



10-29
OCT 28 1997

Carol Kelso

Wisconsin State Legislature
88th Assembly District Representative

In response to your recent request.

I thought you might be interested in the enclosed material.

she testified at the hearing

P.O. Box 8952, State Capitol
Madison, Wisconsin 53708-8952

(608) 266-0485 • Toll-Free Message Hotline: (800) 362-9472
Rep.Kelso@legis.state.wi.us

HouseMaster

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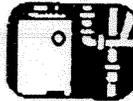
TERMS AND CONDITIONS PRINTED ON REVERSE SIDE.



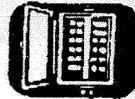
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HouseMaster

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October 26, 1997

Representative Carol Kelso
416 LeCapitaine Circle
Green Bay, WI 54302

Dear Representative Kelso,
Subject: AB 334

Thank you for taking the time to phone me during your recent trip back to Green Bay. I appreciate the opportunity to voice my views on a bill you support AB 334.

As a business owner employing 9 home inspectors throughout the state, we support licensing of inspectors. We also support the need for home inspectors to carry professional liability insurance. AB 334 and SB 186 accomplish this. This bill does a good job of protecting the consumer. As written, this bill shifts all the responsibility for home ownership on the shoulders of the home inspectors. It does not protect the small business providing this important service, the home inspector. We need more assurances that the bill does not promote frivolous lawsuits at the expense of the home inspector. The potential liability to home inspectors with the bill as written is tremendous.

On Page 9 line 9 Section 440.976 Disclaimers of liability. It's true that most home inspectors do limit the liability of their service to the fee for the inspection. Putting some kind of limit on the liability a home inspector shall endure is very important. Home inspectors are "general practitioners". We provide a full assessment of the home in about 2.5 hours. Several things drive this: the home buyer does not want to spend more than \$225.00 for an inspection, and the realtor does not want to spend more than two hours in the home waiting for the home inspector to perform the home inspection. Also of importance is the fact that from the time the inspection has taken place to the closing date the home is being lived in by the seller. This time could be as high as 3 months. I propose the following changes to section 440.976 on AB 334:

- **A Wisconsin registered home inspector is liable for any negligent act or omission: As described in WB11: Residential Offer to Purchase**
 1. Structural inadequacies that if not repaired will significantly shorten the expected normal life of the Property.
 2. Mechanical systems inadequate for the present use of the Property.
 3. Conditions constituting a significant health or safety hazard for occupants of Property.

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Brookfield, WI 53005
(414) 964-4949

1929 Holmgren Way
Green Bay, WI 54304
(920) 497-4948

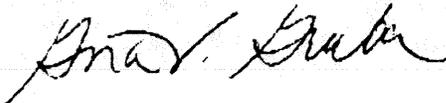
- **A pre-closing walk through by the buyers is mandatory.**
- **An aggregate maximum limit is set.**
- **A written procedure for handling complaints is established. Contained in this should be:**
 1. Length of liability term.
 2. Formal notification of the inspection company prior to repairs.
 3. Inspection must be paid in full.
 4. Stipulation stating that the Inspection Company is liable for elements that were rated in good operating or satisfactory condition and are not functioning within the liability term, or elements omitted during the inspection.
- **A maximum limit per element for repairs of the element.**
- **A maximum limit per element for replacement if repair is not possible. This takes into consideration the age of the element being replaced.**

I have documented suggestions for your review and discussion. The home inspector's liability must be reduced in some manner in AB334. I hate to think what will happen to our industry if there are no guidelines or limits to what a person can sue for.

There are already companies performing home inspections and not requiring the client to sign a waiver releasing total liability. HouseMaster has been offering a 90-day guarantee for at least 7 years. I have attached a copy of HouseMaster's 90 Day Limited Guarantee. I feel the coverage is fair to the consumer and yet helps us avoid frivolous lawsuits and repairs that should be routine maintenance. This guarantee adds credibility to our service and our reputation.

Thank you for your consideration.

Respectfully,



Gina Valeri Gruba
Regional Franchise Owner
HouseMaster

1. INTRODUCTION

The purpose of this complimentary Guarantee is to provide a HouseMaster home-buyer client with coverage for specified repair expense for a period of ninety (90) days from the inspection date or thirty (30) days from the title transfer date, whichever occurs first. This Guarantee is not designed to cover normal maintenance nor to replace available insurance. It applies only to owner occupied one and two family resale houses and condominiums (not common elements).

Your local HouseMaster licensee performed a visual inspection of the resale house described in the Inspection Report on the date noted. This Guarantee applies to the following house elements found to be in satisfactory condition and repairs to those house elements not noted or forecast in the Inspection Report:

- A. **Central Heating.** Includes the main house heating system if reported by the HouseMaster Inspector to be less than ten (10) years old. If more than one system, the unit heating the master bedroom area would be the one covered.
- B. **Central Cooling.** Includes the main house cooling system if reported by the HouseMaster Inspector to be less than seven (7) years old. If more than one system, the unit cooling the master bedroom would be the one covered.
- C. **Interior Plumbing.** Includes the water, drain, sewer, vent piping throughout the house and the hot water heater.
- D. **Interior Electric.** Includes the main electric panel box and wiring throughout the house.
- E. **Main Roofing.** Includes sloped (greater than 2 on 12 slope) roofing materials, roof framing and roof backing over main house, if reported by the HouseMaster Inspector to be less than ten (10) years old.
- F. **Foundation Walls.** Includes poured concrete and block foundation walls to the extent that their load-bearing ability is affected. Water penetration is not covered.
- G. **Kitchen Appliances.** Includes built-in kitchen appliances reported by the HouseMaster Inspector to be less than six (6) years old.

2. COVERAGE

HouseMaster will pay up to an aggregate maximum of \$5,000.00 per Guarantee for the cost of repair expense to covered elements subject to the following conditions:

- A. Any element or component of an element inspected by the HouseMaster Inspector and judged to be in satisfactory condition and so recorded in the Inspection Report will be eligible for coverage under this Guarantee up to a maximum of \$1,500 per element. Conversely, an element or component not inspected or not judged to be in satisfactory condition or any condition forecast or suggested correction or recommendation noted in the Inspection Report will not be covered.
- B. There will be a \$95 service fee or the actual fee, whichever is lower, per incident/per element. The HouseMaster client will be responsible for payment of these fees. HouseMaster will reimburse the client for the balance of the repair expense.
- C. In no event will HouseMaster assume responsibility for repair claims (1) reported prior to closing or after the expiration date of the Guarantee, (2) on Inspection Reports not fully paid for or (3) where the work was completed prior to formal notification and inspection by HouseMaster.
- D. The Guarantee is provided for the exclusive benefit of the home-buying client. It may not be transferred or assigned to any other party without the written consent of HouseMaster.
- E. If, in the sole judgement of HouseMaster, a repair of a covered element or component is not possible, HouseMaster will pay up to a maximum of \$500.00, less the service fee, for the replacement of a similar style and quality element or component.
- F. Client is responsible for arranging access to the property and the opening up of any surfaces needed to complete a repair. HouseMaster assumes no responsibility for the closing, resurfacing and decorating after the repair work is completed.

3. LIMITATIONS

Other than as provided by this Guarantee, HouseMaster assumes no liability to any party for damages which may result from the inspection, the contents of the Inspection Report or this Guarantee. Nor does HouseMaster assume any liability for bodily injury caused by any of the inspected components or property damage to others. HOUSEMASTER IS NOT RESPONSIBLE FOR CONSEQUENTIAL OR SECONDARY DAMAGES or other conditions resulting from the failure or malfunction of the components of the house. HouseMaster specifically disclaims any liability for the adequacy of the capacity or the design of any component or its failure to comply with any local, state or national code. In addition, HouseMaster will not be liable for costs necessitated by normal maintenance or for damages which result from neglect or misuse, termites or other insects, shifting or settling of land, frost heaves, subsidence, dry rot, condensation, floods, surface water, waves or tidal waves, nuclear or air contamination, war or any act of aggression and other acts of God, or for losses recoverable under homeowner insurance, manufacturer and/or contractor warranties or service contracts, etc.

4. CLAIM PROCEDURE

Prior to any repair work, the HouseMaster client must notify the local HouseMaster office that performed the inspection in writing during the term of this Guarantee. HouseMaster will forward a special Client Reporting Form to the client for their submission of a claim. The local HouseMaster office will advise the client on the repair completion procedure. In cases where the condition makes the house uninhabitable, HouseMaster may authorize, by telephone, reasonable emergency repairs. Any repairs made prior to notification and authorization by HouseMaster will void this Guarantee with respect to the element or component so repaired. HouseMaster assumes no liability for a recurrence of a settled claim condition. IN THE EVENT THAT A DISPUTE ARISES BETWEEN THE CLIENT AND HOUSEMASTER AS TO HOUSEMASTER'S LIABILITY UNDER THIS GUARANTEE, SUCH DISPUTE WILL BE PRESENTED TO THE AMERICAN ARBITRATION ASSOCIATION, AT CLIENT'S EXPENSE, FOR RESOLUTION.

OCT 24 1997

Oct. 22, 1997

Dear Representative Owens:

As a REALTOR I am asking that you support AB 334 and SB 186.

I strongly support the use of home inspectors in real estate transactions. I firmly believe that the more information buyers and sellers have, the better it is for buyer and seller and REALTOR.

Professionals involved in real estate sales are all regulated. Only home inspectors remain unregulated. Inspectors should be regulated to protect the consumer.

Thanks for your work as an assembly housing committee member.

Sincerely yours,



Denis Kuennen
REALTOR
Century 21 Gold Key
1627 N. Central Ave.
Marshfield, Wi. 54449

~~_____~~
10-27
do we need to answer
they are talking

(Heard testimony on both bills at same time)

321 (Bock) DATCP (\$500 for each violation)
 334 (Vrakas) reg. for regio w/ D of Reg. licensing
 best cert. fixator

* Bock / consumer protection legislation

- written report within 30 days
- report last year against an inspector
- see fiscal estimate on # of complaints / conflicts

* Vrakas / 4th session → 8 yrs.

- Samples
- courts → no criteria to pass. / set standards for their job.
- registered home inspectors (set reg. needed)
- DPLHR / weatherization only
- follow other professions (plumbers)
- home insp. / consumers / head of Dept.
- ↳ bring back standards in bill from to the Committee
- best for consumers / #1 issue for introd. the bill

* Wierke

- pro-consumer!! protect home buyers!
- anyone can say they can be a home inspector - this is wrong!
- why are home inspectors against "professionals"!
- DATCP / many dept. \$500 fine is a "slap on the hand".

✓ Secy. Cummings (Reg. & Lic.)

- study conducted in 1991
 - examination / what do I need to take to be a home inspector?
 - this is an area that needs regulations → follow similar professions.
 - 1st need to do a job analysis (ASHI) → prof. of occupation
Wis. wants consumer protection
 - background ck. (many inspectors are in homes on their own)
 - last member of the housing industry to be regulated.
-

- 2½ - 3 hr. inspection / average \$225 - 250
- \$6.4 billion market / Mike Theo → provided a disclaimer (yellow sheet)
↳ large business to be unregulated!
- inspectors feel they should not be liable for things they can't see (things that are covered up)
- limited time / can't thoroughly ck. everything!

(Jina Gaska) pg. 6 / 1-12 (not clear definition) can't be responsible for every single element

pg. 6 / 13-18 → certified in "risk" matters

pg. 8 / 1-5 inspectors may not "fit" in certain areas

pg. 9 / 15 what does "any act" mean?

pg. 9 / 21 what transaction?



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P. O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

TESTIMONY
Assembly Bill 334
ASSEMBLY HOUSING COMMITTEE
Thursday, October 16, 1997
10:00 A.M.
Marlene A. Cummings
Secretary, Department of Regulation and Licensing

Honorable Chair and members of the Assembly Housing Committee, I am here to add my support to the legislative proposal providing for a registration type of regulation for Home Inspectors if a Home Inspector or Home Inspection business is to use the title Wisconsin Registered Home Inspector.

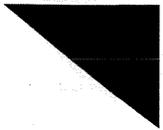
Six and a half years ago, the Department of Regulation and Licensing convened members of diverse groups of housing related occupations and professions. The committee was convened to learn more about the practices of home inspectors, their track record with consumers, relationship with related professions and occupations and whether there was a need for some type of state regulation. The study was publicized and distributed to different groups and legislators. It was made available to all interested parties.

The department did not pursue legislative action to seek regulation at that time because the committee did not reach consensus. There was opposition from home inspectors who were mainly members of the American Society of Home Inspectors. ASHI has credible, if not overly stringent requirements for membership. There were, at the time of the committee meetings, less than 50 ASHI members in Wisconsin and approximately 100,000 home buying transactions which meant that the bulk of home buyers did not have their inspections conducted by ASHI members. The services of home inspectors have increased. There is hardly a transaction conducted without an inspection. Better we have regulation for this industry than to have it go the way of Real Estate Appraisers. *Regulation was forced on the states due to major acts of misconduct throughout the nation.*

It is difficult for me to think of being under the influence of the Realtors. It is equally difficult for me to NOT solicit their viewpoints and observations of real or potential problems in the housing industry. They are a major part of it. When two separate professions are interdependent, they should have the same level playing field. We in the department are able to identify turf battles and recommendations designed to reduce the effectiveness of another profession and we weigh these factors against the information we are receiving.

Regulatory Boards

Accounting; Architects; Landscape Architects; Professional Geologists; Professional Engineers; Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.



We question whether the consumer can adequately determine the competence of a home inspector. Generally, the consumer has little knowledge about the construction or improvements of homes and may not know the right questions to ask or how to interpret inspection reports. Home inspectors are the last of the housing industry to be the subject of state regulation. It is fitting that they join the ranks of the other state regulated professions. As it stands now, they are in a position to engage in what I will characterize as "malicious mischief" without accountability. Decisions about the purchase of a home should be made with accurate and reliable information. Those providing the information relative to this major investment should be accountable to the public and the public should know what to expect.

Home inspectors come from many education and experience backgrounds. This probably should remain, however we need to be sure of the knowledge needed to conduct a competent home inspection. So far, examinations have withstood the test of time and have proven to be the most effective measurement. The proposal requests that the department approve an examination. Our examination experts would review existing examinations after a job analysis is conducted to determine the nature of the work, review existing examinations and from that would suggest use of either an existing examination or require that we develop one that would hold up if challenged. The examination must be related to work.

We like the registration model for home inspection. It is the least restrictive form of regulation. We would like to see it join the interior design profession in the business registration unit of the department. It is unusual for the department to take a stand in behalf of regulating yet another profession. We cannot ignore, however, the increased demand for home inspectors with questionable preparation and practices. We cannot require home inspectors to join national associations so they would get the education necessary to perform their functions. We can register them so the consumer or members of the housing or financial services industries can obtain information about them. We will make our registration information available on the Internet. Thank you for your time.



Journal photo by Jim Gehrz

HOME INSPECTOR Jerome Baumgardt gives a close look to a chimney atop a ranch-style home.

Closer look: Regulation sought for inspectors

Increased use of technical experts by home buyers prompts need for standards, state official says

By JOEL DRESANG
of The Journal staff

Madison, Wis. — Marlene Cummings, secretary of the state Department of Regulation and Licensing, has asked a panel of 19 advisers to consider regulations on home inspectors, who are hired by potential home buyers to examine the conditions of houses.

At a daylong meeting and public hearing here Wednesday, a group of real estate and contracting experts from around the state discussed the merits of imposing requirements on home inspectors.

The use of home inspectors has been increasing, especially among first-time buyers and particularly in urban areas, panelists said. To date, the inspectors have not been regulated as a group.

"Consumers today are looking for technical experts to tell them what's wrong and what isn't," Cummings said during a three-hour public hearing. "And they want to hold those experts accountable."

In general, real estate professionals say they favor regulating home inspectors. Inspectors say they resist regulation.

"I think we all agree that any industry in which any Tom, Dick or Harry may become an inspector presents a serious problem," Kathy Walch, a Madison real estate agent, told the panel.

Appleton inspector Donald Day testified: "Realtors have a tendency to look at a home inspection as a deal breaker."

Elisabeth Weirich, a panel member from Madison, said: "We're not out as Realtors to malign home inspectors, but we do have a great deal of concern about competency."

Jerome Baumgardt, a Milwaukee home inspector and member of the panel, replied: "We are there to attempt to reduce the risk to the buyer as much as we can. I think the real estate community has portrayed us to the consumers as God. We are not God. We are human beings going in and making judgments. We can't see through walls."

In opening remarks to the advisory committee, Cummings said: "We do not have a preconceived notion that home inspectors should be regulated by the

HOME INSPECTION TIPS

Before you invest in a house, consider spending having a home inspection so that you're reasonably sure the building is in good shape. Here are some tips for hiring an inspector:

- **Get a few names** and numbers of inspectors from a real estate agent, the Yellow Pages and acquaintances. Shop around.
- **Ask former customers** for references and ask their impressions.
- **Find out how much** the inspection costs and if you pay a flat or hourly rate.
- **The American Society of Home Inspectors** says a thorough inspection should take at least an hour and a half and should include an examination of the heating and air-conditioning systems, plumbing, electrical system, attic, roof, basement, foundation, doors, windows, insulation and site drainage.
- **Ask questions** during the inspection and take notes.

state."

Included in materials distributed among committee members was a Department of Regulation and Licensing draft law that would require home inspectors to register with the department every two years and be subject to standards of ethics and practice set by the department. In addition, the department would have authority to investigate and penalize home inspectors not meeting state requirements.

Texas is the only state to license home inspectors, according to the American Society of Home Inspectors. Wisconsin is among three or four states considering such regulation. Texas home inspectors are regulated by the state's Real Estate Commission.

The advisory committee is scheduled to make a recommendation to Cummings on June 12. The Legislature and governor would have to act before regulation could begin.

COMPLAINTS FROM AGENTS

A few real estate agents complained about deals botched by an inspector from Illinois who is listed in some Wisconsin phone books.

Roy Newcomer, an inspector from Waukesha, testi-

Please see Homes page 9

Thursday June 6, 1991

Homes/Rules sought for inspectors

From page 8

...tied that he had reinspected seven houses where the Illinois firm found problems that would cost from \$10,000 to \$40,000 to remedy. But Newcomer found only minor problems.

The Wisconsin Realtors Association says its members are complaining about more than just one company, though. Richard Staff, vice president of legal services for the 10,000-member group, expressed the need to have more home inspectors with the qualifications, training, standards and ethics of inspectors certified by the American Society of Home Inspectors (ASHI). That group has 15 members and 25 candidate members among the 100 or so home inspectors statewide.

The society, which started in 1975, requires candidates to pass three examinations, do 250 inspections and complete a year of probation before membership. The organization provides continuing education, practice standards and a code of ethics for members.

"If there were enough ASHI members, we'd be the last to call for licensing home inspectors," said Staff, who is also a member of the panel. "The trouble is, there are some bad eggs out there, some real bad eggs."

State consumer protection agencies report few complaints about home inspectors. George Dan-chuck, of the Department of Agriculture, Trade and Consumer Protection, said his agency received 5 to 10 a year. Since 1989, only four written complaints have been filed with the attorney general's office against home inspectors.

MONEY

■ STOCK LISTINGS/6B
■ MUTUAL FUNDS/7B
■ \$60-million goof/7B

8B

Wisconsin State Journal
Tuesday, April 30, 1991

Home-buyer protection pushed

By Scott Lautenschlager
Business reporter

Wisconsin officials are moving to protect home buyers on two fronts.

State Rep. Rosemary Potter, D-Milwaukee, said Monday she will introduce a bill requiring property sellers to disclose known defects before any sale.

Separately, the state Department of Regulation and Licensing said it will investigate the need to regulate home-inspection services, from which consumers often get information before purchasing houses.

DRL Secretary Marlene Cummings said she wants public input on good and bad consumer experiences with inspectors.

The Potter bill, which is said to have strong bipartisan support, is expected to go before the Assembly in October.

The bill is supported by the Wisconsin Realtors Association, which usually plays an important role in real-estate legislation,

Comments sought

A public hearing will be June 5 at the Department of Regulation and Licensing's main office in Madison. DRL Secretary Marlene Cummings invites written comments by June 1. The address is home inspectors, P.O. Box 8935, Madison, Wis. 53708.

said Richard Staff, vice president of legal services for the trade association.

"This bill will assist the home-buying consumer to ascertain whether the property is structurally sound and free of known hazards," said Potter, chairwoman of the Assembly Housing Committee.

Failure to disclose defects is a common reason why consumers are dissatisfied with home purchases, according to Richard Caselnovo, an attorney with the state Department of Regulation and Licensing,

which oversees real estate agents.

According to HouseMaster of America, a national home-inspection service, 40 percent of U.S. homes have at least one serious defect when they go on the market.

Basement water leaks are the most common problems and can be costly to fix, up to \$5,000, HouseMaster said in a report. Foundation defects tend to be the most expensive, costing between \$6,000 and \$10,000 for major repair.

Under Potter's bill, sellers would be required to provide prospective buyers a list of known defects within 10 days after accepting an offer to purchase.

The information would be supplied on a standard form identifying 25 potential defects covering plumbing and electrical systems, the foundation and structure, and hazardous and toxic substances. Pending special assessments also would have to be listed.

Buyers would have two business days to rescind an offer to purchase if any defects are disclosed.

Potter said the bill also is aimed at protecting the state's housing stock from deterioration and at maintaining affordable housing.

"I look upon residential housing as a valuable resource," she said. "If we let this resource fall into disrepair, our cost to replace it skyrockets, putting home ownership further out of reach for many first-time home buyers."

On the home-inspection issue, Cummings said the fact that inspectors are not regulated "may pose expensive risks to the consumer in the biggest of all family commitments."

Cummings said she is creating an advisory committee of people representing real estate professionals and the public to determine whether regulation is necessary.

MARKET Memo

BUSI

CAP-TIMES

UPDATE 6-10-91

Physicians Plus signs with United

United HealthCare Corp. has signed a letter of intent to provide management services beginning Jan. 1 to Physicians Plus Insurance Corp., a 62,000-member Madison-based health plan. The companies expect to reach a definitive management agreement, which would be subject to regulatory approval, this summer.

Physicians Plus Insurance, a five-year-old for-profit HMO, is jointly owned by Physicians Plus Medical Group and Meriter Hospital.

United HealthCare, a leading national provider of managed health care services, owns and manages 17 health plans nationwide with combined total membership of nearly 1.3 million. United serves an additional 9 million lives through its specialty companies.

State may regulate home inspectors

New rules governing professional housing inspectors could protect consumers against incompetent advice when they consider buying homes, the state's licensing secretary says.

Marlene Cummings, head of the Department of Regulation and Licensing, submitted the proposal last week to a panel of advisers.

"Consumers today are looking for technical experts to tell them what's wrong and what isn't," she said, "and they want to hold those experts accountable."

Inspectors hired by house shoppers to look for defects in a dwelling are not regulated as a group.

Johnson Wax has new care center

RACINE — A new \$1.3 million child care center that opens today for Johnson Wax employees will end the waiting list for a program

Low milk prices push family off the farm

By Robert Imrie

Associated Press

ATHENS (AP) — A handmade sign nailed to a sawhorse along Wisconsin 29 advertises Ray and Dolores Gajewski's century-old farm for sale. It's a casualty of the lowest milk prices in 13 years.

"We wouldn't have done this if milk wouldn't have went down," Dolores Gajewski said about the decision to sell the farm after Ray died of a heart attack last November. "But milk (prices) kept going down and down until we figured we were probably better off getting rid of it."

The decision to sell marks the end of a three-generation family farm. The newest generation — five sons and seven daughters — wants nothing to do with the dairy industry.

"You just can't kill yourself working," 55-year-old Dolores Gajewski said, her Polish accent heavy on each word. "There are quite a few farms in the area that are for sale. If they could sell, they would get rid of it right away. They had theirs for sale before I had mine."

In recent months, the price paid for farmers' raw milk has dropped from about \$15 per hundredweight, about 12 gallons, to \$10.04, the lowest price since 1978.

Some economists warn the income stress could drive 3,000 to 5,000 Wisconsin farmers out of business in coming months.



Part of the Gajewski family — John, daughter, Samantha — advertise sign of the times for the Dairy State

The recession is making it even harder to sell a farm, Dolores Gajewski said.

"With the way the price of milk is, some farmers are probably scared to go in debt any more."

There's been more than a dozen people inquire about the farm — including one from Illinois — but no solid offers yet, she said.

Her \$110,000 price for the place, which includes 200 acres, a two-story, five-bedroom brick home and a repaired barn, is negotiable. Any money she gets will pay off debts, she said.

Her husband's grandfather, John Gajewski, started the farm in 1891. Raymond took over in 1952. The farm's herd of Holsteins, all the milking equipment and the machinery were sold at auction in March.

One of Dolores Gajewski's sons, John, 23, was blunt about why none of children wanted to continue the farm. "There is no

HOME INSPECTORS: A CLOSER LOOK

DEPARTMENT OF REGULATION AND LICENSING

HOME INSPECTORS ADVISORY COMMITTEE

JUNE 1991

HOME INSPECTORS: A CLOSER LOOK

Home Inspectors Project Report, June 1991

DEPARTMENT OF REGULATION & LICENSING
Home Inspectors Advisory Committee
Meeting Dates: June 5 and 12, 1991

Committee Members:

Marlene Cummings	Secretary	Department of Regulation & Licensing
	Committee Chair	
David Schmalz	Certified Soil Tester	Appleton
	Landscape Architect	
	Board Member, A,PE,D & LS Board	
Jerome Baumgardt	Home Inspector	Milwaukee area
	Baumgardt Home Inspection	
Arlan Kay	Architect	Madison
	Board Member, A,PE,D & LS Board	
George Mark	Wisconsin Builders Association	Janesville
Floyd Rathburn	Electrical Contractor	Green Bay
	Board Member, A,PE,D & LS Board	
Jerome Quinn	Board Member, A,PE,D & LS Board	Green Bay
Peter Schils	Real Estate Broker	Sheboygan
	Board Member, Real Estate Board	
Clint McCullough	Master Plumber Contractor	Madison
	Board Member, A,PE,D & LS Board	
Michael Corry	Administrator	Safety & Buildings Division, DILHR
Thomas Jones	Home Inspector	Sun Prairie
	Amer Property Inspections	
Bruce Kieffer	Architect	Madison
	Board Member, A,PE,D & LS Board	
Lisabeth Weirich	Realtor	Madison
	The Greater Madison Board of Realtors	
Richard Staff	Legal Services	Wisconsin Realtors Association
Beechie O. Brooks	United Realty Group	Milwaukee
	Board Member, Real Estate Board	
Linn A. Duesterbeck	Real Estate Appraiser	Janesville
	Board Member, Real Estate Appraisers Board	
Donald V. Cohen	American Society of Home Inspectors (ASHI)	Milwaukee

Department of Regulation & Licensing Staff:

Myra Shelton	Executive Assistant	Office of the Secretary
	Legislative Liaison	
	Home Inspectors Project Coordinator	
Jacquelyn Lahn	Director	Bureau of Business & Design Prof.
John Temby	Administrator	Division of Enforcement
Don Severson	Administrative Assistant I/ICR	Division of Enforcement
William Dusso	Administrator	Div. of Administrative Services
	General Counsel	
Cletus Hansen	Director	Bureau of Direct Licensing & Real Estate
Pamela Haack	Administrative Assistant	Office of Administrative Rules
Grace Schwingel	Secretary	Office of the Secretary
Evelyn L. Keaton	Intern	Office of the Secretary

TABLE OF CONTENTS

	<u>Page Number</u>
Introduction.....	1
Background, Associations & Societies.....	1-2
Education & Training.....	2
Numbers & Location.....	2
Issues & Concerns	
Issue 1: Consumer Protection, Consumer Education,..... and Consumer Choice	2-4
Issue 2: Defining a Home Inspector & a Home Inspection.....	4-5
Issue 3: Conflicts of Interests.....	5
Issue 4: Testing Home Inspectors.....	6
Issue 5: Regulation of Out-of-state Home Inspectors.....	7
Summary.....	7-9
Advisory Committee Actions.....	9
Draft of Chapter 460, Proposed Home Inspection Law	
Reviewed by the Advisory Committee.....	10-13
Appendix	
...Wisconsin Department of Justice Consumer Complaints	
...Advisory Committee Meeting Summaries	

INTRODUCTION

The Home Inspectors Advisory Committee, consisting of statewide representatives from the following groups: architects, professional engineers, land surveyors, real estate agents, real estate appraisers, electricians, home inspectors, plumbers, soil testers, and the Department of Industry, Labor and Human Relations (DILHR), met at the Department of Regulation and Licensing (DORL) in Madison for two one-day sessions to discuss the need, if any, for regulation of home inspectors in Wisconsin. At the June 5, 1991 meeting and public hearing, committee members and registered individuals offered comments and testimony regarding the regulation of home inspectors. At the June 12, 1991 meeting, the committee discussed the testimony received and possible ways of monitoring and/or regulating home inspectors in Wisconsin through existing or new legislation.

This report is a compilation of the committee's discussion on home inspectors relating to consumer concerns and alternatives to the regulation of home inspectors in Wisconsin. Consumer protection was the main focus and criteria of the committee's discussions. Additionally, the committee considered the existing scope and practices of already regulated groups: architects, professional engineers, design professionals and real estate agents, and their relationship to home inspectors and home inspections.

HOME INSPECTOR PROFILE: BACKGROUND INFORMATION

The Department does not have verifiable data on the number of home inspectors practicing in the state of Wisconsin. Home inspection is advertised in the Yellow Pages under 'building inspector' and this classification lists a wide variety of different businesses offering complete home inspection services ranging from asbestos inspection to weatherization. Many of these advertisements contain a reference to state certification or membership in one of the professional associations for home inspectors.

The Safety & Buildings Division in the Department of Industry, Labor and Human Relations (DILHR) certifies building inspectors in up to six areas: dwelling construction, energy, heating, ventilation and air conditioning, electrical, plumbing, and commercial buildings (from ILHR s. 26.06, Wis. Adm. Code). However, these inspectors, generally working for municipal and other government agencies, inspect in accordance with the Uniform Dwelling Code which does not include existing dwellings, additions or alterations to a property (from ILHR s. 20.05 and 20.10, Wis. Adm. Code). Presently, there are 1,220 DILHR certified inspectors in Wisconsin.

Associations & Societies

There are two national professional associations, The American Association of Home Inspectors (ASHI) formed in 1976 and The National Association of Home Inspectors (NAHI) formed in 1988. Amer Technology is a franchise similar to about a half dozen such operations in the U.S. ASHI qualifies its members by means of a three level test series and requires continuing education. NAHI requires only an annual dues payment and participation in its insurance

program. It was originally formed as an insurance buying group. It offers training to its members but does not require participation. Other for profit organizations offer education and even offer "certification," but do not test or review participants (customers).

ASHI has a membership of fifteen in Wisconsin, while NAHI and Amer Technology Systems have two members in Wisconsin and 200 members nationwide.

Education & Training

Members of the three national associations primarily come from construction, contractor, home improvement backgrounds. Others, advertising as home inspectors, generally have a background as DILHR certified inspectors, professional engineers, architects, plumbers, electricians or real estate agents. However, at this time, anyone can become a home inspector, and no mechanism is in place to monitor the competency and quality of home inspectors or their inspections.

Numbers & Location

In Wisconsin, home inspectors are primarily located in the Milwaukee and Dane County areas according to a survey of the yellow pages in Wisconsin directories. However, advertisements for home inspection can be found in the yellow pages throughout the state in most all medium-sized communities. An average of four to seven ads appear in the directories of the Lake Geneva, Green Bay, Fox Cities, and Eau Claire areas for building/home inspection. On the average, four out-of-state firms advertise as home inspectors in a survey of Wisconsin Yellow Pages. No laws exist which set requirements for advertising as a practitioner in Wisconsin.

ISSUES & CONCERNS

The following are major issues and concerns discussed by the Home Inspection Advisory Committee, including discussion points and viable solutions.

ISSUE 1: Consumer Protection, Consumer Education & Consumer Choice

Concerns

- 1) No clearinghouse for grievances or complaints against home inspectors exists for the consumer.
- 2) No standard exists to protect the public from incompetent home inspectors.
- 3) No mechanism exists to discipline or to provide corrective training to practicing home inspectors against whom the public files complaints.
- 4) No legal standards exist to hold home inspectors accountable for their actions.

Discussion Points

- 1) **A general order issued by the Department of Agriculture, Trade and Consumer Protection (DATCP) could be a mechanism through which to regulate home inspectors.**

The format of the procedure is outlined in s. 100.20, Wis. Stats. dealing with Methods of Competition & Trade Practices.

A general order can be issued by the department after a public hearing and a determination that unfair trade practices are being used. General orders provide a mechanism for disciplining individual practitioners engaging in illegal trade practices, allow the consumer to sue for two times the amount of pecuniary loss plus attorney fees, give the state investigation powers over the trade practice and authorize the DATCP to commence Circuit Court action. General orders would provide the consumer protection and recourse against unsatisfactory home inspectors, and could utilize existing personnel and structures to provide needed services to the consumer. General orders, however, are a mixed blessing for the trade. Limits on recovery are set by law but disciplinary decisions are left to government officials without a peer review mechanism.

- 2) **The services of DILHR certified inspectors could be utilized through municipal agencies for a fee to the public. In this way, the consumer could be assured of a quality inspection by a licensed authority which has standard guidelines.**

DILHR inspectors inspect primarily new residential construction and commercial dwellings and only inspect in accordance with the Uniform Dwelling Code (ILHR Chs. 20-25, Wis. Adm. Code) and other local, municipal codes which vary according to location. However, municipal agencies can only inspect the dwelling in accordance with state code and public health and welfare standards, and only with the permission of the legal owner (usually the seller) or principal resident of the property. Therefore, home buyers would need to contact the seller to have this done as well as find out if the municipal inspection authority would provide this service.

DILHR inspectors, like the ASHI and AMER certified home inspectors, only perform visual inspections. However, if an inspection reveals that a dwelling is out of compliance with current code but still legal, additional specialists are usually sent to the residence to follow up, and the municipal authority will follow the case until the dwelling is brought up to code standards. For a consumer buying a house, this may not be the option they're looking for because of time constraints and dealings with the seller.

DILHR inspectors are trained to inspect against a code. Most existing homes were not constructed under the current code. Problems could occur in finding fault with a non-code compliance circumstance, which is not illegal, and still structurally sound.

Also, a conflict of interest may exist between an inspector serving the interest of the home buyer/owner and enforcing the current codes. Home owners may want to be advised of a problem but not ordered to fix it.

3) Registration of home inspectors through the Department of Regulation & Licensing (DORL) with an education and examination requirement to obtain and renew credentialing may help to promote professional standards.

Home inspectors could be registered providing a roster of practitioners through which consumers could identify service providers and report complaints for resolution. Education requirements for registration and/or re-registration would ensure a minimal level of competency and encourage home inspectors to remain current in their field.

However, registration may duplicate the goals and services presently available through the professional associations. Also, at this time, it may be difficult to determine needed education & examination requirements because inspectors have very diverse backgrounds.

4) DILHR certification of home inspectors

DILHR does not have authority to develop rules on existing dwellings at this time per 101.615.

5) Bonding or Insurance Requirements for Home Inspectors

Requiring bonding of an individual contractor is too costly. Errors and omissions insurance is another alternative that may provide the consumer with protection. However, imposing a bond or insurance requirement on home inspectors may be opposed by the profession since members of similar professions do not have to comply with this requirement.

ISSUE 2: DEFINING A HOME INSPECTOR AND A HOME INSPECTION

Concerns

Who/What is a home inspector? home inspection?
What role does a home inspector have in a real estate transaction?
What should the consumer expect?
What are the minimal standards needed to be a home inspector?

Discussion Points

1) Consumer Education

Through real estate agents and public service brochures, the consumer can be educated about the role of the home inspector as an advocate/client of the buyer in the property sales process. Many consumers have independent ideas about the role of a home inspector. Their ideas and the industry's definition of home inspection often are not the same thing. Education would help the consumer be a better-informed user of home inspector services and greatly diminish the apparent gap between consumer expectation and home inspection standards as evidenced through the contents of the complaints filed. Consumers would also learn how to go about hiring a home inspector and not be as susceptible to misleading advertising and credentials.

While education is always good, information should be disseminated in a manner that the home buying public has access to it through their real estate agent, the Better Business Bureau or local municipal inspection agency.

2) Legally define the qualifications needed to be a home inspector.

Home inspection is a generalist occupation. Practitioners from the architecture, engineering and design professions all have the background to do aspects of home inspection. However, there is no legally defined body of knowledge that a home inspector can be held responsible for knowing and practicing. There is also no way the public can find out if a practitioner in another field comprehends the body of knowledge needed to be a home inspector. Further complicating the issue is that there are only a handful of home inspector schools in the United States none of which are located in the Midwest. Home inspector education is not offered or available in Wisconsin.

The consumer can better decipher ads found in the phone directory and determine who may be a competent home inspector if he or she knows what a home inspector is. A legal definition may help develop minimal standards for home inspectors and enable the disciplining of negligent and incompetent inspectors as well as guide consumer expectations. However, it may not be feasible to mandate restrictions on entry requirements, because, at present, home inspection education is not available in Wisconsin. Many practitioners may not be able to afford the travel expenses incurred by out-of-state trade schooling.

ISSUE 3: CONFLICTS OF INTERESTS

Concerns

Since many home inspectors are also contractors, home improvement practitioners or practitioners in other related skilled trades, the opportunity exists for them to assess damages to a home and also offer to repair the damages.

Also, there is a possible conflict between inspectors as an agent of buyer/seller and as a government inspector.

Discussion Points

In order to prevent conflicts of interests in the role of inspectors, warranty periods for inspections could be provided by inspectors or a code of home inspector ethical conduct could be developed to prevent them from soliciting business when acting as a home inspector.

The nature of the home inspector role is as a buyer's client-advocate in the home buying process. A conflict could arise if the client were to ask the inspector to do repairs as part of the inspector's business. A code of ethical conduct may help to resolve such issues. However, enforcement of a code of ethical conduct may be difficult to monitor without consumer education and reporting of violations.

ISSUE 4: TESTING HOME INSPECTORS

Concerns

A testing mechanism for home inspectors may ensure a minimal amount of performance competence for public safety. However, the testing requirement must not prevent competent, practicing home inspectors from being able to make a living. The testing requirement for home inspectors could be in the form of a written exam, practical exam or a time/experience requirement.

Discussion Points

1) Follow the New Soil Testers Model of Regulation

At present, DILHR is phasing in new practice standards for soil testers. Training is being provided to prospective and renewal licensees. Two-day training sessions on formal educational requirements and the new soil techniques being tested on the revised exam are being offered at six sites in Wisconsin. Classes are taught by University of Wisconsin Soil Science and Engineering staff. The sessions are run by selected private septic firms. This combination training and testing allows the state to maintain minimal testing costs but through test revision, permits new and practicing soil testers who will be re-certified an opportunity to gain hands-on experience and take practical tests, and at the same time, obtain expert, professional instruction.

Finding enough experienced, professional home inspection instructors to offer similar training may prove difficult with few professionally certified home inspectors in the state. The same problem may present itself in the development of a written exam. There are few professionally certified home inspectors as evidenced by low membership levels in professional associations.

2) Adopt testing methods used by national home inspector associations.

The exams used by the national home inspector associations conform to existing national standards and have already been tested and developed by examination professionals. Professional association exams also include practical exams, i.e., taking an inspector through a house and grading their inspection. The drawback to requiring this kind of test would be that there are few qualified practitioners in the state to oversee a practical exam.

ISSUE 5: REGULATION OF OUT-OF-STATE HOME INSPECTORS

Concerns

How do you discipline or investigate out-of-state inspectors practicing in Wisconsin?

Discussion Points

1) Reciprocal Licensure

A complaint about the incompetent practice of an inspector from an Illinois firm which conducted home inspections in Wisconsin was described to the committee. Currently, no mechanism exists to legally prevent such out-of-state inspectors from working in Wisconsin.

Providing reciprocal licensure to practitioners who meet Wisconsin standards would increase protection for the consumer without denying competent inspectors an opportunity to work in Wisconsin.

SUMMARY

Pursuing an occupation is a fundamental right recognized by the Constitution. Free enterprise and open competition are basic to our system of government. Occupational regulation by government may infringe upon this right and is, therefore, inappropriate **unless the regulation is necessary to protect the health, safety and well being of the public**. This philosophy provides the basis for the overriding questions that legislators and regulatory personnel should answer to pursue regulation of any occupation. These questions are:

- does the unlicensed practice of an occupation pose a serious risk to the consumer's life, health, and safety, or economic well-being?
- can the potential users of the occupational service be expected to possess the knowledge needed to properly evaluate the qualifications of those offering the services?
- do benefits to the public clearly outweigh any potential harmful effects such as a decrease in the availability of practitioners, the higher costs of goods and services, and restrictions on optimum utilization of personnel?

The proceedings did provide the department with answers to some of these questions. Further study would be necessary to form complete answers to some issues and questions.

DOES THE UNREGULATED PRACTICE OF HOME INSPECTORS POSE A SERIOUS RISK TO THE CONSUMER'S HEALTH, SAFETY, OR ECONOMIC WELL-BEING?

There were few documented complaints registered with the Department of Justice and the Department of Agriculture's Consumer Safety Division. Few actual consumers of home inspection services wrote the DORL about problems, and none actually testified at the hearing, although the hearing was well publicized. Public testimony was presented by members of the occupation and the real estate industry.

Home inspectors presenting testimony generally expressed the view that the industry did not pose a serious risk for the consumer. Based on the low number of consumer complaints, it was their opinion and observation that the department did not have supportive evidence that actual harm had been done to the consumer. It has been the observation of the department, however, that other recent legislative action to regulate professions have occurred with little evidence of actual harm. Acupuncturists, real estate appraisers, occupational therapists, mortgage bankers and cemetery salespersons have all become regulated with few or no documented harm statements on file in this state. In these cases, the potential for harm was weighed against whether the users of occupational services can be expected to possess the knowledge needed to properly evaluate the qualifications of those offering the services, and whether those offering the services could pose a threat to consumer health, safety, welfare, and economic well-being. In addition, the experience in other states contributed to the decision to regulate for the public good.

Real estate agents presenting testimony gave examples of actual harm to the consumer and described home inspection practices that can adversely affect the ability of real estate agents to appropriately represent their clients in housing transactions. They testified that home inspectors can positively or negatively affect the selling price of an existing property and create an unnecessary expense for the seller or buyer of the property. Questions of competency were raised and the fact that consumers do not have redress, short of litigation, for the problems they encounter with home inspectors.

Home inspectors questioned the reasons why real estate agents are urging regulation of home inspectors. Although some agents admitted that sales can be aborted by home inspection reports, the fact remains that all parties to a transaction can significantly benefit from a competent inspection. In any case, home inspectors do not guarantee the contents of their reports. As one home inspector said, "we are just an extra pair of eyes with more experience."

CAN THE POTENTIAL USERS OF HOME INSPECTION SERVICES BE EXPECTED TO POSSESS THE KNOWLEDGE NEEDED TO PROPERLY EVALUATE THE QUALIFICATIONS OF THOSE OFFERING THE SERVICES?

Generally, home inspectors emerge from many different backgrounds including home repair and improvement services, plumbing, professional engineering, the construction trades; others are entrepreneurs. There are no education, experience or minimal entry requirements for those who want to conduct home inspections.

Home inspectors who are members of home inspection associations do meet education and experience standards. They also have practice standards and continuing education requirements. Only a small percentage of home inspectors in Wisconsin belong to associations. The consumer cannot easily identify competent home inspectors because there are no minimal requirements by which to make such a determination.

DO THE BENEFITS TO THE PUBLIC CLEARLY OUTWEIGH ANY POTENTIAL HARMFUL EFFECTS SUCH AS A DECREASE IN AVAILABILITY OF PRACTITIONERS, HIGHER COSTS OF GOODS AND SERVICES, AND RESTRICTIONS ON OPTIMUM UTILIZATION OF PERSONNEL AS A RESULT OF REGULATION?

There appears to be a need to obtain more information from the public, home inspectors and members of related occupations to make this determination. The meetings did indicate that there is a problem. The extent of the problem and impact on various home inspection businesses is not known.

ADVISORY COMMITTEE ACTIONS

1. When asked if any of the committee members would have strong opposition to a form of regulation, there were no responses. This is not to be interpreted as support for the status quo or for regulation, rather it probably reflects the committee's caution and unanimous concern for public accountability and consumer well-being. None of the occupational groups involved with the committee or who observed the proceedings want the public at risk because of incompetent home inspection services.

The committee went on to agree that if there was regulation, the preferred type of regulation would be registration. Since home inspectors come from various background, including those regulated through the Department of Regulation and Licensing (Professional Engineers, Architects and Designers) and DILHR (Plumbers), building contractors and other members of the building trades, there was a concern about requirements which could if too stringent, unnecessarily infringe upon their conduct of business.

2. The Committee was asked to review a draft of a registration model for regulation and to recommend changes for consideration SHOULD LEGISLATION BE DRAFTED TO REGULATE HOME INSPECTORS. The committee was reminded that the department will not be seeking legislation to regulate home inspectors. The meetings were convened to study the issue since home inspections have been raised as a concern by the Real Estate Board and the Joint Board of Architects, Engineers, Designers and Land Surveyors.

CHAPTER 460
REGISTRATION OF HOME INSPECTORS

460.01 Definitions. In this chapter:

- (1) Client means the person, partnership or corporation who contracts for a home inspection.
- (2) "Home inspection" means an inspection of improvements to one- or 2- family residential real property, including structural and mechanical components, and the preparation of a home inspection report.
- (4) "Home inspection report" means a written opinion of the functional condition of improvements to one- or 2- family residential real property, including structural and mechanical components and systems.
- (5) "Home inspector" means a person who, for another, and for a fee, money or other thing of value, inspects improvements to one- or 2- family residential real property, including structural and mechanical components and systems. "Home Inspector" does not include:
 - (a) An electrician, plumber, carpenter, structural pest control operator, or any other person who repairs, improves or maintains improvements to real property, and who does not advertise or otherwise claim to be in the business of inspecting improvements to one- or 2- family residential property.
 - (b) A person whose inspections of improvements to one- or 2- family residential property is incidental to a business of repairing, improving or maintaining improvements to real property.
- (6) "Improvements" means changes and additions to real property including residential and other structures and structural and mechanical components and systems.
- (7) "Person" does not include a partnership or corporation.

460.02 Applicability. Nothing in this chapter requires a certificate of registration under this chapter for:

- (1) An individual holding a credential issued by the state who offers and provides home inspection services within the scope of his or her license, permit or certificate; or,
- (2) An individual who performs home inspection services only as an agent of this state.

460.03 General duties and powers of department.

- (1) In addition to the other duties and powers of the department under this chapter, the department shall do all of the following:
 - (a) Review applications, grant and issue certificates of registration to home inspectors.

(b) Promulgate rules establishing examination requirements for registration as a home inspector. The department may approve examinations offered by certifying associations and educational institutions, contract for the preparation of an examination or prepare an examination.

(c) Promulgate rules which establish standards of professional conduct, minimum standards for a home inspection and which define prohibited unethical practices.

(2) The department may do any of the following:

(a) Prepare letters and bulletins and conduct courses for disseminating information to home inspectors.

(b) Promulgate rules requiring that applicants for renewal of a certificate of registration as a home inspector submit evidence of having completed continuing education requirements.

460.04 Registration of Home Inspectors

(1) REGISTRATION REQUIRED. No person may use the title "home inspector," "certified home inspector" or "registered home inspector," advertise or otherwise portray himself or herself as a home inspector, or act as a home inspector unless the person has been issued a certificate of registration from the department.

(2) APPLICATIONS FOR REGISTRATION. The department shall grant a certificate of registration as a home inspector to an individual who does all of the following:

(a) Submits an application for a certificate of registration to the department on forms prescribed by the department;

(b) Pays the application fee specified in s. 440.05 (1)

(c) Completes an examination approved by the department.

(3) EXPIRATION AND RENEWAL OF REGISTRATION. The expiration date for certificates of registration, renewal fees and renewal procedures are in chapter 440. A home inspector may renew a certificate of registration by submitting to the department a renewal application, the renewal fee required under section 440.05 and evidence of meeting any requirements for continuing education established by the department.

460.05 RESPONSIBILITY FOR ACTS OF EMPLOYEES. A home inspector shall be responsible for the acts of employees and of independent contractors conducting all or part of an inspection under contract with a home inspector.

460.06 APPLICABILITY TO ASSOCIATIONS, FIRMS, PARTNERSHIPS AND CORPORATIONS. No association, firm, partnership or corporation may offer to provide home inspection services unless the firm, partnership or corporation has in its employ at least one person who is registered as a home inspector. All home inspections performed on behalf of a association, firm, partnership or corporation shall be performed by an employee who is registered as a home inspector.

460.07 COMPLAINTS AND DISCIPLINARY ACTIONS AGAINST HOME INSPECTORS.

(1) INVESTIGATIONS AND HEARINGS. Subject to the rules promulgated under s. 440.03 (1), the department may conduct investigations and hold hearings to determine whether a violation of this chapter or any rule promulgated under this chapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the department may deny an application, reprimand a certificate holder, revoke, suspend or limit the certificate of registration of a home inspector, assess against a registrant under this chapter a forfeiture of not more than \$1,000 for each violation enumerated under this section, and in addition to or instead of other discipline or special order under sub. (3), require a registrant to successfully complete education or training as a condition of initial registration, continued registration or reinstatement of registration, if it finds that the home inspector has done any of the following:

- (a) Made a material misstatement in the application for a license or in any information furnished to the department;
- (b) Accepted an offer to perform a home inspection contingent on the reporting of a specific, predetermined condition of the improvements to real property or contingent on the reporting of specific findings other than those known by the inspector to be facts at the time of accepting the offer;
- (c) Advertised in a manner, acted in a manner or engaged in a practice that is false, dishonest, deceptive or misleading;
- (d) Performed a home inspection in a negligent or incompetent manner;
- (e) Acted in the dual capacity of home inspector and undisclosed principal in a transaction; or in the dual capacity of home inspector and real estate broker or salesperson or in the dual capacity of home inspector and appraiser unless the dual capacity is fully disclosed to, and approved by, the client prior to the time that a contract for services is made and is clearly disclosed in the home inspection report.
- (f) Performed or agreed to perform any repairs, maintenance or improvements on a property within two years of the home inspector's home inspection unless the client agrees in writing prior to the time any repairs, maintenance or improvements are performed that the client understands that there is a potential conflict of interest if a home inspector conducts an home inspection and also performs repairs, maintenance or improvements on the property inspected, but that the client approves of the service regardless of the potential conflict;
- (g) Provided an estimate of costs for repairs, maintenance or improvements to a property within two years of inspector's home inspection of property;
- (h) Restricted or attempted to restrict a client from providing a copy of a home inspection report or information contained within the report to any interested party to a real estate transaction involving real property inspected by the home inspector;

(i) Failed to provide a home inspection report stating the results of the inspection to the client within the time promised to the client or within a reasonable time after completing the inspection.

(j) Violated this chapter, rules adopted under this chapter or other statutes and rules substantially related to home inspections.

(3) ORDERS OF THE DEPARTMENT.

(a) ORDERS TO PREVENT OR CORRECT ACTIONS. The department may issue general and special orders necessary to prevent or correct actions by a home inspector that constitute cause under this section for revoking, suspending or limiting a certificate of registration.

(b) TYPES OF SPECIAL ORDERS. Special orders may direct a home inspector to cease and desist from engaging in a particular activity or may direct the home inspector to refund or remit to a client amounts that the home inspector received from actions which constitute cause under this section for revoking, suspending or limiting a certificate of registration.

460.08 UNLAWFUL USE OF TITLE. UNLAWFUL PRACTICE. PENALTIES. Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as a home inspector in this state without a license shall be prosecuted by the district attorney or the department in the county where the violation occurs and may be fined not more than \$10,000.00 or imprisoned not more than 6 months or both.

460.09 Fee Splitting. No home inspector may pay a fee or a commission or any part thereof for performing any act specified in this chapter or as a compensation for a referral or as a finder's fee to any person who is not registered under this chapter.

460.10 Limitation on actions for fees. No person engaged in the business or acting in the capacity of a home inspector within this state may bring or maintain an action in the courts of this state for the collection of fees or compensation for the performance of any act mentioned in this chapter without alleging and proving that he or she was a duly registered home inspector at the time the alleged cause of action arose.

460.11 Compensation presumed. In any prosecution for violation of this chapter, proof that a person acted as a home inspector is prima facie proof that compensation therefore was received or promised.

APPENDIX

ITEM #

1 Wisconsin Department of Justice Consumer Complaints

2 Advisory Committee Meeting Summaries

...Wednesday, June 5, 1991

...Wednesday, June 12, 1991

APPENDIX ITEM 1

WISCONSIN DEPARTMENT OF JUSTICE CONSUMER COMPLAINTS

JUN 05 1991



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Patricia J. Gorence
Deputy Attorney General

123 West Washington Avenue
P.O. Box 7857
Madison, WI 53707-7857

June 3, 1991

Marlene Cummings
Secretary
Department of Regulation & Licensing
1400 E. Washington Avenue
Madison, Wisconsin 53708

Dear Ms. Cummings:

I was pleased to learn about the upcoming hearing being held by the Department of Regulation & Licensing concerning the need to regulate home inspectors in Wisconsin. I support your interest in pursuing ways to better protect home-buying consumers. The significant financial and emotional investment made by home buyers makes the problems associated with unscrupulous practices particularly devastating.

Four written consumer complaints related to home inspection services have been recorded with the Department of Justice, Office of Consumer Protection & Citizen Advocacy since 1989. Copies of the complaints are attached for your information.

These written complaints, as well as other contacts with consumers, indicate it would be helpful if guidelines were established to help consumers understand exactly what they are paying for and what specific services they will receive. The extensiveness of the inspections and their written reports seem to be quite varied, and are often based on visual observations which may be fairly superficial.

Inspection services provide no warranties and assume no liability, leaving consumers with little recourse when inspections are inaccurate. In addition, many home-buying consumers have little knowledge about construction or home improvements and may not know the right questions to ask or how to interpret inspection reports.

I hope this information is helpful to you. Please let me know if I can provide you with any additional assistance.

Sincerely,

James D. Jeffries
James D. Jeffries
Director

JDJ:pls
Enclosures

1-5 11:12
1001 2100

Complaint Questionnaire

DONALD J. HANAWAY
ATTORNEY GENERAL



Office of
Consumer Protection
& Citizen Advocacy

Wisconsin Justice Department

123 West Washington Avenue
P.O. Box 7856
Madison, Wisconsin 53707-7856
608-266-1852
Room 520
819 North Sixth Street
Milwaukee, Wisconsin 53203-1678
414-227-4949
Other areas call toll-free 1-800-362-8189

Consumer Complaint

1. Party Complaining **2. Complaint Against**

Please complete both sides of form. Type or print clearly with a black pen.

Your Name ^{MR} ^{MRS} ^{MISS} ^{MS} [Redacted] Name of Firm [Redacted]

(Last) (First) (MI)

Address [Redacted] Address [Redacted]

City [Redacted] City [Redacted]

State [Redacted] Zip [Redacted] State [Redacted] Zip [Redacted]

Home Phone [Redacted] Work Phone [Redacted] Phone [Redacted]

Contact me between 8:00 A.M. and 4:00 P.M. at: Name of person you dealt with: [Redacted]

Home Work, ext. () Time: 7:00-3:30 Title Inspector

3. First Contact Between You and Firm **4. Where Did the Transaction Take Place?**

- Person came to my home.
 - I went to firm's place of business.
 - Away from firm's place of business (convention, at my job, etc.).
 - I received a telephone call from the firm.
 - I telephoned the firm.
 - I received information in the mail.
 - I responded to a radio/TV ad.
 - I responded to a printed advertisement.
- At my home.
 - At the firm's place of business.
 - Away from the firm's place of business (convention, at my job, etc.).
 - Over the telephone.
 - By mail.
 - There was no transaction.

5. Date(s) of transaction: 3-24-90 6. Did you sign a contract? no

7. Amount of payment: \$185.00 Cash Installment Sale Plan
 Credit Card Check. Date check was cashed: 3-29-90
 Loan Other. check # [Redacted]

8. Have you contacted the firm about your complaint? Yes If yes, when? at least 6 times since 10-1-90 9. What action was taken? none did not

10. With what other agency have you filed this complaint? none 11. What action was taken? none

12. Have you contacted a private attorney? Yes No 13. Have you started court action? Yes If yes, type? No

Please complete both sides of form (0

Do Not Fill Out For Office Use Only

ID #	CPLKUP	Agency	Person	Area of R	Area of C	How Received	Age of C
[Redacted]	<u>4</u>	455B 455E	[Redacted]			Date 30101 Phone 30102 Mail 30103 Pers Contact 30104 Referral 30106 App Instituted	0-18-60-8 Trans Date <u>4/6/90</u> Date Rcvd From
Resp Name	[Redacted]						
Comp Name	[Redacted]						

14. Please Describe Your Complaint in Detail (Attach an extra sheet if necessary)

Please attach copies of any papers involved (order blanks, warranties, credit card receipts or statement, contracts, advertisements, cancelled checks - front and back; etc.)

Description of your complaint (please use black pen):

On March 24, 1990 we hired [redacted] to work the house we were planning on purchasing in [redacted] report. (enclosed copy) They said that the furnace may need replacing in next few years. We moved in to the house on Sept. 1, 1990. in Oct we turned the furnace on and to our surprise, it was shot the top of the furnace was all rusted and burned out. We called a service man and he told us it was junk. on the 1st of Oct. we had a new furnace installed by [redacted]. Cost was: \$1,640.00 paid on 11-2-90

We feel that the previous owner [redacted] had some knowledge of this. We also feel that the building inspector should have seen it and told us that it was bad. That's why we hired him. It ~~is~~ to me like this is there job, that he didn't check to part of furnace at all, all he did was start it and shut it off right away, it didn't run 30 seconds.

We have contacted them several times and we get the same story. The furnace was O.K. when we installed it. This is just not true, it's been bad a long time. We want our \$185.00 refunded from them. Enclosed are pictures of top of furnace, and have the old one here for you to see if that is (photos of top of furnace - lighter area is metal, dark holes are in the top where it is rusted all the way through.)

This matter will be pursued to the very end. (if need be court)

15. Your view as to how this matter should be resolved: It would nice if some cost be reimburse [redacted] should refund our \$185.00

The information you provide will be used in efforts to resolve your problem and may be shared with the party complained against. It may also be used to enforce applicable state laws. Under Wisconsin's Open Records Law, this complaint will be available for public review upon request. Note: New gas water heater was also installed.

The above information is true and accurate to the best of my knowledge.

Your Signature [redacted] Date Nov. 8, 1990

Optional:

The age of the person involved in the transaction: 0-17 18-40 41-59 60-84 85-over

Complaint Questionnaire

DONALD J. HANAWAY
ATTORNEY GENERAL

123 West Washington Avenue
P.O. Box 7856
Madison, Wisconsin 53707-7856
608-266-1852
Room 520
819 North Sixth Street
Milwaukee, Wisconsin 53203-1678
414-227-4949
Other areas call toll-free 1-800-362-8189



Office of
Consumer Protection
& Citizen Advocacy
Wisconsin Justice Department

Consumer Complaint

CONS. PROTECTION
DEPT. OF JUSTICE
90 MAR 28 4:19

1. Party Complaining 2. Complaint Against

Please complete both sides of form. Type or print clearly with a black pen.

Your Name ^{MR} [Redacted] ^{MS} [Redacted] ^{MISS} [Redacted] ^{MS} [Redacted]
(Last) (First) (MI)

Address [Redacted]

City [Redacted]

State WI **Zip** [Redacted]

Home Phone [Redacted] **Work** [Redacted]

Name of Firm [Redacted]

Address [Redacted]

City [Redacted]

State [Redacted] **Zip** [Redacted]

Phone [Redacted]

Contact me between 8:00 A.M. and 4:00 P.M. at:

Home Work, ext. () Time: _____

Name of person you dealt with: [Redacted]

Title [Redacted]

3. First Contact Between You and Firm 4. Where Did the Transaction Take Place?

- Person came to my home.
- I went to firm's place of business.
- Away from firm's place of business (convention, at my job, etc.).
- I received a telephone call from the firm.
- I telephoned the firm.
- I received information in the mail.
- I responded to a radio/TV ad.
- I responded to a printed advertisement.

- At my home.
- At the firm's place of business.
- Away from the firm's place of business (convention, at my job, etc.).
- Over the telephone.
- By mail.
- There was no transaction.

5. Date(s) of transaction: 3-27-90

7. Amount of payment: Cash Credit Card Loan

6. Did you sign a contract? No

Installment Sale Plan
 Check. Date check was cashed:
 Other: [Redacted]

8. Have you contacted the firm about your complaint? Yes If yes, when? 3-28-90 No

9. What action was taken? by a prospective buyer of my house. Nothing yet.

10. With what other agency have you filed this complaint? I will be contacting DILHR's Buildings Division

11. What action was taken? All DILHR inspect staff are out today

12. Have you contacted a private attorney? Yes No

13. Have you started court action? No Yes If yes, type? No

Please complete both sides of form (O

DO NOT FILE THIS FORM FOR OFFICE USE ONLY

ID #	CPLKUP	Agency	Person	Area of R	Area of C	How Received	Age of C
[Redacted]	Ø	455B 455E	[Redacted]			Date 30101 Phone 30102 Mail 30103 Pers Contact 30104 Referral	0/18-41-60-8 Trans Date 9003 Date Rcvd From
Resp Name							
Comp Name							

14. Please Describe Your Complaint in Detail (Attach an extra sheet if necessary)

Please attach copies of any papers involved (order blanks, warranties, credit card receipts or statement, contracts, advertisements, cancelled checks - front and back, etc.).

Description of your complaint (please use black pen);

This business was hired to do an inspection of our home by some prospective purchasers of our house. [redacted] spent over three hours inspecting our house. At the conclusion of the inspection they told me that the furnace was emitting carbon monoxide into the house, probably caused by a cracked heat exchanger. They also told me that three gas valves (two on the furnace, one on the hot water heater) were leaking natural gas. The inspectors then left. I immediately shut down the furnace and called M & E for an emergency inspection out of fear of poisoning my family (we have a small baby) or blowing up our house. The M & E inspector, using several testing devices, determined that the heat exchanger was not cracked and the furnace was not leaking carbon monoxide into the house. He also determined that the three gas valves were either not leaking or were leaking "normally" - in his opinion all valves are expected to leak minute amounts. None of my valves needed repair, he said.

I am complaining for two reasons. First, because he unnecessarily alarmed my family. Second, his false determinations may interfere with the sale of our house. - perhaps this is done deliberately to help his clients (the prospective buyers) negotiate a lower price. I simply don't know the motive. I would appreciate anything you can do to discourage this kind of conduct.

15. Your view as to how this matter should be resolved: Determine if this is some sort of scam to get house sellers to reduce selling prices; determine if this outfit should be allowed to perform this business service in this State.

The information you provide will be used in efforts to resolve your problem and may be shared with the party complained against. It may also be used to enforce applicable state laws. Under Wisconsin's Open Records Law, this complaint will be available for public review upon request.

The above information is true and accurate to the best of my knowledge.

Your Signature [redacted]

Date: 3-28-90

Optional

The age of the person involved in the transaction: 0-17 18-40 41-59 60-84 85-over

MAY 8, 1991

(4)

IN THE MONTH OF DECEMBER 1990, I PUT IN A BID ON MY PRESENT HOME WITH [REDACTED] THEN I FOLLOWED UP WITH A HOME INSPECTION WITH A COMPANY CALL [REDACTED] IN WHICH I FELT AT THAT TIME, HE GAVE ME A THOROUGH AND COMPLETE INSPECTION ON MY HOME.

AT THAT TIME I WAS CONCERNED ABOUT THE ELECTRICAL WIRING THAT WAS IN THE HOME. AND I ASK [REDACTED] SEVERAL TIMES ABOUT THE ELECTRICAL WIRING AND EACH TIME WAS PUT OFF. EVEN ON THE SELLER PROPERTY CONDITION REPORT I REQUESTED MORE INFORMATION ON THE ELECTRICAL WIRING, AS THEY DIDN'T HAVE ANYTHING MARKED FOR IT. I RECEIVED THIS REPORT FROM [REDACTED].

SINCE THE [REDACTED] WAS SCHEDULED FOR DECEMBER 20, 1990. I FIGURED THAT HE, THE INSPECTOR THAT I HIRED COULD TELL ME ABOUT THE ELECTRICAL STATUS IN THIS HOUSE. I DID NOT KNOW WHAT AMP SERVICE THIS HOUSE HAD AND NO ONE WOULD GIVE ME A DIRECT ANSWER. I INFORMED [REDACTED] THAT I NEEDED A 220 VOLT "OUTLET" FOR THE DRYER IN THE BASEMENT, AND ASKED HIM IF HE SAW A PROBLEM IN GETTING IT INSTALLED. HE REASSURED ME THAT IT WASN'T A MAJOR PROBLEM IN GETTING IT INSTALLED. BUT WHEN I DO, REQUESTED ME TO HAVE THE ELECTRICIAN CHECK OUT THE FUSE BOX'S IN THE BASEMENT. THE ORIGINAL FUSE BOX WAS STILL HANGING ON THE WALL, BUT THE WIRES WERE CAPED. BELOW THE OLD FUSE BOX WAS A NEWER FUSE BOX. WHEN THE SELLER PUT IN A NEW FURNACE, HE ADD A BOX BY IT SELF AND CONNECTED TO THE NEWER FUSE BOX.

NOT UNTIL I MOVED INTO THE HOUSE AND STARTED TO GET SETTLED DID I CALL TO HAVE AN ELECTRICIAN COME IN TO THE HOUSE AND GIVE ME AN ESTIMATE ON THE OUTLET FOR THE DRYER AND SOME OTHER WORK THAT I WANTED DONE.

AT THAT TIME I WAS INFORMED THAT I DIDN'T HAVE 220 WIRING IN THIS HOUSE AT ALL. I THOUGHT THIS MAN WAS "JOKING" AND CALLED ON TWO MORE ELECTRICIANS TO COME OUT TO THE HOUSE TO GIVE ME ESTIMATE. THEY ALSO INFORM ME THAT I DIDN'T HAVE 220 WIRING IN THIS HOUSE.

I FEEL THAT [REDACTED] NEW ABOUT THE ELECTRICAL PROBLEM IN THIS HOUSE AND FAILED TO INFORM ME WHEN I ASKED [REDACTED] ABOUT THE WIRING. EVEN THOUGH REALTOR IS LOOK OUT FOR THE SELLERS INTEREST NOT THE BUYER. I FEEL I WAS MISLED BY [REDACTED] AND [REDACTED]. I DO NOT KNOW THE LAW ON SOMETHING LIKE THIS OR ANYTHING COULD BE DONE?

AS FOR [REDACTED] WHO OVER LOOKED THE ELECTRICAL WIRING AND ASSUME THAT THIS HOUSE HAD 220 WIRING IN IT ALREADY, I FEEL HE SHOULD OF KNOWN ABOUT ALL ELECTRICIANS PROCEED WITH HIS BACKGROUND AND EXPERIENCE IN HIS FIELD. HE FAILED TO TELL ME. I REQUEST A REFUND BACK FROM [REDACTED].

AND IF I WOULD OF KNOWN ABOUT THIS PROBLEM ABOUT THE WIRING IN THIS HOUSE. I WOULD HAVE GONE BACK TO THE BARGAINING TABLE WITH THE SELLER. THIS HAS COSTED ME EXTRA MONEY THAT I DIDN'T PLAN ON SPENDING.

SINCERITY YOUR,

[REDACTED]

[REDACTED]

Complaint Questionnaire

Consumer Complaint

CONS. PROTECTION
DEPT. OF JUSTICE

'90 JUN 22 A9:49

DONALD J. HANAWAY
ATTORNEY GENERAL



Office of
Consumer Protection
& Citizen Advocacy
Wisconsin Justice Department

123 West Washington Avenue
P.O. Box 7856
Madison, Wisconsin 53707-7856
608-266-1852
Room 520
819 North Sixth Street
Milwaukee, Wisconsin 53203-1678
414-777-4949
Other areas call toll-free 1-800-362-8189

1. Party Complaining **2. Complaint Against**

Please complete both sides of form. Type or print clearly with a black pen.

Your Name ^{MR} ^{MRS} ^{MISS} [REDACTED]
(Last) (First) (MI)

Address [REDACTED]

City [REDACTED]

State Wisconsin Zip [REDACTED]

Home [REDACTED] Work [REDACTED]

Contact me between 8:00 A.M. and 4:00 P.M. at:
 Home Work, ext. ([REDACTED]) Time: 7:00 AM - 11:30 AM
1:00 PM - 4:30 PM

Name of Firm [REDACTED]

Address [REDACTED]

City [REDACTED]

State [REDACTED] Zip [REDACTED]

Phone [REDACTED]

Name of person you dealt with: [REDACTED]

Title Inspector

3. First Contact Between You and Firm? **4. Where Did the Transaction Take Place?**

- Person came to my home.
- I went to firm's place of business.
- Away from firm's place of business (convention, at my job, etc.).
- I received a telephone call from the firm.
- I telephoned the firm.
- I received information in the mail.
- I responded to a radio/TV ad.
- I responded to a printed advertisement.

- At my home.
- At the firm's place of business.
- Away from the firm's place of business (convention, at my job, etc.).
- Over the telephone.
- By mail.
- There was no transaction.

5. Date(s) of transaction: February 12, 1990

6. Did you sign a contract? Don't remember

7. Amount of payment: Cash Credit Card Loan

8. Have you contacted the firm about your complaint? Yes If yes, when? [REDACTED] No

9. What action was taken? [REDACTED]

10. With what other agency have you filed this complaint? None

11. What action was taken? [REDACTED]

12. Have you contacted a private attorney? Yes No

13. Have you started court action? Yes If yes, type? No

Please complete both sides of form (Over)

City	CPLKUP	Agency	Person	Area of R	Area of C	How Received	Age of C
Milwaukee	<u>φ</u>	455B 455E	<u>[REDACTED]</u>			Date 20101 Phone 30102 Mail 30103 Pers Contact 30104 Referral	Trans Date Date Recd

1. Please describe your complaint in detail (attachments if helpful necessary)

Please attach copies of any papers involved (order blanks, warranties, credit card receipts or statement, contracts, advertisements, cancelled checks - front and back; etc.):

Description of your complaint (please use black pen): [redacted] was recommended by [redacted] (the agency selling the home) and conducted an inspection on our home ([redacted]) prior to us purchasing the home (see attached report). We trust his inspection, and based on his report which led us to believe that the house was basically in good condition with only a section of roof needing immediate repair, we made a decision to purchase and to waive a home warranty provided by [redacted]. We have been in the home about one month and have had one repair after another and have discovered the home, in reality, is in very poor condition. The nearly unbelievable number of things that require repair are as follows: 1) Three days after we bought the house the furnace went out - [redacted] told us that it was a top of the line furnace that would last many years 2) one week later the sump pump failed and had to be replaced and rerouted because it didn't drain properly - [redacted] said it was in good condition with the need of a minor adjustment 3) one week later the water softener had to be replaced with the bed being shot and also routed wrong to empty into the sump crock instead of a sanitary sewer - [redacted] said it was in good shape and didn't comment on the code violation of where it drained 4) The sewer in the house does not meet code and should exit through the basement floor instead of through the wall and should be buried 12 feet - [redacted] totally missed this 5) The rotted boards in the roof were caused by dry rot from no roof ventilation or soffit vents in the home - [redacted] didn't comment on vents 6) The back of the home had a pile of bricks in front of a section where the siding is missing and the floor joist is rotted - [redacted] missed this 7) The house is infected by carpenter ants - [redacted] missed this 8) The gutters aren't pitched correctly and don't drain correctly - [redacted] commented about them being full of leaves 9) The kitchen cabinets were falling off the walls - [redacted] missed this 10) There are electrical circuits that continuously short out and improperly wired wall switches - [redacted] missed this 11) Clothes bars in three closets were improperly mounted, pulling out of the wall and not supported - [redacted] missed this 12) We are now aware of the basement flooding at least three times before we moved in - [redacted] said it was basically a dry basement 13) next page *

15. Your view as to how this matter should be resolved: [redacted] should be exposed for its superficial, inaccurate inspections and should be liable for doing a poor job. People like us who put their trust in a so called professional organization should be protected when they pay large sums of money for home inspections. At minimum, our money should be refunded.

The information you provide will be used in efforts to resolve your problem and may be shared with the party complained against. It may also be used to enforce applicable state laws. Under Wisconsin's Open Records Law, this complaint will be available for public review upon request.

The above information is true and accurate to the best of my knowledge. cc: [redacted]

Signature: [redacted] Date: June 14, 1990

Optional:

The age of the person involved in the transaction: 0-17 18-40 41-59 60-84 85-over

14. Please Describe Your Complaint in Detail (Attach an extra sheet if necessary.)

Please attach copies of any papers involved (order blanks, warranties, credit card receipts or statement, contracts, or cancelled checks - front and back; etc.).

*
 Description of your complaint (please use black pen): 13) The laundry tub on the first floor was leaking (since its installation according to [redacted] floor boards and basement ceiling tiles were rotted - [redacted] this 14) The courtyard had dirt mounded up on the siding of the house causing water seepage into the walls and floors - evident by rotting floor boards - [redacted] missed this 15) The house has a major settling crack across the whole house where section built on a basement has moved away from the part built on a slab - [redacted] missed this

15. Your view as to how this matter should be resolved: See 2nd page

The information you provide will be used in efforts to resolve your problem and may be shared with the party against. It may also be used to enforce applicable state laws. Under Wisconsin's Open Records Law, this information is available for public review upon request.

The above information is true and accurate to the best of my knowledge.

Signature

Date

Optional

The age of the person involved in the transaction:

0-17
 18-40

41-59
 60-84

85+ or over

APPENDIX ITEM 2

ADVISORY COMMITTEE MEETING SUMMARIES

.....WEDNESDAY, JUNE 5, 1991

.....WEDNESDAY, JUNE 12, 1991

ADVISORY COMMITTEE/PUBLIC HEARING
FOR
HOME INSPECTORS

Wednesday, June 5, 1991

Advisory Committee Members:

Marlene Cummings, Chair of Committee, Secretary
Department of Regulation & Licensing
David Schmalz, Land Surveyor Section, A,PE,D & LS Board, Certified Soil
Tester, Landscape Architect.
Jerome Baumgardt, Baumgardt Home Inspection - Milwaukee area
Arlan Kay, Architect Section, A,PE,D & LS Board
George Mark, Wisconsin Builders Association - Janesville
Floyd Rathburn, Electrical Contractor, Member, A,PE,D & LS Board - Green Bay
Jerome Quinn, Chairman, Design Section, A,PE,D & LS Board - Green Bay
Peter Schils, Chairman, Real Estate Board - Sheboygan
Clint McCullough, Master Plumber Contractor - Madison
Michael Corry, Administrator, Safety & Buildings Division - DILHR
Thomas Jones, Home Inspector
Bruce Kieffer, Architect, Member, A,PE,D & LS Board
Lisabeth Weirich, Realtor - The Greater Madison Board of Realtors
Richard Staff, Legal Services, Wisconsin Realtors Association
Beechie O. Brooks, United Realty Group, Member, Real Estate Board - Milwaukee
Linn A. Duesterbeck, Real Estate Appraiser, Member, Real Estate Appraisers
Board - Janesville,
Donald V. Cohen, American Society of Home Inspectors (ASHI)

Department of Regulation & Licensing Staff:

Myra Shelton, Executive Assistant, Home Inspectors Project Coordinator
John Temby, Administrator, Division of Enforcement
Don Severson, Division of Enforcement
William Dusso, Administrator, Div. of Administrative Services, General Counsel
Cletus Hansen, Director, Bureau of Direct Licensing & Real Estate
Pamela Haack, Administrative Assistant, Office of Administrative Rules

Home Inspectors
June 5, 1991

The following people were registered to speak at the Public Hearing regarding the regulation of Home Inspectors (listed in order of appearance).

1. **Barbara Fritz**, representing Federal Realty, Ozaukee Board of Realtors, WRA
2. **Bob Hurwitz**, representing Federated Realty, Mequon, WI
3. **Don Robbins**, Home Inspector
4. **Kevin King**, representing Wisconsin Realtors Association (WRA)
5. **Cass F. Hurc**, representing Mechanical Sheet Metal & Plumbing Contractors
6. **Darrell Fuller**, works for Century 21
7. **Donald D. Day**, owner of Fox Valley Inspection
8. **Henry A. Londo**, representing Realtor concerns & protection of the consumer
9. **Roy Newcomer**, has been Real Estate Agent, Broker, Contractor
10. **Kathy Walch**, Stark Company representative
11. **G. W. Ziglinski**, representing General Improvement Services Company (GISCO)
12. **Beechie Brooks**, representing WREB
13. **Albert Dobiash**, representing Dobiash and Associates, Ltd. Home Inspection Service
14. **John A. Geiger**, representing American Society of Home Inspectors (ASHI)
15. **Robert Scherwat**, P.E., representing Housemaster of America (didn't speak - attended for information only)
16. **Ben Olson** (didn't speak - attended for information only)
17. **Cletus Hansen**, Director - Bureau of Direct Licensing and Real Estate
18. **Karen Brey**, representing Wisconsin Society of Professional Engineers (WSPE)
19. **Tom Greenwald**, Home Inspector - Waukesha (made general comments-did not register)

Home Inspectors
June 5, 1991

SUMMARY OF PRELIMINARY COMMENTS BY THE ADVISORY COMMITTEE MEMBERS

The Committee is meeting on Wednesday, June 5, 1991, and Wednesday, June 12, 1991. There is no preconceived notion of whether home inspectors need to be regulated by the state. The philosophy of this administration is that occupational regulation by the government is totally inappropriate and that it is only appropriate when there is some real risk or harm to the consumer that can be identified that the consumer cannot realistically be expected to judge the competency of a particular profession.

The expectation of the Committee is that regulation by government or any professional or occupational group should meet a public need and take into consideration and specify the precise nature and seriousness of the need to be considered. We have to be able to specifically identify the problem in order to seek a solution for it. We have to consider whether the unlicensed or unregulated practice of an occupation poses a serious risk to the consumer's life, health, safety and/or economic well-being and whether the potential users of the occupational service can realistically be expected to possess the knowledge needed to properly evaluate the qualifications of those offering the services and whether benefits to the public clearly outweigh any potential harmful effects such as decrease in the availability of practitioners, higher costs of goods and services and restrictions on the optimum utilization of personnel.

Licensure is the most restrictive form of regulation and is not recommended very often. Certification is not quite so restrictive, mostly title protection. Registration is the most flexible form of regulation which gives the consumer a place to go for information and a place to register complaints.

Four of the Boards of the Department of Regulation & Licensing are represented on this committee - the Real Estate Board, Architects Board, Professional Engineers, Designers and Real Estate Appraisers.

From the perspective of the Architects Board, there is no opinion that there has to be licensure of home inspectors, this is merely a fact finding effort at this point.

WHAT SHOULD (AND SHOULD NOT) BE EXPECTED FROM A HOME INSPECTOR?

It needs to be recognized that home inspectors are generalists. They are not electricians, plumbers, roofers, or foundation specialists and generally they are not engineers. Their function is to spell out the major areas of concern in the house and perhaps recommend that the buyer have an expert in that particular area of home maintenance check it out further.

The home inspector is a trained pair of eyes. Their function is to reduce the risk of the buyer as much as possible at a cost that the prospective home buyer is willing to pay.

Home inspectors do not inspect the entire structure, they inspect the components of the structure. They determine whether something needs replacement, or repairs.

People feel that a home inspection provides a guarantee, that an inspection is a warranty, which it is not.

People need to realize that home inspection is a service that is trying to identify problems so that buyers become a more knowledgeable purchaser of that home.

People have to realize that the average home inspection costs between \$175 - \$300, takes about 2-4 hours plus some time for writing up a report, which doesn't provide any resources for a fund for paying for problems that may crop up that weren't found. The expectations of home buyers is very high. Home buyers need to realize that the home inspection is an opinion and nothing more, it is not an insurance policy and there is no liability on the part of the home inspector. Home buyers would not be willing to pay the fee that would be required to provide that kind of warranty. If home buyers want the \$6,000 inspection then they can be provided with a warranty of the inspection. The level of expectation needs to be brought down to the level of realism.

Licensing and regulation does not guarantee the consumer any kind of financial rebate. All that a board can do is take some kind of disciplinary action against a professional person if it is warranted.

Does the home inspection industry do any kind of bonding to back up their reports? What is the value of all kinds of regulations if there is no way for the consumer to recover damages but to go to court and wait long periods of time to have their case resolved?

Home Inspectors
June 5, 1991

WHY SHOULD HOME INSPECTORS BE REGULATED?

Home inspectors need to be regulated because of a few bad home inspectors. Just as mortgage bankers were regulated because of a few "bad eggs" there, so too, there are a few bad home inspectors who are doing a lot of business in home inspections and are abusing the system. These few bad home inspectors should be dealt with and without regulation of some sort there is nothing that can be done about them.

Home inspectors give a disclaimer of liability saying "we are not liable for anything" when actually they are liable for any negligence that they may be involved in. Home buyers are injured by disclaimers of any liability because they are not aware that the law does not allow a home inspector to give that kind of blanket disclaimer. As a professional you are liable for any negligence that you commit as part of your professional service. Home inspectors cannot "language away" those responsibilities.

This is an area that regulation can help cover as it does for many industries.

COMPETENCY:

From the viewpoint of the Real Estate Board they would like to see the public protected by having competent home inspectors that can provide expertise to the consumer who is buying or selling a home. Whether they are regulated or not is not a prime issue but the fact that there are competent people who can provide this service is a concern of both the Real Estate Board and the Real Estate licensees.

From the perspective of the Appraisers the main concern is competency of the home inspectors. The appraiser looks at how the condition of the home affects the value of the property.

EFFECTS OF POOR HOME INSPECTION VS. POOR APPRAISAL

It was felt that the home inspection is more important than an appraisal. An appraisal is an opinion of value (the payment of which is spread out over the life of the mortgage, 15-30 years). But if an expensive piece of equipment is deficient and the home owner was not planning on having to repair it, the home owner can be faced with a major expense that they are not prepared to pay for out of pocket expenses.

CONFLICT OF INTEREST

There are building inspectors who are performing home inspections and then offering to perform any work that they may find necessary. Question raised was are these really legitimate aspects of the home inspection or is it a source of revenue to follow up and perform the work.

(ASHI forbids its members to take a job where they have done an inspection and prefer that their home inspectors are NOT in the construction business.)

BUYERS' QUESTIONS RE: HOME INSPECTORS

Prospective home buyers are asking their realtors "How do I know if a listed home inspector is any good?" Who can I contact to find out about the quality of services I can expect from the person who inspects the home?" Realtors are left with no reliable answer to these kinds of questions. There is no place for the public to go right now to find out if there are any complaints against the home inspector they may be considering for service.

What is the value of the warranty that ASHI home inspectors give when you take into account the limiting conditions that are attached to the report? Attorneys state that there are so many contingencies and limiting conditions attached that essentially leaves the home inspector off the hook as far as any future financial responsibility as the result of his inspection.

IMPACT ON ABILITY TO GET LOAN

Many home inspections result in generating amendments to contracts, which end up in the hands of the underwriters. It is preferred that contracts are completed prior to the closing of the loan.

Home Inspectors
June 5, 1991

WHY HOME INSPECTORS SHOULD NOT BE REGULATED?

First we need to determine if there is a big public interest in wanting a home inspection type of regulation.

The issue of public harm has to be clearly defined.

DILHR has inspectors; consider certification of home inspectors through DILHR. Examining Board for Architects and Engineers - the law already specifies what kind of responsibility and activity these people can be involved in. Could some sort of regulation of home inspectors come under the jurisdiction of something that is already in place without having to go through the whole regulation process?

Would certifying home inspectors as UBC inspectors meet the criteria that is being sought?

Licensing or regulation would not guarantee a high level of standards in home inspectors. In what way will either licensing, registration or certification improve the situation to increase the supply of quality home inspectors?

The WRA and Realtors have a great degree of control already as an interested party on who does inspections. A large part of the business of home inspectors comes from realtors. Inspectors also get referrals from previous clients and attorneys. There is a concern that realtors, as an interested party, would have a great deal of control in steering business towards home inspectors that are not "going to break their real estate deals." Because of this conflict of interest it is felt that realtors are not the best source of referrals on home inspectors.

We are taking too much responsibility away from the home buyer. More education is needed for people who are buying homes -to buy within their means, to learn how to maintain their homes and do some minor upkeep themselves.

All parties involved - the owner, the builder, the appraiser, the home inspector - all need to join in as a team. The addendum that the real estate broker writes along with his offer to purchase gives the buyer the right to inspect the home after he gets his offer accepted and opens a can of worms for that buyer to negotiate with the seller to bring the price of the home down. We need to realize that the seller of a home is also a consumer who needs protection from having the price of his home lowered by an inspection that gives the buyer an escape clause if the price of the home isn't lowered. A solution could be to have the property inspected before the offer to purchase is made to eliminate having the home inspection being used as a bargaining tool.

WHY HOME INSPECTORS SHOULD NOT BE REGULATED? (Continued)

AMERICAN SOCIETY OF HOME INSPECTORS (ASHI)

Requirements of Membership in ASHI: - Must pass three examinations and have a certain level of experience.

There are less than 50 ASHI members in Wisconsin and approximately 100,000 home buying transactions which leaves many home buyers unable to obtain an ASHI member to perform their home inspection. If there were enough of the good ASHI members to perform the number of home inspections that are done in a year, no one would be asking for regulation of the home inspectors.

ASHI has continuing education credits that have to be fulfilled every two years.

Home Inspectors
June 5, 1991

SUMMARY OF PUBLIC HEARING TESTIMONY

Comments Made Favoring Some Type of Regulation of Home Inspectors

Competency of home inspectors is a major concern. Anyone can list themselves as a home inspector and there is no guarantee they have any of the needed qualifications to do the job properly. Certification would give a more professional image to home inspectors and would weed out people who are working as home inspectors as a sideline with little investment in their profession.

People feel good about ASHI. Would like to see all home inspectors meet ASHI's standards. See some sort of regulation as means of accomplishing this. There are not enough ASHI members in the state to do all the home inspections that are needed. There needs to be some sort of guidelines for home inspectors whether it is done by the state or the home inspectors regulate themselves.

Realtors have no place to go to report a bad inspector.

Poor home inspectors who refuse to have realtors on property while inspection is going on could damage home owner's property and/or use this time to case a home.

Home inspectors calling themselves registered, professional engineers. There is no criteria backing up these labels but the home buyer is not aware of this. Home inspectors should have to demonstrate that they have the ability to recognize major component problems in a home. There is a need for the Committee to determine competency of home inspectors and credentials used by home inspectors should be verifiable.

Home inspection is a blueprint for future maintenance, giving some sort of time frame as to when the homeowner can expect certain major expenses to occur. This information needs to be reliable.

Some home inspectors are alarmists; they write such a negative report that realtors are not able to put a deal together when certain home inspectors have been used.

Some home inspectors give buyers inflated estimates of what it will cost to fix a problem when in realty the problem was able to be fixed for a much lesser amount than the figure quoted.

Unethical home inspectors are "deal killers" in real estate transactions. They sometimes make derogatory remarks about the craftsmanship of work done on a home (roofer must have been drunk, etc.)

Problem of out-of-state inspectors working in Wisconsin and doing a poor job. Currently there are no controls on these home inspectors.

Comments Made Favoring Some Type of Regulation of Home Inspectors (Continued)

Regulation makes the person regulated more vulnerable. If they are not qualified, there is at least some system in place whereby they can be controlled or disciplined.

There are no standards of practice or code of ethics. There is no recourse for the consumer who is harmed by an unqualified or unethical home inspector. The public needs to know that inspectors will at least meet minimum standards. At this point there are no standards at all that home inspectors must meet. Anyone can go out, get some business cards, take out an ad in the yellow pages of the phone book and declare themselves to be a home inspector.

The public has no recourse if they receive a bad home inspection. Costs of taking legal action would not be justified for the amount of money home buyers would be dealing with.

It is a conflict of interest when home inspectors also offer to do the repairs they say are required.

Realtors, attorneys, bankers and home inspectors are all involved when a home is bought. Why are the home inspectors the only ones who are not regulated?

There should be some written guidelines to let all parties involved know what their respective responsibilities are in the selling, buying, or inspection of a home.

OTHER COMMENTS

If regulation were to take place would people already in the profession be able to be grandfathered in? (No)

Home inspectors should be bonded so that injured consumers could recover their losses.

If regulation goes into effect, will every contractor have to become a "home inspector?"

What happens to a regulated home inspector who "messes up?" Do you take his license away? How does that help the consumer?

Home Inspectors
June 5, 1991

SUMMARY OF PUBLIC HEARING TESTIMONY

Comments Made Opposed To The Regulation of Home Inspectors

How would certification or regulation solve some of the problems given as reasons for the need for regulation? Regulation would only give the consumer a false sense of security. Just passing a test to qualify for state regulation does not guarantee competency.

Regulation only requires that people be minimally qualified. It is no guarantee of high-quality services.

Realtors have too much control over home inspectors because they are in a position to refer home inspectors to potential home buyers. Realtors have a vested interest in not recommending home inspectors who they may view as "deal breakers" because they point out too many problems. Not all deals should go through.

What ASHI does is a model for what is needed in the home inspection profession. ASHI has professional standards, a code of ethics and provide on-going training for their home inspectors. Home inspectors provide an experienced pair of eyes, not experts in each trade. ASHI members can lose their membership if they don't keep up with ASHI standards. Consumers expect some sort of estimate of how much it will cost to fix any problem that is pointed out. Someone in the industry who knows the profession should regulate home inspectors and give guidelines - it is not the job of the state. The regulation will be more thorough if home inspectors regulate themselves.

Realtors looking at regulation as a means of protecting their commission; this is not the purpose of regulation.

Hotline the realtors refer to deals with questions from realtors, not consumers.

Expectations of consumers are too high for the amount of money they pay for an inspection.

Regulation is to protect the consumer. It should be remembered that the buyer is not the only consumer to consider. Sellers are also consumers and they are hurt when the home inspection is used as a means of lowering the price of their home. Realtors should advise home buyers to reserve some money to pay for unexpected home repairs after they buy the house.

For every rule, regulation or law written, there is a hustler to take advantage of that law.

If the state gets into regulating the home inspectors they will be throwing a monkeywrench into something that is working smoothly for the most part.

SUMMARY OF ADVISORY COMMITTEE MEETING
FOR
HOME INSPECTORS

Wednesday, June 12, 1991

Advisory Committee Members Present:

Marlene Cummings, Chairperson of Committee
Arlan Kay, Architect, Member, A,PE,D & LS Board
George Mark, Wisconsin Builders Association - Janesville
Floyd Rathburn, Electrical Contractor, Member, A,PE,D & LS Board- Green Bay
Peter Schils, Chairperson, Real Estate Board - Sheboygan
Clint McCullough, Master Plumber Contractor, Member, A,PE,D & LS Board - Madison
Michael Corry, Administrator, Safety & Buildings Division - DILHR
Jerome Baumgardt, Baumgardt Home Inspection - Milwaukee area
Linn A. Duesterbeck, Real Estate Appraiser, Member, Real Estate Appraisers
Board - Janesville
Thomas Jones, Home Inspector - Sun Prairie
Richard Staff, Legal Services, Wisconsin Realtors Association
Lisabeth Weirich, Realtor, The Greater Madison Board of Realtors
Beechie O. Brooks, United Realty Group, Member, Real Estate Board - Milwaukee
Donald V. Cohen, American Society of Home Inspectors (ASHI)- Milwaukee

Advisory Committee Members Not Present:

David Schmalz, Member, Land Surveyor Section, A,PE,D & LS Board,
Certified Soil Tester, Landscape Architect
Jerome Quinn, Chairperson, Design Section, A,PE,D & LS Board- Green Bay
Bruce Kieffer, Architect, Member, A,PE,D & LS Board - Madison

Department of Regulation and Licensing Staff Present:

Myra Shelton, Executive Assistant, Legislative Liaison,
Home Inspectors Project Coordinator
William Dusso, Administrator, Division of Administrative Services, General Counsel
Jacquelyn Lahn, Director - Bureau of Business & Design Professions
Don Severson, Administrative Assistant, Division of Enforcement
Grace Schwingel, Secretary to Marlene Cummings
Evelyn Keaton, Intern, Office of the Secretary

Other People Present:

Gordon Ziglinski, Owner, General Improvement Services
James Ziglinski, Manager, General Improvement Services
Ben Olson, P.E., O. Neil Olson & Associates, Consulting Engineers
Alan Bednar, Bednar Homes Inspection, Oconomowoc
Don Robbins, Home Specialist, Madison
Roy Newcomer, Newcomer's Home Inspection Service, Inc.
John Geiger, Home Examiner, Inc.

SUMMARY OF ADVISORY COMMITTEE MEETING
ON HOME INSPECTORS

Wednesday, June 12, 1991

In the morning session there was a group discussion regarding testimony from the Public Hearing of June 5, 1991. Problems related to the lack of regulation of home inspectors were discussed.

- Points discussed included:

- a definition of who qualified as a "consumer"
- some of the problems experienced by the consumer
- who/what is a home inspector - they are generalists
- the role of a home inspector in a real estate transaction
- various forms of regulation and how they would protect the consumer
- education of the consumer as to what should be expected from a home inspector
- why certain professions want and need regulation
- potential problems of regulation
- problems that have been experienced by home owners and realtors as a result of unprofessional home inspectors
- who should have access to home inspection reports and related problems
- questions regarding liability for injury to home inspector and/or damage to home
- Secretary Cummings read a letter into the record regarding liability from Julie Rogers of Wauwatosa and a letter from John Geiger, Home Examiner, Inc.

William Dusso, General Counsel, led a review and discussion of a legislative proposal for registering home inspectors.

In the afternoon session various remedies for problems associated with home inspections were discussed as well as advantages and disadvantages of regulating the home inspection profession.

William Dusso led the discussion as to what type of requirements and/or regulation the Committee would want to see implemented if regulation of home inspectors were to occur. It was decided that Chapter 460 dealing with the Registration of Home Inspectors would be acceptable to most of the committee with specific modifications that were discussed.

Secretary Cummings pointed out that the Department of Regulation & Licensing was not drafting legislation for home inspectors but the report the Committee produces will become a public record for legislators or any other group that may be interested in pursuing the regulation of home inspectors. The purpose of this meeting is to give the members of the committee the opportunity to suggest the features and type of regulation they would like to see implemented should regulation of home inspectors become a reality. The advantage of this process as opposed to incorporating rules and regulations into the Wisconsin Administrative Code is that home inspectors have some say about how they will be regulated should someone decide that home inspectors should be regulated. It was noted that it is in the public's best interest that regulation be done in such a way that people are not excluded from practicing the profession.

CONCLUSION: It was concluded that a report will be issued by the committee which summarizes the information and discussion of the hearing and meetings on home inspectors.