesting that real estate brokers are experts in the field of mold or its effects.

Water Quality Issues

In nature, water collects impurities from everything it touches as it flows in streams, sits in lakes, and filters through layers of soil and rock in the ground. Some of these substances are harmless, but at certain levels some minerals can make water unpalatable or even unsafe. While most drinking water is safe, home buyers may want to check for unsafe levels of contaminants in the water that is pumped from the public water utility or a private well. The Wisconsin Department of Natural Resources (DNR) identifies bacteria, nitrates, and lead tests as the most important for wells in Wisconsin. However, depending on location conditions other important tests may include atrazine, arsenic, radium, volatile organic chemicals (VOCs), and iron.

Bacteria

Coliform bacteria are microorganisms found in the intestines and feces of humans and other warm-blooded animals as well as in soil, on vegetation, and in surface water runoff. Finding coliform bacteria in a water supply is an indication that disease-producing organisms may also be present. Poorly constructed or unsealed wells, fractured rock outcroppings, sinkholes, and quarries may provide a path for coliform bacteria to enter groundwater. Once in the groundwater, bacteria can easily pollute private drinking well water.

Nitrates

Nitrate is a natural constituent of plants and is found in vegetables at varying levels depending on the amount of fertilizer applied and on other growing conditions. Common sources of nitrate contamination include fertilizers, animal wastes, septic tanks, municipal sewage treatment systems, and decaying plant debris. High levels of nitrates in drinking water pose a serious health threat for infants less than six months of age. Nitrate is changed to nitrite in the stomachs of infants where it interferes with the blood's ability to carry oxygen, and may produce suffocation symptoms or blue baby syndrome.

Lead

The source of lead in the drinking water of most Wisconsin homes is usually lead pipes or solder in the house water supply plumbing, or lead service lines connecting buildings to street water mains. Under typical circumstances, lead will dissolve continuously into the water. On average, it is estimated that lead in drinking water contributes between 10 and 20 percent of total lead exposure in young children. Homes that were constructed before 1985 or have very soft water are more likely to have a lead problem. The degree of harm one receives from lead is directly related to the level of lead in the blood. Known effects of exposure to lead range from subtle changes in body system functions at low levels of exposure to severe toxic effects associated with acute poisoning or even death at very high levels. Excessive levels of lead can damage the brain, kidneys, nervous system, red blood cells, and the reproductive system. It is a greater hazard to young children than to adults.

Atrazine

Fourteen types of pesticides (insecticides and herbicides) have been found in Wisconsin water supplies. Atrazine is a popular corn herbicide that has been used in Wisconsin for more than 25 years to control weeds in cornfields, thus entering the groundwater, and is by far the most frequently detected pesticide. The EPA is researching the health effects of atrazine in water. The EPA considers atrazine a possible cancer-causing substance. Drinking water that contains atrazine does not cause immediate sickness or health problems. However, the effects of consuming low levels of atrazine over an extended period of time have not yet been determined.

Arsenic

Arsenic is an element that is found in soil and rock. High levels of arsenic are found in hundreds of private drinking water wells in northeastern Wisconsin. Most of these wells are in parts of Outagamie and Winnebago counties where there is a deep soil layer of arsenic. Under certain conditions this arsenic can be released into groundwater and enter local wells. Some experts believe that draw down of the water table is causing arsenic levels to rise in local wells. Draw down occurs when the groundwater level is lowered as water is pumped from the ground by wells. For this reason conserving water use could reduce the likelihood of a future arsenic problem. Long-term exposure to high levels of arsenic is known to increase risks of skin, bladder, lung, liver, colon, and kidney cancer. Other health effects may include blood vessel damage, high blood pressure, nerve damage, anemia, stomach upsets, diabetes, and skin changes.

Radium

Radium is a naturally occurring radioactive metal that is usually found at low levels in soil, rock, water and plants. According to the DNR, the highest radium levels in water are found in water drawn from the deep sandstone of the state's eastern quarter and the crystalline granite rock of the north-central part of the state. Approximately, 50 of Wisconsin's 1,300 community water systems exceeded the standard for radium in the drinking water. In Wisconsin, a narrow band stretching from Green Bay to the Illinois state line exists. Groundwater, which moves slowly through the pores or cracks in underground layers of rock, dissolves minerals as it travels. Where the rock contains significant amounts of radium and the groundwater moves at a slow enough rate, the water can pick up higher amounts of radium. There is no immediate health risk from drinking water contaminated with levels of radium found in Wisconsin groundwater, but use of water with high levels of radium over a lifetime can increase the risk for contracting bone cancer. The risk of dying from radium is no greater than dying from lightning strikes, tornados and hurricanes.

VOC

Volatile organic chemicals (VOCs) are widely used as cleaning and liquefying agents in fuels, paints, degreasers, solvents, polishes, cosmetics, and dry cleaning solutions. When VOCs are spilled or dumped, a portion evaporates, but some usually soaks into the ground. In soil, VOCs can be carried deeper with percolating rainwater or melting snow. If they reach the water table, they can persist for years because the cool, dark, low-bacteria environment does not promote decomposition.

If VOCs in the groundwater migrate to nearby wells, they can end up in someone's drinking water. Wells near leaking underground gas tanks and old landfills are most likely to be contaminated with these substances. As a group, VOCs are not among the most toxic environmental pollutants. However, some VOCs are known or suspected carcinogens. In high doses, VOCs can harm the kidneys, liver and the central nervous system.

Testing shows that a small percentage of Wisconsin wells are contaminated with VOCs according to the DNR. VOCs are found at airports, service stations, paint shops, chemical plants, dry cleaning establishments and in household products.

Iron

Iron is not considered hazardous to health. In fact, iron is essential for good health because it transports oxygen in the blood. In the United States, most tap water probably supplies less than five percent of the dietary requirement for iron. Under DNR rules, iron is considered a secondary or "aesthetic" contaminant. Higher levels of iron in the water may cause property owners to experience red, brown, or yellow staining of laundry, glassware, dishes and household fixtures such as bathtubs and sinks. The water may also have a metallic taste and an offensive odor. Water system piping and fixtures can also become restricted or clogged and may over a period of time become deteriorated and need replaced.

The facts and statistics relating to the discussed environmental contaminants are provided by the Wisconsin Department of Natural Resources and the Environmental Protection Agency. To learn more about go to the Wisconsin Department of Natural Resources www.dnr.state.wi.us or to the federal Web site www.epa.gov to the Environmental Protection Agency.

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

REAL ESTATE CONDITION REPORT

Wisconsin REALTORS Association

Page 1 of 2

DISCLAIMER

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

OWNER'S INFORMATION

B.1. In this form, "am aware" means to have notice or knowledge. In this form, "defect" means a condition that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

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

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

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

PROPERTY CONDITION STATEMENTS*

		Yes	No	N/A	See Expert's Report
C.1.	I am aware of defects in the roof.	_____	_____	_____	_____
C.2.	I am aware of defects in the electrical system.	_____	_____	_____	_____
C.3.	I am aware of defects in part of the plumbing system (including the water heater, water softener and swimming pool) that is included in the sale.	_____	_____	_____	_____
C.4.	I am aware of defects in the heating and air conditioning system (including the air filters and humidifiers).	_____	_____	_____	_____
C.5.	I am aware of defects in the well, including unsafe well water.	_____	_____	_____	_____
C.6.	I am aware that this property is served by a joint well.	_____	_____	_____	_____
C.7.	I am aware of defects in the septic system or other sanitary disposal system.	_____	_____	_____	_____
C.8.	I am aware of underground or aboveground fuel storage tanks on or previously located on the property. (If "yes", the owner, by law, may have to register the tanks with the department of commerce at P.O. Box 7970, Madison, Wisconsin, 53707, whether the tanks are in use or not. Regulations of the department of commerce may require the closure or removal of unused tanks).	_____	_____	_____	_____
C.9.	I am aware of an "LP" tank on the property. (If "yes", specify in the additional information space whether or not the owner of the property either owns or leases the tank).	_____	_____	_____	_____
C.10.	I am aware of defects in the basement or foundation (including cracks, seepage and bulges). <i>Other basement defects might include, but are not limited to, flooding, extreme dampness or wet walls, unsafe concentrations of mold, or defects in drain tiling or sump pumps.</i>	_____	_____	_____	_____
C.11.	I am aware that the property is located in a floodplain, wetland or shoreland zoning area.	_____	_____	_____	_____
C.12.	I am aware of defects in the structure of the property.	_____	_____	_____	_____
C.13.	I am aware of defects in mechanical equipment included in the sale either as fixtures or personal property.	_____	_____	_____	_____
C.14.	I am aware of boundary or lot line disputes, encroachments or encumbrances (including a joint driveway).	_____	_____	_____	_____
C.15.	I am aware of a defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, <i>high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the property</i> , lead in paint, lead in soil, lead in water supplies or plumbing system or other potentially hazardous or toxic substances on the premises. <i>Such defects might also be caused by unsafe levels of mold. NOTE: specific federal lead paint disclosure requirements must be complied with in the sale of most residential properties built before 1978.</i>	_____	_____	_____	_____
C.16.	I am aware of the presence of asbestos or asbestos-containing materials on the premises.	_____	_____	_____	_____
C.17.	I am aware of a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic substances on neighboring properties.	_____	_____	_____	_____
C.18.	I am aware of current or previous termite, powder-post beetle or carpenter ant infestations or defects caused by animal or other insect infestations.	_____	_____	_____	_____
C.19.	I am aware of defects in a woodburning stove or fireplace or of defects caused by a fire in a stove or fireplace or elsewhere on the property or a violation of applicable state or local smoke detector laws; <i>NOTE: State law requires operating smoke detectors on all levels of all residential properties, and operating carbon monoxide detectors on all levels of most residential properties (see Wis. Stat. §§ 101.149 & 101.647).</i>	_____	_____	_____	_____
C.20.	I am aware either that remodeling affecting the property's structure or mechanical systems was done or that additions to this property were made during my period of ownership without the required permits.	_____	_____	_____	_____
C.21.	I am aware of federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.	_____	_____	_____	_____

	Yes	No	N/A	See Expert's Report
C.22. I have received notice of property tax increases, other than normal annual increases, or am aware of a pending property reassessment.	_____	_____	_____	_____
C.23. I am aware that remodeling that may increase the property's assessed value was done.	_____	_____	_____	_____
C.24. I am aware of proposed or pending special assessments.	_____	_____	_____	_____
C.24.m I am aware that the property is located within a special purpose district, such as a drainage district, that has the authority to impose assessments against the real property located within the district.	_____	_____	_____	_____
C.25. I am aware of the proposed construction of a public project that may affect the use of the property.	_____	_____	_____	_____
C.26. I am aware of subdivision homeowners' associations, common areas co-owned with others, zoning violations or nonconforming uses, <i>any land division involving the property for which required state or local permits had not been obtained</i> , rights-of-way, easements or another use of a part of the property by nonowners, other than recorded utility easements.	_____	_____	_____	_____
C.26.m I am aware that the property is subject to a mitigation plan required under administrative rules of the department of natural resources related to county shoreland zoning ordinances, which obligates the owner of the property to establish or maintain certain measures related to shoreland conditions and which is enforceable by the county.	_____	_____	_____	_____
C.27. I am aware of other defects affecting the property.	_____	_____	_____	_____
ADDITIONAL INFORMATION				
D.1. I am aware that a structure on the property is designated as a historic building or that part of the property is in a historic district.	_____	_____	_____	_____
D.1.a I am aware of a pier attached to the property that is not in compliance with state or local pier regulations. See http://dnr.wi.gov/ for information.	_____	_____	_____	_____
D.1.b <i>All or part of the land has been assessed as agricultural land under Wis. Stat. § 70.32(2r) (use-value assessment).</i>	_____	_____	_____	_____
D.1.c <i>The owner has been assessed a use-value assessment conversion charge under Wis. Stat. § 74.485(2).</i>	_____	_____	_____	_____
D.1.d <i>The payment of the use-value assessment conversion charge has been deferred under Wis. Stat. § 74.485(4).</i> <i>Notice: The use value assessment system values agricultural land based on the income that would be generated from its rental for agricultural use rather than its fair market value. When a person converts agricultural land to a non-agricultural use (e.g. residential or commercial development), that person may owe a conversion charge. To obtain more information about the use value law or conversion charge, contact the Wisconsin Department of Revenue's Equalization Section at 608-266-2149 or visit http://www.revenue.wi.gov/faqs/slf/usesassmt.html.</i>	_____	_____	_____	_____
D.1.e <i>The property is in a certified farmland preservation zoning district or subject to a farmland preservation agreement.</i> <i>Notice: Rezoning a property zoned farmland preservation to another use or early termination of a farmland preservation agreement or removal of land from such an agreement can trigger payment of a conversion fee equal to 3 times the class 1 "use value" of the land. Call 608-224-4500 or visit http://www.datcp.state.wi.us/workinglands/index.jsp for more information.</i>	_____	_____	_____	_____
D.1.f <i>I am aware of the presence of unsafe levels of mold, or roof, basement, window or plumbing leaks, or overflow from sinks, bathtubs or sewers, or other water or moisture intrusions or conditions that might initiate the growth of unsafe levels of mold.</i>	_____	_____	_____	_____
D.1.g I am aware that all, or part, of the property is subject to, enrolled in or in violation of a Farmland Preservation Agreement (see D.1.e.), Forest Crop Law, Managed Forest Law see disclosure requirement in Wis. Stat. § 710.12), the Conservation Reserve Program or a comparable program.	_____	_____	_____	_____
D.2. The owner has lived on the property for _____ years.	_____	_____	_____	_____
D.3. Explanation of "yes" responses. (See B. 3.) _____	_____	_____	_____	_____

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

OWNER'S CERTIFICATION

E. The owner certifies that the information in this report is true and correct to the best of the owner's knowledge as of the date on which the owner signs this report. NOTE: Wisconsin Statute §709.035 requires owners who, prior to acceptance, obtain information which would change a response on this report, to submit a new report or an amended report to the prospective buyer.

Owner _____ Date _____ Owner _____ Date _____
 Owner _____ Date _____ Owner _____ Date _____

CERTIFICATION BY PERSON SUPPLYING INFORMATION

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

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

NOTICE REGARDING ADVICE OR INSPECTIONS

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

BUYER'S ACKNOWLEDGMENT

H.1. THE PROSPECTIVE BUYER ACKNOWLEDGES THAT TECHNICAL KNOWLEDGE SUCH AS THAT ACQUIRED BY PROFESSIONAL INSPECTORS MAY BE REQUIRED TO DETECT CERTAIN DEFECTS SUCH AS THE PRESENCE OF ASBESTOS, BUILDING CODE VIOLATIONS AND FLOODPLAIN STATUS.

H.2. I ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Prospective Buyer _____ Date _____ Prospective Buyer _____ Date _____
 Prospective Buyer _____ Date _____ Prospective Buyer _____ Date _____

**NOTE: All information appearing in italics in this REAL ESTATE CONDITION REPORT is purely of a supplemental nature and is not required pursuant to Section 709.03 of the Wisconsin Statutes.*

Wisconsin REALTORS Association

INSTRUCTIONS FOR COMPLETING THE EXECUTIVE SUMMARY

The purpose of the Executive Summary is to highlight essential information about the condominium for prospective buyers. This Executive Summary form utilizes a fill-in-the-blank, checkbox format for easy completion on behalf of a condominium association by a condominium board of directors officer, a property manager or an attorney. **CAUTION: REAL ESTATE LICENSEES AND UNIT OWNERS SHOULD NOT COMPLETE THIS FORM!**

1. Fill in blanks and check boxes. Each section of the Executive Summary asks a question about a different aspect of condominium living. The topical question is followed by detailed questions that may be answered by checking one or more boxes and filling in the blanks. Provide as much information as possible in a clear and direct manner.

-OR-

2. Refer to the Condominium Documents. Each section of the Executive Summary concludes with an item that says, "_____." Fill in the blank lines by indicating exactly where in the condominium disclosure materials the prospective purchaser may read provisions discussing the section topic. For example, the blank lines might be filled in to refer the prospective purchasers to "pages 23-24 of the Declaration and page 36 of the Bylaws."

The goal of the Executive Summary is to provide information in clear, plain language or to provide specific references to the condominium documents where the topics are addressed. Doing both - providing concise information about each topic and referring the reader to the pertinent condominium document provisions - is also an option but is not required. Once completed, a copy of the Executive Summary may be distributed to each unit owner. Consult with your attorney if you have any questions concerning the preparation of the Executive Summary.

 **Executive Summary: Legal Requirements.** Per Wis. Stat. § 703.33(1m), the declarant (developer) or the association is responsible for preparing the Executive Summary and revising it whenever a change is made in the disclosure materials that necessitates a corresponding revision to the Executive Summary. An Executive Summary must appear in the condominium disclosure materials directly following the index [Wis. Stat. § 703.33(2)], and must be attached as an addendum to the real estate condition report (RECR) that a seller gives to a prospective unit purchaser, generally before the prospect writes an offer to purchase (Wis. Stat. § 709.02). An Executive Summary may not be required as part of the disclosure materials for a "small condominium" (up to 12 units), depending upon the elections made in the declaration [Wis. Stat. § 703.365 (1) & (8)].

 **Executive Summary: Effective Dates.** The use of the Executive Summary in the disclosure materials and as an addendum to the RECR is mandatory for condominiums created on or after May 1, 2005 in transactions scheduled to close on or after May 1, 2005. For condominiums created before May 1, 2005, use of the Executive Summary in the condominium disclosure materials and with the RECR is mandatory in transactions scheduled to close on or after June 1, 2006.

 **Executive Summary: Use Current Disclosure Materials.** The Executive Summary should be completed based upon a current set of the condominium disclosure materials, and the seller should make sure that the materials they deliver to a buyer are up-to-date. The seller must provide the buyer with the condominium disclosure materials no later than 15 days before closing. Wis. Stat. § 703.20(2) requires an association to furnish the seller with the required disclosure materials, at the seller's expense, within 10 days of the seller's request. It is recommended that all associations routinely provide this service and that all unit sellers obtain a current copy of the condominium disclosure materials from the association to avoid the problems that may arise if the seller gives the buyer an incomplete or outdated set of documents.

EXECUTIVE SUMMARY

Page 1 of 3

This Executive Summary highlights some of the information that prospective condominium buyers are most interested in learning, as well as some of the information that they should consider when contemplating the purchase of a condominium unit. The following sections either briefly summarize pertinent information by answering the questions asked, direct prospective buyers to specific sections of the condominium disclosure materials that discuss each topic in detail (at the  icon), or may be completed to both summarize the information and refer to the condominium documents. ***This summary, however, is not intended to replace the buyer's review of the condominium declaration, bylaws and other condominium disclosure materials nor is it a substitute for a professional review of the condominium documents.***

Condominium Name: _____

How is the condominium association managed?

- ◆ What is the name of the condominium association? _____
- ◆ What is the association's mailing address? _____
- ◆ How is the association managed? ☐ By the unit owners (self-managed) ☐ By a management agent or company ☐ By the declarant (developer) or the declarant's management company
- ◆ Whom should I contact for more information about the condominium and the association? _____
 _____ (management agent/company or other available contact person)
- ◆ What is the address, phone number, fax number, web site & e-mail address for association management or the contact person? _____

 For specific information about the management of this association, see _____

What are the parking arrangements at this condominium?

- ◆ Number of parking spaces assigned to each unit: _____ How many Outside? _____ How many Inside? _____
☐ Common element ☐ Limited common element ☐ Included as part of the unit ☐ Separate non-voting units ☐ Depends on individual transaction [check all that apply]
- ◆ Do I have to pay any extra parking fees (include separate maintenance charges, if any)? ☐ No ☐ Yes, in the amount of \$ _____ per _____ ☐ Other (*specify*): _____
- ◆ Are parking assignments reserved or designated on the plat or in the condominium documents?
☐ No ☐ Yes - Where? _____ Are parking spaces assigned to a unit by deed? ☐ No ☐ Yes Can parking spaces be transferred between unit owners? ☐ No ☐ Yes
- ◆ What parking is available for visitors? _____
- ◆ What are the parking restrictions at this condominium? _____

 For specific information about parking at this condominium, see _____

May I have any pets at this condominium?

- ◆ ☐ No ☐ Yes - What kinds of pets are allowed? _____
- ◆ What are some of the major restrictions and limitations on pets? _____

 For specific information about the condominium pet rules, see _____

May I rent my condominium unit?

Page 2 of 3

- ◆ ☐ No ☐ Yes - What are the major limitations and restrictions on unit rentals? _____

📖 For specific information about renting units at this condominium, see _____

Does this condominium have any special amenities and features?

- ◆ ☐ No ☐ Yes - What are the major amenities and features? _____

- ◆ Are unit owners obligated to join or make additional payments for any amenity associated with the condominium, such as an athletic club or golf course? ☐ No ☐ Yes - What is the cost? \$ _____

📖 For specific information about special amenities, see _____

What are my maintenance and repair responsibilities for my unit?

- ◆ A Unit Owner must maintain and repair _____

📖 For specific information about unit maintenance and repairs, see _____

Who is responsible for maintaining, repairing and replacing the common elements and limited common elements?

- ◆ Common element maintenance, repair and replacement is performed as follows: _____

- ◆ How are repairs and replacements of the common elements funded? ☐ Unit owner assessments ☐ Reserve funds ☐ Both ☐ Other(*specify*): _____

- ◆ Limited common element maintenance, repairs and replacement is performed as follows: _____

- ◆ How are repairs and replacements of the limited common elements funded? ☐ Unit owner assessments ☐ Reserve funds ☐ Both ☐ Other (*specify*): _____

📖 For specific information about common element maintenance, repairs and replacements see _____

Does the condominium association maintain reserve funds for the repair and replacement of the common elements? ☐ Yes ☐ No Is there a Statutory Reserve Account (*see note on page 3*)? ☐ Yes ☐ No

📖 For specific information about this condominium's reserve funds for repairs and replacements, see _____

How are condominium fees paid for on the developer's new units that have not yet been sold to a purchaser?

- ◆ Is the developer's obligation to pay fees for unsold units different than the obligation of new unit purchasers to pay fees on their units? ☐ Not applicable (no developer-owned units) ☐ No ☐ Yes - In what way? _____

- ◆ Are there any special provisions for the payment of assessment fees that apply only during the developer control period? ☐ No ☐ Yes - Describe these provisions: _____

 For specific information about condominium fees during the developer control period, see _____

Has the declarant (developer) reserved the right to expand this condominium in the future?

- ◆ ☐ No ☐ Yes - How many additional units may be added through expansion? _____ units
- ◆ When does the expansion period end? _____
- ◆ Who will manage the condominium during the expansion period? _____

 For specific information about condominium expansion plans, see _____

May I alter my unit or enclose any limited common elements?

- ◆ Describe the rules, restrictions and procedures for altering a unit: _____
- ◆ Describe the rules, restrictions and procedures for enclosing limited common elements: _____

 For specific information about unit alterations and limited common element enclosures, see _____

Can any of the condominium materials be amended in a way that might affect my rights and responsibilities?

- ◆ Yes, Wisconsin law allows the unit owners to amend the condominium declaration, bylaws and other condominium documents if the required votes are obtained. Some of these changes may alter your legal rights and responsibilities with regard to your condominium unit.

 For specific information about condominium document amendment procedures and requirements, see _____

Other restrictions or features (optional): _____

This Executive Summary was prepared on _____ (insert date)
by _____ (state name and title or position).

***Note:** A "Statutory Reserve Account" is a specific type of reserve account established under Wis. Stat. § 703.163 to be used for the repair and replacement of the common elements in a residential condominium (optional for a small condominium with less than 13 units or a mixed-use condominium with residential and non-residential units). In a new condominium, the developer initially decides whether to have a statutory reserve account, but after the declarant control period ends, the association may opt-in or opt-out of a statutory reserve account with the written consent of a majority of the unit votes. Existing condominiums must establish a statutory reserve account by May 1, 2006 unless the association elects to not establish the account by the written consent of a majority of the unit votes. Condominiums may also have other reserve fund accounts used for the repair and replacement of the common elements that operate apart from §703.165.

This Executive Summary was developed and distributed by the Wisconsin REALTORS® Association (2004).

Drafted by: Attorneys Debra Peterson Conrad (WRA), Jonathan B. Levine, and Lisa M. Pardon (Brennan, Steil & Basting, S.C.)

WISCONSIN REALTORS® ASSOCIATION4801 Forest Run Road
Madison, Wisconsin 53704

Page 1 of 2

CONDOMINIUM ADDENDUM TO REAL ESTATE CONDITION REPORT

1 THIS CONDOMINIUM ADDENDUM TO REAL ESTATE CONDITION REPORT (REPORT) IS AN ADDENDUM TO THE REAL ESTATE
 2 CONDITION REPORT DATED _____ CONCERNING THE PROPERTY LOCATED AT
 3 _____
 4 _____ (STREET ADDRESS), IN THE (CITY) (VILLAGE) (TOWN) **STRIKE TWO**
 5 OF _____, COUNTY OF _____, STATE OF WISCONSIN.

6 This Report is given in compliance with Wis. Stat. § 709.02(2) and is not a substitute for a professional review of the condominium
 7 documents and disclosure materials.

8 I. CONDOMINIUM IDENTIFICATION and SELLER CONTACT INFORMATION

9 Name of Condominium: _____
 10 Unit Number: _____
 11 This Condominium was created by the recording of the condominium instruments with the Office of the Register of Deeds on
 12 _____ (insert date).

13 The contact information for the (Unit Owner) (Unit Owner's agent/listing broker) **STRIKE ONE** is as follows:

14 Name: _____
 15 Address: _____
 16 Phone Number(s): _____
 17 E-mail address (optional): _____

18 II. CONDOMINIUM ASSOCIATION INFORMATION

19 Name of the Condominium Association: _____
 20 Address of the Condominium Association: _____
 21 This Condominium Association is ☐ self-managed ☐ has hired or retained management **CHECK ONE**.
 22 Contact Information (Association representative who can address the sale or the condominium in general):
 23 Name: _____
 24 Address: _____
 25 Phone Number(s): _____
 26 E-mail address (optional): _____

27 III. CONDOMINIUM ASSESSMENTS, FEES and CHARGES

28 The Unit Owner is responsible for the following current condominium assessments, fees, special assessments and other charges
 29 (itemize)(Optional: attach a copy of the current budget for easy reference.): _____
 30 _____ Have all current charges been paid? ☐ Yes ☐ No **CHECK ONE**

31 IV. EXECUTIVE SUMMARY

32 A copy of the Executive Summary is attached unless this is a small condominium electing Wis. Stat. § 703.365(8) disclosure
 33 requirements. Check with the Condominium Association to be sure that it is the most current version.

34 The information in this Report is true, correct and current to the best of the Unit Owner's knowledge.

35 Unit	Unit
36 Owner _____ Date _____	Owner _____ Date _____
37 Print Name Here ►	Print Name Here ►

38 Buyer acknowledges receipt of a copy of this Report. Check ☐ if condominium disclosure materials have been received.

39 Buyer _____ Date _____	Buyer _____ Date _____
40 Print Name Here ►	Print Name Here ►

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

41 RESIDENTIAL CONDOMINIUM CONCEPTS

42 In general terms, residential Condominiums take what otherwise might have been an apartment, townhouse or house, and permits
43 individual sales of the separate dwelling Units. All of the dwelling Unit owners own the common areas together and collectively pay
44 for the upkeep and other common expenses. A Condominium, however, is not like living in an apartment because the owner is
45 usually responsible for the maintenance and repair of everything within the Unit - the property manager does not take care of it, as
46 would be the case with a tenant. To understand Condominium ownership, an understanding of certain key concepts is needed.

47 ■ **Declaration:** The Declaration is a written document that creates a Condominium from one or more parcels of real estate. In the
48 Declaration, the owner declares his or her property to now be a Condominium. The Declaration divides the property into several
49 smaller parcels: Units, which are individually owned, and the Common Elements, which are owned in common by all of the Unit
50 owners together. The Declaration sets out what percentage of ownership interest in the Common Elements is assigned to each
51 Unit, and the number of votes that the owner of each Unit has in the Association.

52 ■ **Declarant:** The Declarant is the builder or developer who declares his or her property to be a Condominium by recording the
53 Declaration and plat maps. The Declarant may reserve a period of "Declarant Control" that gives the Declarant time to finish
54 construction of the Condominium project and/or to sell the Units. During this period, the Declarant exercises the powers and
55 responsibilities of the Association through its exclusive right to appoint the directors to the Association board. As the Units are sold
56 to purchasers, elections are held at different intervals and the Unit owners (other than the Declarant) elect an increasing number of
57 the directors. Declarant Control lasts up to ten years in expandable Condominiums and up to three years in other Condominiums.

58 ■ **Unit:** A Unit is the part of the Condominium that is privately owned and used by the Unit owner. A Unit owner has exclusive
59 ownership and possession of his or her Unit. The statutes define Unit in terms of cubicles of air, enclosed spaces located on one or
60 more floors, and rooms. A Unit may also include structural parts of a building (walls, wood frame) or a Unit may be a whole
61 building, a building plus the surrounding land, or just land (similar to a lot). Units may also include separate areas that are some
62 distance apart. For example, a Unit may include a dwelling plus a storage area, patio or parking space. The boundaries of each Unit
63 are defined in the Declaration, which may describe the perimeter walls, sometimes known as the "perimetric boundaries," the upper
64 boundaries and the lower boundaries. Generally, everything within these boundaries will be part of the Unit. Therefore, each Unit's
65 boundaries may impact the Unit owner's maintenance responsibilities, ability to make improvements or alterations, and insurance
66 liability.

67 ■ **Common Elements:** Common Elements means everything else in the Condominium that is not a Unit. In a typical residential
68 Condominium, the Common Elements may include the land, the exterior and common areas of buildings (entranceway, halls,
69 elevator, meeting room, etc.), landscaping, roads, any outside parking areas, outdoor lighting, any recreational facilities (swimming
70 pool, tennis courts, clubhouse, etc.) and all other common areas and amenities.

71 ■ **Limited Common Elements:** The Limited Common Elements are Common Elements that are identified in the Declaration or plat
72 as reserved for the exclusive use of less than all of the Unit owners. Typically, a Limited Common Element will be reserved for the
73 use of just one Unit. Basically, you don't own it individually, but you are the only one who may use it. This exclusive use, however,
74 may be subject to restrictions stated in the Declaration, Bylaws or Condominium rules and regulations. Limited Common Elements
75 may include features like a storage area, patio, balcony, garage parking space, or a boat slip.

76 ■ **Percentage Interests:** Every Unit owner shares in the ownership of the Common Elements with the other owners. Each Unit is
77 allotted a portion of this ownership interest called the Percentage Interests. The Percentage Interests are stated in the Declaration
78 and come automatically with the ownership of a Unit. The Percentage Interests often determine the share of common expenses that
79 the Unit owner must pay for the repair and maintenance of the Common Elements and for the operation of the Association.
80 Percentage Interests may be an equal percentage for all Units, in proportion to the square footage of the Units, based upon the
81 location or value of the Units, or based upon some other formula stated in the Declaration.

82 ■ **Association:** The Association is the entity that the Unit owners use to act together as a group to manage and maintain the
83 Condominium property and finances. This group will be either a nonstock, nonprofit corporation or an unincorporated Association.
84 Every Unit owner is automatically a member of the Association and votes for the Association directors who, on behalf of the
85 Association, manage and maintain the Common Elements, adopt budgets and set the amount of the fees or assessments paid by
86 the Unit owners for the Association's common expenses. The Association directors typically are responsible for the maintenance of
87 the Condominium property, including lawn and garden care, snow removal, painting, roofs, and amenities such as swimming pools
88 and tennis courts. They are responsible for collecting assessment fees, maintaining books and records, overseeing reserve funds,
89 preparing financial reports, and filing tax returns. The board of directors is responsible for enforcing the rules and providing
90 disclosure materials for Unit sales. Some or all of these functions may be delegated to a Condominium manager or other
91 professionals such as accountants.

92 ■ **Assessment Fees:** The Association sets a budget for all of the Condominium expenses and divides those expenses among the
93 Unit owners. These fees are called "common assessments" or "condo maintenance fees" and typically are paid monthly. The
94 Association may also create reserves for future maintenance and repairs.

Residential Condominium Concepts was developed and distributed by the Wisconsin REALTORS® Association (2005).
Drafted by: Attorneys Debra Peterson Conrad (WRA) and Lisa M. Pardon (Brennan, Steil & Basting, S.C.)

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Madison, Wisconsin 53704

Wisconsin REALTORS Association

**OFFER ADDENDUM S - LEAD BASED PAINT
DISCLOSURES AND ACKNOWLEDGMENTS**

Page 1 of 3

1 **■ LEAD WARNING STATEMENT:** Every purchaser of any interest in residential real property on which a
2 residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from
3 lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in
4 young children may produce permanent neurological damage, including learning disabilities, reduced
5 intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular
6 risk to pregnant women. The seller of any interest in residential real property is required to provide the
7 buyer with any information on lead-based paint hazards from risk assessments or inspections in the
8 seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or
9 inspection for possible lead-based paint hazards is recommended prior to purchase.

10 Disclosures and Acknowledgments made with respect to the Property at _____,
11 _____, Wisconsin.

12 **■ SELLER DISCLOSURE AND CERTIFICATION.** Note: See Seller Obligations at lines 27 - 54 and 55 - 112.

13 (1) SELLER DISCLOSURES: (a) Seller hereby represents that Seller has no knowledge of any lead-based paint or
14 lead-based paint hazards (collectively referred to as LBP) present in or on the Property except: _____

15
16 *(Explain the information known to Seller, including any additional information available about the basis for the determination
17 that LBP exists in or on the Property, the location of any LBP, and the condition of painted surfaces, or indicate "none.")*

18 (b) Seller hereby confirms that Seller has provided the Buyer with the following records and reports which comprise all
19 of the reports and records available to Seller pertaining to lead-based paint or lead-based paint hazards (LBP) in or on the Property:

20
21 _____ *(Identify the LBP record(s) and report(s) (e.g. LBP abatements,
22 inspections, reductions, risk assessments, etc., as defined at lines 89 - 107) provided to Buyer, or indicate "none available.")*

23 (2) SELLER CERTIFICATION: The undersigned Seller has reviewed the information above and certifies, to the best of their
24 knowledge, that the information provided by them is true and accurate.

25 (X) _____
26 (ALL Sellers' signatures) ▲ Print Names Here ► _____ (Date) ▲

27 Seller Obligations under the Federal Lead-Based Paint Disclosure Rules
28 (Based upon 40 CFR Chapter 1, Part 745, Subpart F, §§745.103, 745.107, 745.110, 745.113 & 745.115; and 24 CFR subtitle A,
29 Part 35, Subpart H, §§35.86, 35.88, 35.90, 35.92 & 35.94, which all are collectively referred to in this Addendum as Federal LBP Law.)
30 DISCLOSURE REQUIREMENTS FOR SELLERS. (a) The following activities shall be completed before the Buyer is obligated
31 under any contract to purchase target housing that is not otherwise an exempt transaction pursuant to Federal Law. Nothing in this
32 section implies a positive obligation on the Seller to conduct any risk assessment and/or inspection or any reduction activities.

33 (1) Provide LBP Pamphlet to Buyer. The Seller shall provide the Buyer with an EPA-approved lead hazard information
34 pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead In Your Home* (EPA
35 #747-K-99-001) or an equivalent pamphlet that has been approved for use in this state by EPA.

36 (2) Disclosure of Known LBP to Buyer. The Seller shall disclose to the Buyer the presence of any known lead-based
37 paint and/or lead-based paint hazards in the target housing being sold. The Seller shall also disclose any additional
38 information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the
39 determination that lead-based paint and/or lead-based paint hazards exist, the location of lead-based paint and/or lead-based
40 paint hazards, and the condition of painted surfaces (chipping, cracked, peeling).

41 (3) Disclosure of Known LBP & LBP Records to Agent. The Seller shall disclose to each agent the presence of any
42 known lead-based paint and/or lead-based paint hazards in the target housing being sold and the existence of any available
43 records or reports pertaining to lead-based paint and/or lead-based paint hazards. The Seller shall also disclose any
44 additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis
45 for the determination that lead-based paint and/or lead-based paint hazards exist, the location of lead-based paint and/or
46 lead-based paint hazards, and the condition of the painted surfaces (chipping, cracked, peeling).

47 (4) Provision of Available LBP Records & Reports to Buyer. The Seller shall provide the Buyer with any records or reports
48 available (see line 88) to the Seller pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold.
49 This requirement includes records or reports regarding common areas. This requirement also includes records or reports
50 regarding other residential dwellings in multifamily target housing, provided that such information is part of a risk assessment and/or
51 inspection or a reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

52 (b) Disclosure Prior to Acceptance of Offer. If any of the disclosure activities identified in lines 30-51 occurs after the Buyer
53 has provided an offer to purchase the housing, the Seller shall complete the required disclosure activities prior to accepting
54 the Buyer's offer and allow the Buyer an opportunity to review the information and possibly amend the offer.

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55 ■ CERTIFICATION AND ACKNOWLEDGMENT OF LBP DISCLOSURE. (a) Seller requirements. Each contract to sell target
56 housing shall include an attachment or addendum containing the following elements, in the language of the contract (e.g., English,
57 Spanish):

58 (1) Lead Warning Statement. A Lead Warning Statement consisting of the following language:

59 Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified
60 that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead
61 poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities,
62 reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to
63 pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on
64 lead-based paint hazards from risk assessments or inspections in the Seller's possession and notify the buyer of any known
65 lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to
66 purchase.

67 (2) Disclosure of Known LBP & LBP Information Re: the Property. A statement by the Seller disclosing the presence of
68 known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the
69 presence of lead-based paint and/or lead-based paint hazards. The Seller shall also provide any additional information
70 available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination
71 that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint
72 hazards, and the condition of the painted surfaces (chipping, cracked, peeling, dust, etc.).

73 (3) List of Available LBP Records & Reports Provided to Buyer. A list of any records or reports available to the Seller
74 pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the Buyer. If no
75 such records or reports are available, the Seller shall so indicate.

76 (4) Buyer Acknowledgment of Receipt of Disclosures, Records & Pamphlet. A statement by the Buyer affirming receipt
77 of the information set out in lines 67 - 75 and a lead hazard information pamphlet approved by EPA.

78 (5) Buyer Acknowledgment of Receipt of Opportunity for LBP Inspection. A statement by the Buyer that he or she has either:
79 (i) received the opportunity to conduct the risk assessment or inspection required per lines 123 - 127; or (ii) waived the opportunity.

80 (6) Agent Certification. When one or more real estate agents are involved in the transaction to sell target housing,
81 a statement from each agent that: (i) The agent has informed the Seller of the Seller's obligations under
82 Federal LBP Law; and (ii) the agent is aware of his or her duty to ensure compliance with Federal LBP Law. Agents ensure
83 compliance by informing Seller of his or her obligations and by making sure that the Seller or the agent personally completes
84 the required activities. Buyer's agents paid solely by Buyer are exempt.

85 (7) Signatures. The signatures of all Sellers and Buyers, and all agents subject to Federal LBP Law (see lines 80 - 84)
86 certifying to the accuracy of their statements to the best of their knowledge, along with the dates of the signatures.

87 ■ DEFINITIONS:

88 Available means in the possession of or reasonably obtainable by the Seller at the time of the disclosure.

89 Abatement means the permanent elimination of lead-based paint and/or lead-based paint hazards by methods such as
90 removing, replacing, encapsulating, containing, sealing or enclosing lead-based paint with special materials, in conformance
91 with any applicable legal requirements.

92 Buyer means one or more individuals or entities who enter into a contract to purchase an interest in target housing (referred
93 to in the singular whether one or more).

94 Inspection means: (1) a surface-by-surface investigation to determine the presence of lead-based paint, and (2) the provision
95 of a report explaining the results of the investigation.

96 Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square
97 centimeter or 0.5 percent by weight.

98 Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated
99 soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces
100 that would result in adverse human health effects as established by the appropriate Federal agency.

101 Reduction means designed to reduce or eliminate human exposure to lead-based paint hazards through interim controls,
102 abatement, etc.

103 Risk assessment means an on-site investigation to determine and report the presence of lead-based paint, and to evaluate
104 and report the extent, nature, severity, and location of lead-based paint hazards in residential dwellings, including: (1)
105 information gathering regarding the age and history of the housing and occupancy by children under 6; (2) visual inspection;
106 (3) limited wipe sampling or other environmental sampling techniques; (4) other activity as may be appropriate; and (5)
107 provision of a report explaining the results of the investigation.

108 Seller means one or more individuals or entities who transfer, in return for consideration, (1) legal title to target housing, in
109 whole or in part; (2) shares in a cooperatively owned project; or (3) an interest in a leasehold (referred to in the singular
110 whether one or more).

111 Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless
112 any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

113 ■ AGENT(S) ACKNOWLEDGMENT AND CERTIFICATION.

114 (1) ACKNOWLEDGMENT: All agent(s) in this transaction subject to Federal LBP Law (see lines 80 - 84) hereby
 115 acknowledge that: (1) the Seller was informed of his or her obligations under the Federal LBP Law (see lines 27 - 54 and 55 -
 116 112); and (2) they are aware of their duty to ensure compliance with the requirements of Federal LBP Law.

117 (2) CERTIFICATION: The undersigned agents have reviewed the information above and certify, to the best of their
 118 knowledge, that the information provided by them is true and accurate.

119 (X) _____
 120 (Agent's signature) ▲ Print Agent & Firm Names Here ► (Date) ▲

121 (X) _____
 122 (Agent's signature) ▲ Print Agent & Firm Names Here ► (Date) ▲

123 ■ BUYER'S OPPORTUNITY TO CONDUCT AN EVALUATION (LBP Inspection Contingency). (a) Before a Buyer is
 124 obligated under any contract to purchase target housing, the Seller shall permit the Buyer a 10-day period (unless the parties
 125 mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of
 126 lead-based paint and/or lead-based paint hazards. (b) Notwithstanding lines 123 - 126, a Buyer may waive the opportunity
 127 to conduct the risk assessment or inspection by so indicating in writing.

128 ■ BUYER INSPECTION CONTINGENCY, ACKNOWLEDGMENT AND CERTIFICATION.

129 (1) LEAD-BASED PAINT INSPECTION CONTINGENCY: [Buyer to check one box at lines 131, 147 or 148. If no box is
 130 checked, Buyer is deemed to have elected a 10-day contingency per lines 131 - 146.]

131 ☐ LEAD-BASED PAINT INSPECTION CONTINGENCY: This Offer is contingent upon a federal or state certified lead
 132 inspector or lead risk assessor conducting an inspection or risk assessment of the Property, at Buyer's cost, which discloses
 133 no lead-based paint and/or lead-based paint hazards (see lines 96 - 100) (collectively referred to as LBP). This contingency
 134 shall be deemed satisfied, and Buyer will have elected to take the Property "as is" with respect to LBP, unless Buyer, within
 135 _____ days of acceptance, delivers to Seller a copy of the inspector's or risk assessor's written report and a written notice
 136 listing the LBP identified in the report to which the Buyer objects. Buyer agrees to concurrently deliver a copy of the report
 137 and notice to the listing broker, if any. A proposed amendment will not satisfy this notice requirement.

138 RIGHT TO CURE: Seller (shall)(shall not) STRIKE ONE have a right to cure [if neither struck, Seller shall have the right to
 139 cure]. If Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering, within 10 days of receipt of Buyer's
 140 notice, written notice of Seller's election to abate the LBP identified by the Buyer; and (2) providing Buyer, no later than 3 days
 141 prior to closing, with certification from a certified lead supervisor or project designer, or other certified lead contractor that
 142 the identified LBP has been abated. This Offer shall be null and void if Buyer makes timely delivery of the above notice and
 143 report and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: a) Seller delivers notice that Seller will
 144 not cure or b) Seller does not timely deliver the notice of election to cure. "Abate" shall mean to permanently eliminate the
 145 identified LBP by methods such as removing, replacing, encapsulating, containing, sealing or enclosing the identified LBP,
 146 in conformance with the requirements of all applicable law.

147 ☐ Buyer elects the LBP contingency Buyer has attached to this Addendum S.

148 ☐ Buyer waives the opportunity for a LBP inspection or assessment.

149 (2) BUYER ACKNOWLEDGMENT: Buyer hereby acknowledges and certifies that Buyer has: (a) received the Seller's
 150 above-listed disclosures, reports and records concerning any known LBP in or on the Property (see lines 12 - 22); (b) received
 151 a lead hazard information pamphlet approved by the EPA; and (c) received the opportunity to conduct a LBP risk assessment
 152 or inspection of the Property or has waived the opportunity (see lines 131 - 148 above).

153 (3) BUYER CERTIFICATION: The undersigned Buyer has reviewed the information above and certifies, to the best of their
 154 knowledge, that the information provided by them is true and accurate.

155 (X) _____
 156 (ALL Buyers' signatures)▲ Print Names Here ► (Date) ▲
 157

CHAPTER 452

Real Estate Practice

* Only the relevant portions to the state license exam of 452 are provided.

452.139 Changes in common law duties and liabilities of brokers and parties.

(1) COMMON LAW DUTIES OF BROKER. The duties of a broker specified in this chapter or in rules promulgated under this chapter shall supersede duties or obligations under common law to the extent that those common law duties or obligations are inconsistent with the duties specified in this chapter or in rules promulgated under this chapter.

NOTE: Sub. (1) is shown as amended eff. 7-1-06 by 2005 Wis. Act 87. Prior to 7-1-06 it reads:

(1) FIDUCIARY DUTIES OF BROKER. The duties of a broker specified in this chapter or in rules promulgated under this chapter shall supersede any fiduciary duties of a broker to a party based on common law principles of agency to the extent that those common law fiduciary duties are inconsistent with the duties specified in this chapter or in rules promulgated under this chapter.

(2) MISREPRESENTATION BY BROKER.

(a) A client is not liable for a misrepresentation made by a broker in connection with the broker providing brokerage services, unless the client knows or should have known of the misrepresentation or the broker is repeating a misrepresentation made to him or her by the client.

(b) A broker who is providing brokerage services to a client and who retains another broker to provide brokerage services to that client is not liable for a misrepresentation made by the other broker, unless the broker knew or should have known of the other broker's misrepresentation or the other broker is repeating a misrepresentation made to him or her by the broker.

(c) Nothing in this subsection limits the liability of a broker under s. 452.12 (3) for misrepresentations made by an employee who is a broker. Nothing in this subsection limits the liability of a client for a misrepresentation that the client makes in connection with brokerage services.

History: 1993 a. 127; 2001 a. 16; 2005 a. 87. Cross Reference: See also ch. RL 24, Wis. adm. code.

452.23 Disclosures, investigations and inspections by brokers and salespersons.

(1) A broker or salesperson may not disclose to any person in connection with the sale, exchange, purchase or rental of real property information, the disclosure of which constitutes unlawful discrimination in housing under s. 106.50 or unlawful discrimination based on handicap under 42 USC 3604, 3605, 3606 or 3617.

(2) A broker or salesperson is not required to disclose any of the following to any person in connection with the sale, exchange, purchase or rental of real property:

(a) That the property was the site of a specific act or occurrence, if the act or occurrence had no effect on the physical condition of the property or any structures located on the property.

(b) Except as provided in sub. (3), information relating to the physical condition of the property or any other information relating to the real estate transaction, if a written report that discloses the information has been prepared by a qualified 3rd party and provided to the person. In this paragraph, "qualified 3rd party" means a federal, state or local governmental agency, or any person whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the 3rd party in order to prepare the written report.

(c) The location of any adult family home, as defined in s. 50.01 (1), community-based residential facility, as defined in s. 50.01 (1g), or nursing home, as defined in s. 50.01 (3), in relation to the location of the property.

(d) Except as provided in s. 452.24, any information related to the fact that a particular person is required to register as a sex offender under s. 301.45 or any information about the sex offender registry under s. 301.45.

(3) A broker or salesperson shall disclose to the parties to a real estate transaction any facts known by the broker or salesperson that contradict any information included in a written report described under sub. (2) (b).

(4) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a broker or salesperson shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson under this chapter.

History: 1989 a. 341; 1995 a. 27; 1999 a. 82, 89.

An independent inspection by a qualified third party operates to relieve a broker from liability for disclosures related to the physical condition of the property. *Conell v. Coldwell Banker*, 181 Wis. 2d 894, 512 N.W.2d 239 (Ct. App. 1994). Sub. (2) (b) relieves a broker from the obligation to disclose information disclosed in a 3rd party report. Sub. (2) (b) does not apply to a separate affirmative act of negligence and does not preclude a broker's liability for a breach of other duties. *Johnson v. Neuville*, 226 Wis. 2d 365, 595 N.W.2d 100 (Ct. App. 1999), 98-1680.

452.24 Disclosure duty; immunity for providing notice about the sex offender registry.

(1) If, in connection with the sale, exchange, purchase or rental of real property, a licensee receives a request from a person to whom the licensee is providing brokerage services in connection with the sale, exchange, purchase or rental for information related to whether a particular person is required to register as a sex offender under s. 301.45 or any other information about the sex offender registry under s. 301.45, the licensee has a duty to disclose such information, if the licensee has actual knowledge of the information.

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(2) Notwithstanding sub. (1), the broker or salesperson is immune from liability for any act or omission related to the disclosure of information under sub. (1) if the broker or salesperson in a timely manner provides to the person requesting the information written notice that the person may obtain information about the sex offender registry and persons registered with the registry by contacting the department of corrections. The notice shall include the appropriate telephone number and Internet site of the department of corrections. **History:** 1999 a. 89.

CHAPTER 703 CONDOMINIUMS

*** Only the portions of chapter 703 relevant to the state license exam are provided.**

703.33 Disclosure requirements.

(1) MATERIAL TO BE FURNISHED BY SELLER TO PURCHASER BEFORE CLOSING. Not later than 15 days prior to the closing of the sale of a unit to a member of the public, the seller shall furnish to the purchaser the following:

- (a) A copy of the proposed or existing declaration, bylaws and any rules or regulations, together with an index of the contents.
- (b) A copy of the proposed or existing articles of incorporation of the association, if it is or is to be incorporated.
- (c) A copy of any proposed or existing management contract, employment contract or other contract affecting the use, maintenance or access of all or part of the condominium to which it is anticipated the unit owners or the association will be a party following closing.
- (d) A copy of the projected annual operating budget for the condominium including reasonable details concerning the estimated monthly payments by the purchaser for assessments, and monthly charges for the use, rental or lease of any facilities not part of the condominium.
- (e) A copy of any lease to which it is anticipated the unit owners or the association will be a party following closing.
- (f) A description of any contemplated expansion of the condominium with a general description of each stage of expansion and the maximum number of units that can be added to the condominium.
- (g) A copy of the floor plan of the unit together with the information that is necessary to show the location of the common elements and other facilities to be used by the unit owners and indicating which facilities will be part of the condominium and which facilities will be owned by others.
- (h) An executive summary setting forth in clear plain language the following information or location within the disclosure materials described in pars. (a) to (g) where the information may be found:
 1. 'Condominium identification.' The name of the condominium.
 2. 'Expansion plans.' A description of the declarant's expansion plan for the condominium and deadline for implementation and the identity of the condominium management during the expansion period.
 3. 'Governance.' The name and address of the condominium association; whether the association is self-managed or has hired or retained management; and the name, address, and telephone number of the individual or individuals who may be contacted regarding the condominium in general.
 4. 'Special amenities.' A description of any special amenities, such as an athletic club or golf course, and a statement of the obligation of a unit owner to join or support the amenity.
 5. 'Maintenance and repair of units.' A description of an owner's responsibilities for the repair and maintenance of the unit.
 6. 'Maintenance, repair, and replacement of common elements.' The identity of the person responsible for the maintenance, repair, and replacement of common elements and limited common elements and whether repairs or replacements will be funded from unit owner assessments, reserve funds, or both.
 7. 'Rental of units.' Whether unit owners may rent their units and any restrictions on rentals.
 8. 'Unit alterations.' A description of any rules, restrictions, or procedures governing a unit owner's authority to alter the unit or use or enclose limited common elements.
 9. 'Parking.' A description of the availability, restrictions, and costs of parking.
 10. 'Pets.' A description of rules relating to unit owners' pets.
 11. 'Reserves.' Whether the association maintains reserves for repairs and replacement of common elements beyond routine maintenance and, if so, whether a statutory reserve account under s. 703.163 is maintained.
 - 11m. 'Fees on new units.' A description of any provisions exempting the declarant or modifying the declarant's obligation to pay assessments on the declarant's unsold units during the period of the declarant's control, and any other provisions in the declaration, bylaws, or budget addressing the levying and payment of assessments on units during the period of the declarant's control.
 - 11q. 'Amendments.' An indication that a unit purchaser's rights and responsibilities may be altered by an amendment of the declaration or bylaws, and a description of the amendment process and requirements.
 12. 'Other restrictions or features.' At the option of the declarant or association a description of other restrictions or features of the condominium.

(1m) PREPARATION OF EXECUTIVE SUMMARY. The executive summary under sub. (1) (h) shall be prepared, and subsequently revised whenever a change is made in the disclosure materials described in sub. (1) (a) to (g) that requires a revision of a statement in the summary, by the declarant or the association, whichever is in control of the condominium when the executive summary is prepared or revised.

(2) DISCLOSURE FORM. The materials required in sub. (1) shall be delivered to a prospective purchaser with cover sheet, index, and tables of contents as prescribed in this section. A cover sheet and index shall precede all other materials required in sub. (1). The executive summary required under sub. (1) (h) shall appear immediately following the index. A table of contents shall precede the section to which it applies.

- (a) *Cover sheet.* A cover sheet shall be of the same approximate size and shape as the majority of the disclosure materials required in sub. (1) and shall bear the title "Disclosure Materials" and shall contain the name and location of the condominium, the name and business address of the declarant, and the

CHAPTER 703 CONDOMINIUMS

name and business address of the declarant's agent or, if the seller is not the declarant, the name and address of the seller. Following this information, but separate from it, there shall appear on the front of the cover sheet 3 statements in boldface type, or capital letters no smaller than the largest type on the page, in the following wording:

1. THESE ARE THE LEGAL DOCUMENTS COVERING YOUR RIGHTS AND RESPONSIBILITIES AS A CONDOMINIUM OWNER. IF YOU DO NOT UNDERSTAND ANY PROVISIONS CONTAINED IN THEM, YOU SHOULD OBTAIN PROFESSIONAL ADVICE.

2. THESE DISCLOSURE MATERIALS GIVEN TO YOU AS REQUIRED BY LAW MAY, WITH THE EXCEPTION OF THE EXECUTIVE SUMMARY, BE RELIED UPON AS CORRECT AND BINDING. FOR A COMPLETE UNDERSTANDING OF THE EXECUTIVE SUMMARY, CONSULT THE DISCLOSURE DOCUMENTS TO WHICH A PARTICULAR EXECUTIVE SUMMARY STATEMENT PERTAINS. ORAL STATEMENTS MAY NOT BE LEGALLY BINDING. 3. YOU MAY AT ANY TIME WITHIN 5 BUSINESS DAYS FOLLOWING RECEIPT OF THESE DOCUMENTS, OR FOLLOWING NOTICE OF ANY MATERIAL CHANGES IN THESE DOCUMENTS, CANCEL IN WRITING THE CONTRACT OF SALE AND RECEIVE A FULL REFUND OF ANY DEPOSITS MADE. IF THE SELLER DELIVERS LESS THAN ALL OF THE DOCUMENTS REQUIRED, YOU MAY, WITHIN 5 BUSINESS DAYS FOLLOWING RECEIPT OF THE DOCUMENTS, DELIVER A REQUEST FOR ANY MISSING DOCUMENTS. IF YOU TIMELY DELIVER A REQUEST FOR MISSING DOCUMENTS, YOU MAY, AT ANY TIME WITHIN 5 BUSINESS DAYS FOLLOWING THE EARLIER OF EITHER THE RECEIPT OF THE REQUESTED DOCUMENTS OR THE SELLER'S DEADLINE TO DELIVER THE REQUESTED DOCUMENTS, CANCEL IN WRITING THE CONTRACT OF SALE AND RECEIVE A FULL REFUND OF ANY DEPOSITS MADE.

(b) *Index.* Following the material required in par. (a), there shall appear an index of the disclosure materials. An index may begin on the cover sheet, if space permits, and be continued on the first and subsequent pages immediately following the cover sheet or may begin on the first page immediately following the cover sheet and continue on subsequent pages. An index shall be in substantially the following form: The disclosure materials the seller is required by law to provide to each prospective condominium purchaser contains the following documents and exhibits: 1c. 'Executive summary.' The executive summary highlights for a buyer of a condominium unit essential information regarding the condominium. The executive summary begins on page 1m. 'Declaration.' The declaration establishes and describes the condominium, the units and the common areas. The declaration begins on page 2. 'Bylaws.' The bylaws contain rules which govern the condominium and effect the rights and responsibilities of unit owners. The bylaws begin on page 3. 'Articles of incorporation.' The operation of a condominium is governed by the association, of which each unit owner is a member. Powers, duties, and operation of an association are specified in its articles of incorporation. The articles of incorporation begin on page 4. 'Management or employment contracts.' Certain services are provided to the condominium through contracts with individuals or private firms. These contracts begin on page 5. 'Annual operating budget.' The association incurs expenses for the operation of the condominium which are assessed to the unit owners. The operating budget is an estimate of those charges which are in addition to mortgage and utility payments. The budget begins on page 6. 'Leases.' Units in this condominium are sold subject to one or more leases of property or facilities which are not a part of the condominium. These leases begin on page 7. 'Expansion plans.' The declarant has reserved the right to expand the condominium in the future. A description of the plans for expansion and its effect on unit owners begins on page 8. 'Floor plan and map.' The seller has provided a floor plan of the unit being offered for sale and a map of the condominium which shows the location of the unit you are considering and all facilities and common areas which are part of the condominium. The floor plan and map begin on page

(c) *Tables of contents and page numbers.* In addition to an index required by par. (b), tables of contents for the declaration and bylaws shall be provided, identifying each section of these documents and providing a page number for each section. Each section of disclosure material required in sub. (1) shall, on the first page of that material, identify contents of that section but, with the exception of the declaration and bylaws, is not required to have a table of contents. Each section of disclosure material shall be separately identified by a letter, tab, or number. Pages within each section shall be consecutively numbered with an indication of the section as part of the pagination.

(cm) *Statements; building code violations.* Except with respect to a conversion condominium with 4 or fewer units, in addition to the other information required by this section, the declarant of a conversion condominium shall provide to each purchaser all of the following:

1. A statement by the declarant, based on a report prepared by an independent architect or engineer, describing the present condition of those structural components and mechanical and electrical installations that are material to the use and enjoyment of the building.
2. A statement by the declarant of the expected useful life of each item reported on in subd. 1. or a statement that no representations are made in that regard.

CHAPTER 703 CONDOMINIUMS

3. A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(d) *Additions or exclusions.* All materials required by this section shall be delivered to a prospective purchaser with disclosure materials required under sub. (1) except that articles of incorporation, leases and expansion plans of the index need not be included if they clearly do not apply.

(3c) DELIVERY OF INCOMPLETE SET OF DISCLOSURE MATERIALS. If the seller delivers disclosure materials that include the cover sheet required in sub. (2) (a), but that do not include all of the documents required under sub. (1), the purchaser may, within 5 business days from receipt of the disclosure materials, request any documents that were required to be delivered under sub. (1), but that were not timely delivered. If no executive summary required under subs. (1) (h) and (1m) has been prepared, the seller may so inform the purchaser when the seller delivers the disclosure materials to the seller. The seller has 5 business days following receipt of the purchaser's request to deliver the requested documents to the purchaser.

(3m) CHANGE IN MATERIAL FOLLOWING DELIVERY TO PURCHASER. Any material furnished under sub. (1) may not be changed or amended following delivery to a purchaser, if the change or amendment would affect materially the rights of the purchaser, without first obtaining approval of the purchaser. A copy of amendments shall be delivered promptly to the purchaser.

(4) PURCHASER'S RIGHT TO RESCIND CONTRACT OF SALE.

(a) Any purchaser may at any time within 5 business days following receipt of all of the documents required under sub. (1) and within 5 business days following receipt of all of the amendments required under sub. (3m), rescind in writing a contract of sale without stating any reason and without any liability on his or her part.

(b) If the disclosure materials delivered by the seller do not include all the documents required under sub. (1), the purchaser may rescind in writing a contract of sale without stating any reason and without any liability on his or her part as follows: 1. If the purchaser does not give notice requesting missing documents under sub. (3c), the purchaser may rescind within 5 business days following receipt of the incomplete disclosure materials. 2. If the purchaser gives notice requesting missing documents under sub. (3c), the purchaser may rescind within 5 business days following the earlier of receipt of the requested documents or the deadline, under sub. (3c), for the seller's delivery of the requested missing documents.

(c) A purchaser who timely rescinds under par. (a) or (b) is entitled to the return of any deposits made under the contract.

(5) UNTRUE STATEMENT OR OMISSION OF MATERIAL FACT. Any seller who in disclosing information required under subs. (1) and (2) makes any untrue statement of material fact or omits to state a material fact necessary in order to make statements made not misleading shall be liable to any person purchasing a unit from him or her. However, no action may be maintained to enforce any liability created under this section unless brought within one year after facts constituting a cause of action are or should have been discovered.

(6) WAIVER OF PURCHASER'S RIGHT. Rights of purchasers under this section may not be waived in the contract of sale and any attempt to waiver is void. However, if the purchaser proceeds to closing, the purchaser's right under this section to rescind is terminated.

(7) SALE OF UNIT FOR NONRESIDENTIAL PURPOSES. Requirements of this section do not apply to a sale of any unit which is primarily intended to be occupied and used for nonresidential purposes.

(8) LOCATION OF CONDOMINIUM IMMATERIAL. Requirements of this section shall apply to a sale of any unit offered for sale in this state without regard to the location of a condominium.

History: 1977 c. 407; 1985 a. 188; 2003 a. 283.

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes. Tips for Representing Condominium Sellers. Hagopian. Wis. Law. May 1993.

CHAPTER 709

DISCLOSURES BY OWNERS OF RESIDENTIAL REAL ESTATE

709.01 Requirements for transfer.
 709.02 Disclosure.
 709.03 Report form.
 709.035 Amendments to report.

709.04 Indication of compliance.
 709.05 Right to rescind.
 709.06 Good faith.
 709.07 Liability precluded.
 709.08 Waiver.

709.01 Requirements for transfer.

(1) Except as provided in sub. (2), all persons who transfer real property located in this state, including a condominium unit, as defined in s. 703.02 (15), and time-share property, as defined in s. 707.02 (32), but excluding property that has not been inhabited, that includes 1 to 4 dwelling units, as defined in s. 101.61(1), by sale, exchange or land contract, unless the transfer is exempt from the real estate transfer fee under s. 77.25, shall comply with ss. 709.02 to 709.04 and 709.06.

(2) Subsection (1) does not apply to any of the following persons, if those persons have never occupied the property transferred:

- (a) Personal representatives.
- (b) Trustees.
- (c) Conservators.
- (d) Fiduciaries who are appointed by, or subject to the supervision of, a court.

History: 1991 a. 162; 1995 a. 180. Truth or Consequences? Residential Seller Disclosure Law. Conrad. Wis. Law. August 1992. Protecting the Residential Seller. Young. Wis. Law. May 1993.

709.02 Disclosure.

(1) In regard to transfers described in s. 709.01, the owner of the property shall furnish, not later than 10 days after acceptance of a contract of sale or option contract, to the prospective buyer of the property a completed copy of the report under s. 709.03, subject to s. 709.035, except that the owner may substitute for any entry information supplied by a licensed engineer, land surveyor or structural pest control operator or by an individual who is a qualified 3rd party, as defined in s. 452.23 (2) (b), or by a contractor about matters within the scope of the contractor's occupation if the information is in writing and is furnished on time and if the entry to which it relates is identified and except that the owner may substitute for any entry information supplied by a public agency, as defined in s. 66.0825 (3) (h). Information that substitutes for an entry on the report under s. 709.03 and that is supplied by a person specified in this section may be submitted and certified on a supplemental report prepared by the person, as long as the information otherwise satisfies the requirements under this section. A prospective buyer who does not receive a report within the 10 days may, within 2 business days after the end of that 10-day period, rescind the contract of sale or option contract by delivering a written notice of rescission to the owner or to the owner's agent.

(2) In regard to a transfer of a condominium unit, as defined in s. 703.02 (15), the owner shall furnish, in addition to and at the same time as the information required under sub. (1), all the following information as an addendum to the real estate condition report under s. 709.03:

- (a) The name of the condominium and the date the condominium was created by recording condominium instruments with the register of deeds under s. 703.07; the unit number of the property offered for sale; and the name, address, and telephone number of the seller or the seller's agent.
- (b) The name and address of the condominium association; a statement specifying whether the association is self-managed or has hired or retained management; and the name, address, and telephone number of the individual who may be contacted as a representative of the association regarding the sale, in particular, or the condominium, in general.
- (c) The amount of current condominium assessments, fees, special assessments, or other charges for which a unit owner is responsible and whether the current charges for the unit have been paid.
- (d) A copy of the executive summary required under s. 703.33 (1) (h).

History: 1991 a. 162; 1995 a. 180; 1999 a. 150 s. 672; 2003 a. 283.

Note: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes. There is nothing in s. 709.02 or 709.03 that requires a seller to provide details of specific safety and health hazards associated with any property defect. Sellers of real estate are required to disclose general descriptions of potential defects in the property. In the case of a natural gas pipeline, ch. 709 does not require a seller to disclose all potential problems that could foreseeably arise as a result of the pipeline's presence. *Hoekstra v. Guardian Pipeline, LLC*, 2006 WI App 245, 298 Wis. 2d 165, 726 N.W.2d 648, [03-2809](#). Residential Real Property Disclosure Duties. Hinkston. Wis. Law. May, 2002.

709.03 Report form. The report required under s. 709.02 shall be in substantially the following form and shall include at least all of the following information:

REAL ESTATE CONDITION REPORT DISCLAIMER

A. THIS CONDITION REPORT CONCERNS THE REAL PROPERTY LOCATED AT IN THE (CITY) (VILLAGE) (TOWN) OF, COUNTY OF, STATE OF WISCONSIN. THIS REPORT IS A DISCLOSURE OF THE CONDITION OF THAT PROPERTY IN COMPLIANCE WITH SECTION 709.02 OF

CHAPTER 709

DISCLOSURES BY OWNERS OF RESIDENTIAL REAL ESTATE

THE WISCONSIN STATUTES AS OF (MONTH), ... (DAY), ... (YEAR). IT IS NOT A WARRANTY OF ANY KIND BY THE OWNER OR ANY AGENTS REPRESENTING ANY PRINCIPAL IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT THE PRINCIPALS MAY WISH TO OBTAIN.

OWNER'S INFORMATION

B. 1.. In this form, "am aware" means have notice or knowledge. In this form, "defect" means a condition that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

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

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

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

YES NO N/A

- | | |
|--|----------------|
| C. 1. I am aware of defects in the roof. | |
| C. 2. I am aware of defects in the electrical system. | |
| C. 3. I am aware of defects in part of the plumbing system
(including the water heater, water softener and swimming pool) that is
included in the sale. | |
| C. 4. I am aware of defects in the heating and air conditioning system
(including the air filters and humidifiers). | |
| C. 5. I am aware of defects in the well, including unsafe well water | |
| C. 6. I am aware that this property is served by a joint well. | |
| C. 7. I am aware of defects in the septic system or other sanitary disposal
system. | |
| C. 8. I am aware of underground or aboveground fuel storage tanks
on the property. (If "yes", the owner, by law, may have to register
the tanks with the department of commerce at P.O. Box 7970,
Madison, Wisconsin, 53707, whether the tanks are in use or not.
Regulations of the department of commerce may require the closure or
removal of unused tanks. | |
| C. 9. I am aware of an "LP" tank on the property. (If "yes", specify in the
additional information space whether the owner of the property either owns
or leases the tank. | |
| C. 10. I am aware of defects in the basement or foundation (including
cracks, seepage and bulges). | |
| C. 11. I am aware that the property is located in a floodplain, wetland
or shoreland zoning area | |
| C. 12. I am aware of defects in the structure of the property. | |

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	YES	NO	N/A
C. 13. I am aware of defects in mechanical equipment included in the sale either as fixtures or personal property.			
C. 14. I am aware of boundary or lot line disputes, encroachments or encumbrances (including a joint driveway)			
C. 15. I am aware of a defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, lead in paint, lead in soil, lead in water supplies or plumbing system or other potentially hazardous or toxic substances on the premises			
C. 16. I am aware of the presence of asbestos or asbestos-containing materials on the premises.			
C. 17. I am aware of a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic substances on neighboring properties.			
C. 18. I am aware of current or previous termite, powder-post beetle or carpenter ant infestations.			
C. 19. I am aware of defects in a wood-burning stove or fireplace or of defects caused by a fire in a stove or fireplace or elsewhere on the property.			
C. 20. I am aware either that remodeling affecting the property's structure or mechanical systems was done or that additions to this property were made during my period of ownership without the required permits.			
C. 21. I am aware of federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.			
C. 22. I have received notice of property tax increases, other than normal annual increases, or am aware of a pending property reassessment.			
C. 23. I am aware that remodeling that may increase the property's assessed value was done.			
C. 24. I am aware of proposed or pending special assessments.			
C. 24m. I am aware that the property is located within a special purpose district, such as a drainage district, that has the authority to impose assessments against the real property located within the district. Eff. 11/08			
C. 25. I am aware of the proposed construction of a public project that may affect the use of the property.			
C. 26. I am aware of subdivision homeowners' associations, common areas co-owned with others, zoning violations or nonconforming uses, rights-of-way, easements or another use of a part of the property by nonowners, other than recorded utility easements. .			
C.26 m. I am aware that the property is subject to a mitigation plan required under administrative rules of the department of natural resources related to county shoreland zoning ordinances, which obligates the owner of the property to establish or maintain certain measures related to shoreland conditions and which is enforceable by the county.			
C. 27. I am aware of other defects affecting the property.			

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ADDITIONAL INFORMATION

YES NO N/A

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

....

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

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

.....
.....
.....

OWNER'S CERTIFICATION

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

Owner

Date

Owner

Date

CERTIFICATION BY PERSON SUPPLYING INFORMATION

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

Person

Items

Date

Person

Items

Date

Person

Items

Date

NOTICE REGARDING ADVICE OR INSPECTIONS

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

BUYER'S ACKNOWLEDGEMENT

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

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

Prospective buyer Date

Prospective buyer Date

Prospective buyer Date

History: 1991 a. 162; 1995 a. 27 ss. 7067, 9116 (5), 9130 (4); 1995 a. 180; 2007

a. 121; 2009 a. 211. There is nothing in s. 709.02 or 709.03 that requires a seller to provide details of specific safety and health hazards associated with any property defect. Sellers of real estate are required to disclose general descriptions of potential defects in the property. In the case of a natural gas pipeline, ch. 709 does not require a seller to disclose all potential problems that could foreseeably arise as a result of the pipeline's presence. *Hoekstra v. Guardian Pipeline, LLC*, 2006 WI App 245, 298 Wis. 2d 165, 295 Wis. 2d 298, 03-2809.

709.035 Amendments to report. If at any time after completing a report, whether the original or an amended report, but before acceptance of a contract of sale or option contract an owner obtains information or becomes aware of any condition that would change a response on the completed report, the owner shall submit to a prospective buyer, within the time required under s. 709.02, a complete amended report or an amendment to the previously completed report, along with a copy of the previously completed report if not already submitted to the prospective buyer, that states all of the following:

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- (1) The address of the property.
- (2) The owner's name.
- (3) The date of the report being amended.
- (4) The number of any statement on the report that is affected by the new information.
- (5) How the owner's original response to the statement is changed and, if the response is changed to "yes", an explanation of the reason why the response to the statement is "yes".

History: 1995 a. 180.

709.04 Indication of compliance. An owner shall indicate compliance with this chapter on the contract of sale or option contract, on the closing statement or in an addendum to one of those documents.

History: 1991 a. 162; 1995 a. 180.

709.05 Right to rescind.

(1) Except as provided in sub. (2) (b), if a buyer receives a report after submission of a contract of sale or option contract to the owner or the owner's agent, the buyer may, after receipt of that report by the prospective buyer and before the applicable deadline, rescind in writing a contract of sale or option contract if a defect, as defined in the report, is disclosed, without any liability on his or her part, and a buyer is entitled to the return of any deposits or option fees paid in the transaction. A prospective buyer who receives a report that is incomplete or that contains an inaccurate assertion that an item is not applicable and who is not aware of the defects that the owner failed to disclose may, within 2 business days after receipt of that report, rescind in writing a contract of sale or option contract without any liability on his or her part and is entitled to the return of any deposits or option fees paid in the transaction.

(2) (a) 1. Except as provided in subd. 2., a buyer may not rescind a contract of sale or option contract under this section if he or she receives a complete report before submitting the contract of sale or option contract to the owner or the owner's agent.

2. Unless par. (b) applies, a buyer under subd. 1. who, after submitting the contract of sale or option contract to the owner or the owner's agent, receives an amended report, or an amendment to the report previously received, that discloses a defect that was not disclosed in the report previously received may, after receipt of the amended report or amendment to the report and before the applicable deadline, rescind in writing the contract of sale or option contract and is entitled to the return of any deposits or option fees paid in the transaction.

(b) A buyer may not rescind a contract of sale or option contract under this section on the basis of a defect disclosed in a report, amended report or amendment to a report if the buyer was aware, or had written notice, of the nature and extent of the defect at the time the contract of sale or option contract was submitted to the owner or the owner's agent.

(3) Rescissions under this section are timely if they are delivered to the owner or the owner's agent within 2 business days after the prospective buyer or the prospective buyer's agent receives the report, amended report or amendment to the report.

(4) The right to rescind under this section is the only remedy under this chapter.

History: 1991 a. 162; 1995 a. 180.

709.06 Good faith. The owner shall perform each act, and make each disclosure, required by this chapter with honesty in fact.

History: 1991 a. 162.

709.07 Liability precluded. An owner is not liable for an error or omission in a report under s. 709.03 if the owner had no knowledge of that error or omission, if the error or omission was based on information provided by a public agency, as defined in s. 66.0825 (3) (h), or by a licensed engineer, land surveyor, structural pest control operator or qualified 3rd party, as defined in s. 452.23 (2) (b), or by a contractor about matters within the scope of the contractor's occupation.

History: 1991 a. 162; 1999 a. 150 s. 672.

709.08 Waiver. A buyer may waive in writing the right to rescind under s. 709.05. If a buyer proceeds to closing, the buyer's right to rescind under s. 709.05 is terminated. A buyer may waive in writing the right to receive the report required under s. 709.02.

History: 1991 a. 162.

CHAPTER RL 24

CONDUCT AND ETHICAL PRACTICES FOR REAL ESTATE LICENSEES

*** Only the portions of RL 24 relevant to the state license exam are provided.**

RL 24.04 Advertising.

(1) FALSE ADVERTISING. Licensees shall not advertise in a manner which is false, deceptive, or misleading.

(2) DISCLOSURE OF NAME.

(a) Except for advertisements for the rental of real estate owned by the broker, a broker shall in all advertising disclose the broker's name exactly as printed on the broker's license or disclose a trade name previously filed with the department, as required by s. RL 23.03, and in either case clearly indicate that the broker is a business concern and not a private party.

(b) Except for advertisements for the rental of real estate owned by the licensee, a licensee employed by a broker shall advertise under the supervision of and in the name of the employing broker.

(c) A licensee may advertise the occasional sale of real estate owned by the licensee or the solicitation of real estate for purchase by the licensee without complying with pars. (a) and (b), provided that the licensee clearly identifies himself, herself or itself as a real estate licensee in the advertisement.

(3) ADVERTISING WITHOUT AUTHORITY PROHIBITED. Brokers shall not advertise property without the consent of the owner.

(4) ADVERTISED PRICE. Brokers shall not advertise property at a price other than that agreed upon with the owner; however, the price may be stated as a range or in general terms if it reflects the agreed upon price.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80; am. (4), Register, March, 1981, No. 303, eff. 4-1-81; renum. from REB 15.04 and am. (2), Register, February, 1983, No. 326, eff. 3-1-83; renum. (2) to be (2) (a) and am., cr. (2) (b) and (c), Register, January, 1987, No. 373, eff. 2-1-87; am. (2) (c), Register, April, 1995, No. 472, eff. 5-1-95.

RL 24.07 Inspection and disclosure duties.

(1) INSPECTION OF REAL ESTATE.

(a) *General Requirement.* A licensee, when engaging in real estate practice which involves real estate improved with a structure, shall conduct a reasonably competent and diligent inspection of accessible areas of the structure and immediately surrounding areas of the property to detect observable, material adverse facts. A licensee, when engaging in real estate practice which involves vacant land, shall, if the vacant land is accessible, conduct a reasonably competent and diligent inspection of the vacant land to detect observable material adverse facts.

(b) *Listing broker.* When listing real estate and prior to execution of the listing contract, a licensee shall inspect the real estate as required by sub. (1), and shall make inquiries of the seller on the condition of the structure, mechanical systems and other relevant aspects of the property as applicable. The licensee shall request that the seller provide a written response to the licensee's inquiry.

(c) *Other licensees.* Licensees, other than listing brokers, shall inspect the real estate as required by sub. (1) prior to or during the showing of the property, unless the licensee is not given access for a showing.

(d) *Specific conduct regarding inspections.* A reasonably competent and diligent inspection of real estate improved with a structure does not require the operation of mechanical equipment; the opening of panels, doors or covers for access to mechanical systems; or the moving of furniture, boxes or other property; nor does it require a licensee to observe areas of the property for which entry presents an unreasonable risk of injury or areas accessible only by ladder, by crawling or other equivalent means of access. A licensee is not required to retain third party inspectors or investigators to complete a reasonably competent and diligent inspection. A reasonably competent and diligent inspection of vacant land does not require an observation of the entire property, but shall include, if given access, an observation of the property from at least one point on or adjacent to the property.

(2) DISCLOSURE OF MATERIAL ADVERSE FACTS. A licensee may not exaggerate or misrepresent facts in the practice of real estate. A licensee, when engaging in real estate practice, shall disclose to each party, in writing and in a timely fashion, all material adverse facts that the licensee knows and that the party does not know or cannot discover through a reasonably vigilant observation, unless the disclosure of the material adverse fact is prohibited by law. This provision is not limited to the condition of the property, but includes other material adverse facts in the transaction.

Note: Certain "material adverse facts", as defined in s. RL 24.02 (12), may not be disclosed by law. For example, unless specifically authorized by a seller, a licensee may not disclose to a potential buyer the actual minimum sales price the seller will accept. See s. 452.133 (1) (d), Stats.

(3) DISCLOSURE OF INFORMATION SUGGESTING MATERIAL ADVERSE FACTS. A licensee, when engaging in real estate practice, who becomes aware of information suggesting the possibility of material adverse facts to the transaction, shall be practicing competently if the licensee discloses to the parties the information suggesting the possibility of material adverse facts to the transaction in writing and in a timely fashion, recommends the parties obtain expert assistance to inspect or investigate for possible material adverse facts to the transaction, and, if directed by the parties, drafts appropriate inspection or investigation contingencies. This provision is not limited to the condition of the property, but includes other material adverse facts to the transaction, including but not limited to defects and conditions included within the report form under s.

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709.03, Stats. A licensee is not required to retain third party inspectors or investigators to perform investigations of information suggesting the possibility of a material adverse fact to the transaction.

(4) DISCLOSURE OF SIDE AGREEMENTS. A licensee, when engaging in real estate practice, who becomes aware of the fact that a party to the transaction has not disclosed that party's entire agreement regarding the transaction to that party's secured lender, shall disclose this fact, in writing and in a timely manner, to the party's secured lender.

(5) RELIANCE UPON THIRD PARTY INSPECTIONS AND INVESTIGATIONS. If a licensee or a party in a transaction engages the services of a qualified third party to conduct a property inspection or investigation of material facts, the licensee may rely on the results of the inspection or investigation providing the licensee obtains a written report of the inspection or investigation and delivers a copy of the report to all interested parties in a timely manner.

(6) INCONSISTENCIES. If a licensee's reasonably competent and diligent inspection reveals facts materially inconsistent with or materially contradictory to the seller's statements provided under sub. (1) (a), or the inspection or investigation report of a third party, the inconsistency shall be disclosed in writing and in a timely manner to the parties.

(7) FALSE INFORMATION. Licensees shall not knowingly give false information about another licensee or property listed with another licensee.

(8) DISCLOSURE OF AGENCY.

(a) General requirements.

1. Prior to providing brokerage services to a party, each licensee shall provide a copy of the agency disclosure form required under s. 452.135, Stats. If the services are for the sale of real estate used or intended to be used principally for one to 4 family residential purposes, the licensee shall, at the time the disclosure is provided, request the party to acknowledge in writing the receipt of a copy of the disclosure form.

2. Licensees acting as agents of potential buyers of real estate used or intended to be used principally for one to 4 family residential purposes, who are negotiating directly with the seller or who are aware that the owner of the real estate has granted another licensee the exclusive right to sell, shall notify the seller or the listing broker, as applicable, of the licensee's buyer agency relationship at the earlier of all of the following:

- a. The first contact with the seller or the listing broker where information regarding the seller or transaction is being exchanged.
- b. A showing of the property.
- c. Any other negotiation with the seller or the listing broker.

3. A change in a licensee's representation that makes the initial disclosure incomplete, misleading or inaccurate requires that a new disclosure be given, as in s. 452.135, Stats.

4. Prior to offering subagency listing brokers or their salespeople shall request the seller's authorization to permit other brokers to act as subagents in the sale of property or business opportunity. This authorization shall be stated in the listing contract.

(b) Listing contracts.

1. Listing brokers or their salespeople shall explain the responsibilities of seller's agents, buyer's agents and subagents to the seller before entering into a listing contract.

2. No listing broker or listing broker's salesperson may permit other brokers to act as subagents in the sale of a property or business opportunity unless the listing broker or salesperson has received the seller's authorization in the listing contract.

(c) Offers to purchase and option contracts. Licensees shall reconfirm, in the offer to purchase or option contract, whom the licensee represents as an agent in a real estate or business opportunity transaction.

(d) Subagency arrangements. A listing broker shall provide an agency disclosure to the seller and to buyers if negotiations are being conducted directly with the buyer and not through a subagent or buyer's agent. Buyer's brokers shall provide an agency disclosure to the buyer and to the seller if negotiations are being conducted directly with the seller and not through a subagent or listing broker. Subagents of listing brokers and buyer's agents shall provide an agency disclosure to the customer they are working with but not to their client. Listing brokers and buyer's brokers are not required to provide an agency disclosure to the customers of their subagents.

(e) Listings for lease and property management contracts. Licensees entering into listings for lease or property management contracts with property owners shall provide to their clients the disclosure form required under s. 452.135, Stats. A licensee shall also provide an agency disclosure form to prospective tenants when the licensee is actually negotiating the terms of a lease on behalf of the owner. A licensee is not required to provide an agency disclosure form to a prospective tenant in situations when the licensee does not negotiate the terms of a lease, such as when the rental unit is only being shown to the prospective tenant or a completed and "non-negotiable" lease is presented to a prospective tenant.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80; emerg. r. (2), eff. 10-14-80; cr. (3), Register, December, 1980, No. 300, eff. 1-1-81; r. (2), Register, March, 1981, No. 303, eff. 4-1-81; renum. from REB 15.07, Register, February, 1983, No. 326, eff. 3-1-83; cr.

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(2), Register, January, 1987, No. 373, eff. 2-1-87; am. (1), r. and recr. (2), cr. (4), Register, June, 1988, No. 390, eff. 7-1-88; am. (1), cr. (1) (a) to (c) and (4) (d), r. and recr. (2), Register, September, 1990, No. 417, eff. 10-1-90; r. and recr. (1), renum. (2), (3), (4) to be (5), (6), (7), cr. (2), (3), (4), Register, July, 1993, No. 451, eff. 8-1-93; am. (1) (a), (d), (2), (3), (5), renum. (1) (a), (b) to be (1) (b), (c) and am., (6) to be (7), r. (1) (c), (7), r. and recr. (4), cr. (6), (8), Register, April, 1995, No. 472, eff. 5-1-95; **am. (8) (a) 2. (intro.), a. and c., Register, January, 2001, No. 541, eff. 2-1-01.**