

1991 Assembly Bill 435

Date of enactment: **April 13, 1992**  
Date of publication\*: **April 27, 1992**

# 1991 WISCONSIN ACT 162

AN ACT to create chapter 709 of the statutes, relating to: disclosure of defects in residences before transfer.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Chapter 709 of the statutes is created to read:

**CHAPTER 709**  
**DISCLOSURES BY OWNERS**  
**OF RESIDENTIAL REAL ESTATE**

**709.01 Requirements for transfer.** All persons; except personal representatives, trustees and conservators and except fiduciaries who are appointed by, or subject to supervision by, a court if those persons have never occupied the property transferred; who transfer real property, including a condominium unit, as defined in s. 703.02 (15), and time-share property, as defined in s. 707.02 (32), but excluding property that has not been inhabited, that includes 1 to 4 dwelling units, as defined in s. 101.61 (1), by sale, exchange or land contract, unless the transfer is exempt from the real estate transfer fee under s. 77.25, shall comply with ss. 709.02 to 709.04 and 709.06.

**709.02 Disclosure.** In regard to transfers described in s. 709.01, the owner of the property shall furnish, not later than 10 days after acceptance of the contract of sale, to the prospective buyer of the property a completed copy of the report under s. 709.03, except that the owner may substitute for any entry information supplied by a licensed engineer, land surveyor or structural pest control operator or by an individual who is a qualified 3rd party, as defined in s. 452.23 (2) (b), or by a contractor about matters within the scope of the contractor's occupation if the information is in writing and is furnished on time and if the entry to which it relates is identified and except that the owner may substitute for any entry information supplied by a public agency, as defined in s. 66.073 (3) (h). A prospective buyer who does not receive a report within the 10 days may, within 2 business days after the end of that 10-day period, rescind the contract of sale by delivering a written notice of rescission to the seller or to the seller's agent.

**709.03 Report form.** The report required under s. 709.02 shall be in the following form:

REAL ESTATE CONDITION REPORT

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

OWNER'S INFORMATION

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

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

The owner represents that to the best of his or her knowledge the following statements have been accurately noted as correct, incorrect or not applicable to the property being sold. If the owner indicates that any statement is correct, the owner shall indicate, in the additional information area of this form, an explanation of the reason why the statement is correct.

CORRECT INCORRECT N/A

1. .... I am aware of defects in the roof.
2. .... I am aware of defects in the electrical system.
3. .... I am aware of defects in part of the plumbing system (including the water heater, water softener and swimming pool) that is included in the sale.
4. .... I am aware of defects in the heating and air conditioning system (including the air filters and humidifiers).
5. .... I am aware of defects in the well, including unsafe well water.
6. .... I am aware that this property is served by a joint well.
7. .... I am aware of defects in the septic system or other sanitary disposal system.
8. .... I am aware of underground fuel storage tanks on the property. (If correct, the owner, by law, must report the location to the department of industry, labor and human relations at P.O. Box 7969, Madison, Wisconsin, 53707.)
9. .... I am aware of an "LP" tank on the property. (If correct, specify in the additional information space whether or not the owner of the property either owns or leases the tank.)
10. .... I am aware of defects in the basement or foundation (including cracks, seepage and bulges).
11. .... I am aware that the property is located in a floodplain, wetland or shoreland zoning area.
12. .... I am aware of defects in the structure of the property.
13. .... I am aware of defects in mechanical equipment included in the sale either as fixtures or personal property.
14. .... I am aware of boundary or lot line disputes, encroachments or encumbrances (including a joint driveway).

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15. .... I am aware of a defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, lead in paint, lead in soil, lead in water supplies or plumbing system or other potentially hazardous or toxic substances on the premises.
16. .... I am aware of the presence of asbestos or asbestos-containing materials on the premises.
17. .... I am aware of a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of hazardous or toxic substances on, neighboring properties.
18. .... I am aware that a structure on the building or that a part of the property is designated as a historic property is in a historic district.
19. .... I am aware of current or previous termite, powder-post beetle or carpenter ant infestations.
20. .... I am aware of defects in a woodburning stove or fireplace.
21. .... I am aware either that remodeling affecting the property's structure or mechanical systems was done or that additions to this property were made during my period of ownership without the required permits.
22. .... I am aware of federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.
23. .... I have received notice of property tax increases, other than normal annual increases.
24. .... I am aware that remodeling that may increase the property's assessed value was done.
25. .... I am aware of proposed or pending special assessments.
26. .... I am aware of the proposed construction of a public project that may affect the use of the property.
27. .... I am aware of subdivision homeowners' associations, common areas coowned with others, zoning violations or nonconforming uses, rights-of-way, easements or another use of a part of the property by

nonowners, other than recorded utility easements.

28. .... I am aware of other defects affecting the property.

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

ADDITIONAL INFORMATION ....

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

Owner .... Date ....

Owner .... Date ....

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

Person .... Items .... Date ....

Person .... Items .... Date ....

Person .... Items .... Date ....

THE PROSPECTIVE BUYER AND THE OWNER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTIONS, DEFECTS OR WARRANTIES. THE PROSPECTIVE BUYER ACKNOWLEDGES THAT TECHNICAL KNOWLEDGE SUCH AS THAT ACQUIRED BY PROFESSIONAL INSPECTORS MAY BE REQUIRED TO DETECT CERTAIN DEFECTS SUCH AS THE PRESENCE OF ASBESTOS, BUILDING CODE VIOLATIONS AND FLOODPLAIN STATUS.

I ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT

Prospective buyer .... Date ....

Prospective buyer .... Date ....

Prospective buyer .... Date ....

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

**709.05 Right to rescind.** If a buyer receives a report after submission of a contract of sale to the seller or the seller's agent, the buyer may, after receipt of that report by the prospective buyer and before the applicable deadline, rescind in writing a contract of sale if a defect, as defined in the report, is disclosed, without any liability on his or her part, and a buyer is entitled to the return of any deposits paid in the transaction. A prospective buyer who receives a report that is incomplete or that contains an inaccurate assertion that an item is not applicable and who is not aware of the defects that the seller failed to disclose may, within 2 business days after receipt of that report, rescind in writing a contract of sale without any liability on his or her part and is entitled to the return of any deposits paid in the transaction. Rescissions under this section are timely if they are delivered to the owner or the owner's agent within 2 business days after the prospective buyer or the prospective buyer's agent receives the report. A buyer may not rescind a contract of sale

under this section if he or she receives a complete report before submitting the contract of sale to the seller or the seller's agent. The right to rescind under this section is the only remedy under this chapter.

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

**709.07 Liability precluded.** An owner is not liable for an error or omission in a report under s. 709.03 if the owner had no knowledge of that error or omission, if the error or omission was based on information provided by a public agency, as defined in s. 66.073 (3) (h), or by a licensed engineer, land surveyor, structural pest control operator or qualified 3rd party, as defined in s. 452.23 (2) (b), or by a contractor about matters within the scope of the contractor's occupation.

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

**SECTION 2. Effective date.** This act takes effect on the first day of the 5th month beginning after publication.