

CHAPTER 709

DISCLOSURES BY OWNERS OF REAL ESTATE

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|---------|--|--------|---------------------------|
| 709.001 | Definitions. | 709.04 | Indication of compliance. |
| 709.01 | Requirements for transfer. | 709.05 | Right to rescind. |
| 709.02 | Disclosure. | 709.06 | Good faith. |
| 709.03 | Residential real estate condition report form. | 709.07 | Liability precluded. |
| 709.033 | Vacant land disclosure report form. | 709.08 | Waiver. |
| 709.035 | Amendments to report. | | |

709.001 Definitions. In this chapter:

- (1) “Condominium unit” or “unit” has the meaning given for “unit” in s. 703.02 (15).
- (2) “Dwelling unit” has the meaning given in s. 101.61 (1).
- (3) “Public agency” has the meaning given in s. 66.0825 (3) (h).
- (4) “Qualified 3rd party” has the meaning given in s. 452.23 (2) (b).
- (5) “Real property” means either of the following:
 - (a) Real property that includes 1 to 4 dwelling units, but excluding property that has not been inhabited.
 - (b) Real property that does not include any buildings.
- (6) “Time–share property” has the meaning given in s. 707.02 (32).

History: 2011 a. 107.

709.01 Requirements for transfer. (1) Except as provided in sub. (2), all persons who transfer real property located in this state, including a condominium unit and time–share property, by sale, exchange, or land contract, unless the transfer is exempt from the real estate transfer fee under s. 77.25, shall comply with ss. 709.02 to 709.04 and 709.06.

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

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

History: 1991 a. 162; 1995 a. 180; 2011 a. 107.

Truth or Consequences? Residential Seller Disclosure Law. Conrad. Wis. Law. Aug. 1992.

Protecting the Residential Seller. Young. Wis. Law. May 1993.

709.02 Disclosure. (1) In regard to transfers described in s. 709.01, the owner of the property shall furnish, not later than 10 days after acceptance of a contract of sale or option contract, to the prospective buyer of the property a completed copy of the report under s. 709.03 or 709.033, whichever is applicable, subject to s. 709.035, except that the owner may substitute for any entry information supplied by a licensed engineer, professional land surveyor, as defined in s. 443.01 (7m), or structural pest control operator, by an individual who is a qualified 3rd party, 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. Information that substitutes for an entry on the report under s. 709.03 or 709.033 and that is supplied by a person specified in this section may be submitted and certified on a supplement-

tal report prepared by the person, as long as the information otherwise satisfies the requirements under this section. A report under s. 709.03 or 709.033 is considered complete only if the owner answered, or supplied information under s. 709.035 for, each item on the report. A prospective buyer who does not receive a report within the 10 days may, within 2 business days after the end of that 10–day period, rescind the contract of sale or option contract by delivering a written notice of rescission to the owner or to the owner’s agent and is entitled to the return of any deposits or option fees paid in the transaction.

(2) In regard to a transfer of a condominium unit, if the owner is required under s. 709.01 to provide the information under sub. (1), the owner shall furnish, in addition to and at the same time as the information required under sub. (1), all the following information as an addendum to the report under s. 709.03 or 709.033:

(a) The name of the condominium and the date the condominium was created by recording condominium instruments with the register of deeds under s. 703.07; the unit number of the property offered for sale; and the name, address, and telephone number of the seller or the seller’s agent.

(b) The name and address of the condominium association; a statement specifying whether the association is self–managed or has hired or retained management; and the name, address, and telephone number of the individual who may be contacted as a representative of the association regarding the sale, in particular, or the condominium, in general.

(c) The amount of current condominium assessments, fees, special assessments, or other charges for which a unit owner is responsible and whether the current charges for the unit have been paid.

(d) Unless excused by s. 703.365 (8), a copy of the executive summary required under s. 703.33 (1) (h).

History: 1991 a. 162; 1995 a. 180; 1999 a. 150 s. 672; 2003 a. 283; 2011 a. 107, 203; 2013 a. 165, 358; 2021 a. 96.

Note: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

There is nothing in this section or s. 709.03 that requires a seller to provide details of specific safety and health hazards associated with any property defect. Sellers of real estate are required to disclose general descriptions of potential defects in the property. In the case of a natural gas pipeline, this chapter does not require a seller to disclose all potential problems that could foreseeably arise as a result of the pipeline’s presence. *Hoekstra v. Guardian Pipeline, LLC*, 2006 WI App 245, 298 Wis. 2d 165, 726 N.W.2d 648, 03–2809.

Sub. (1) and the statutory form under s. 709.03 clearly set out the reasonable expectation regarding who may rely on a real estate condition report. In sub. (1), “prospective buyer” refers specifically to a buyer already in contract with the seller. Thus, that term in the context of the statute must be limited to a future buyer within the specific transaction at issue. The statutes establish that a seller must reasonably expect reliance by only the prospective buyer in the current transaction. *Pagoudis v. Keidl*, 2023 WI 27, 406 Wis. 2d 542, 988 N.W.2d 606, 20–0225.

Residential Real Property Disclosure Duties. Hinkston. Wis. Law. May 2002.

709.03 Residential real estate condition report form.

The report required under s. 709.02 with respect to real property, as defined in s. 709.001 (5) (a), shall be in a substantially the following form and shall include at least all of the following information:

REAL ESTATE CONDITION REPORT

DISCLAIMER

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 PARTY IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT THE PARTIES MAY WISH TO OBTAIN.

A buyer who does not receive a fully completed copy of this report within 10 days after the acceptance of the contract of sale or option contract for the above-described real property has the right to rescind that contract (Wis. Stat. s. 709.02), provided the owner is required to provide this report under Wisconsin Statutes chapter 709.

NOTICE TO PARTIES REGARDING ADVICE OR INSPECTIONS

Real estate licensees may not provide advice or opinions concerning whether or not an item is a defect for the purposes of this report or concerning the legal rights or obligations of parties to a transaction. The parties may wish to obtain professional advice or inspections of the property and to include appropriate provisions in a contract between them with respect to any advice, inspections, defects, or warranties.

A. OWNER’S INFORMATION

A1. In this form, “aware” means the “owner(s)” have notice or knowledge.

A2. 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.

A3. In this form, “owner” means the person or persons, entity, or organization that owns the above-described real property.

An “owner” who transfers real estate containing one to four dwelling units, including a condominium unit and time-share property, by sale, exchange, or land contract is required to complete this report.

Exceptions: An “owner” who is a personal representative, trustee, conservator, or fiduciary appointed by or subject to supervision by a court, and who has never occupied the property transferred is not required to complete this report. An “owner” who transfers property that has not been inhabited or who transfers property in a manner that is exempt from the real estate transfer fee is not required to complete this report. (Wis. Stat. s. 709.01)

A4. The owner represents that to the best of the owner’s knowledge, the responses to the following questions have been accurately checked as “yes,” “no,” or “not applicable (N/A)” to the property being sold. If the owner responds to any question with “yes,” the owner shall provide, in the additional information area of this form, an explanation of the reason why the response to the question is “yes.”

A5. If the transfer is of a condominium unit, the property to which this form applies is the condominium unit, the common elements of the condominium, and any limited common elements that may be used only by the owner of the condominium unit being transferred.

A6. The owner discloses the following information with the knowledge that, even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the property. The owner hereby authorizes the owner’s agents and the agents of any prospective buyer to provide a copy of this report, and to disclose any information in the report, to any person in connection with any actual or anticipated sale of the property.

CAUTION: The lists of defects following each question below are examples only and are not the only defects that may properly be disclosed in response to each respective question.

B. STRUCTURAL AND MECHANICAL

| | | YES | NO | N/A |
|-----|---|------------|-----------|------------|
| B1. | Are you aware of defects in the roof? Roof defects may include items such as leakage or significant problems with gutters or eaves. | .... | .... | .... |
| B2. | Are you aware of defects in the electrical system? Electrical defects may include items such as electrical wiring not in compliance with applicable code, knob and tube wiring, 60 amp service, or aluminum-branch circuit wiring. | .... | .... | .... |
| B3. | Are you aware of defects in part of the plumbing system (including the water heater, water softener, and swimming pool)? Other plumbing system defects may include items such as leaks or defects in pipes, toilets, interior or exterior faucets, bathtubs, showers, or any sprinkler system. | .... | .... | .... |
| B4. | Are you aware of defects in the heating and air conditioning system (including the air filters and humidifiers)? Heating and air conditioning defects may include items such as defects in the heating ventilation and air conditioning (HVAC) equipment, supplemental heaters, ventilating fans or fixtures, or solar collectors. | .... | .... | .... |

3 Updated 21–22 Wis. Stats. DISCLOSURES BY OWNERS OF REAL ESTATE 709.03

| | | YES | NO | N/A |
|------|---|------|------|------|
| B5. | Are you aware of defects in a woodburning stove or fireplace or of other defects caused by a fire in a stove or fireplace or elsewhere on the property? Such defects may include items such as defects in the chimney, fireplace flue, inserts, or other installed fireplace equipment; or woodburning stoves not installed pursuant to applicable code. | .... | .... | .... |
| B6. | Are you aware of defects related to smoke detectors or carbon monoxide detectors or a violation of applicable state or local smoke detector or carbon monoxide detector laws? NOTE: State law requires operating smoke detectors on all levels of all residential properties and operating carbon monoxide detectors on all levels of most residential properties (see Wis. Stat. ch. 101). | .... | .... | .... |
| B7. | Are you aware of defects in the basement or foundation (including cracks, seepage, and bulges)? Other basement defects may include items such as flooding, defects in drain tiling or sump pumps, or movement, shifting, or deterioration in the foundation. | .... | .... | .... |
| B8. | Are you aware of defects in any structure on the property? Structural defects with respect to the residence or other improvements may include items such as movement, shifting, or deterioration in walls; major cracks or flaws in interior or exterior walls, partitions, or the foundation; wood rot; and significant problems with driveways, sidewalks, patios, decks, fences, waterfront piers or walls, windows, doors, floors, ceilings, stairways, or insulation. | .... | .... | .... |
| B9. | Are you aware of defects in mechanical equipment included in the sale either as fixtures or personal property? Mechanical equipment defects may include items such as defects in any appliance, central vacuum, garage door opener, in-ground sprinkler, or in-ground pet containment system that is included in the sale. | .... | .... | .... |
| B10. | Are you aware of rented items located on the property such as a water softener or other water conditioner system or other items affixed to or closely associated with the property? | .... | .... | .... |
| B11. | Are you aware of basement, window, or plumbing leaks, overflow from sinks, bathtubs, or sewers, or other ongoing water or moisture intrusions or conditions? | | | |
| B12. | Explanation of “yes” responses | | | |
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| | | | | |

C. ENVIRONMENTAL

| | | YES | NO | N/A |
|-----|--|------|------|------|
| C1. | Are you aware of the presence of unsafe levels of mold? | | | |
| C2. | Are you aware of a defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the property, lead in paint, lead in soil, or other potentially hazardous or toxic substances on the property? NOTE: Specific federal lead paint disclosure requirements must be complied with in the sale of most residential properties built before 1978. | .... | .... | .... |
| C3. | Are you aware of the presence of asbestos or asbestos-containing materials on the property? | .... | .... | .... |
| C4. | Are you aware of the presence of or a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of hazardous or toxic substances on neighboring properties? | .... | .... | .... |

709.03 DISCLOSURES BY OWNERS OF REAL ESTATE Updated 21–22 Wis. Stats. 4

| | | YES | NO | N/A |
|-----|---|------------|-----------|------------|
| C5. | Are you aware of current or previous termite, powder post beetle, or carpenter ant infestations or defects caused by animal, reptile, or insect infestations? | .... | .... | .... |
| C6. | Are you aware of water quality issues caused by unsafe concentrations of or unsafe conditions relating to lead? | .... | .... | .... |
| C7. | Are you aware of the manufacture of methamphetamine or other hazardous or toxic substances on the property? | | | |
| C8. | Explanation of “yes” responses | | | |
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D. WELLS, SEPTIC SYSTEMS, STORAGE TANKS

| | | YES | NO | N/A |
|------|---|------------|-----------|------------|
| D1. | Are you aware of defects in a well on the property or in a well that serves the property, including unsafe well water? | | | |
| | Well defects may include items such as an unused well not properly closed in conformance with state regulations, a well that was not constructed pursuant to state standards or local code, or a well that requires modifications to bring it into compliance with current code specifications. Well water defects might include, but are not limited to, unsafe levels of bacteria (total Coliform and E. coli), nitrate, arsenic, or other substances affecting human consumption safety. | | | |
| D2. | Are you aware of a joint well serving the property? | .... | .... | .... |
| D3. | Are you aware of a defect related to a joint well serving the property? | .... | .... | .... |
| D4. | Are you aware that a septic system or other private sanitary disposal system serves the property? | .... | .... | .... |
| D5. | Are you aware of defects in the septic system or other private sanitary disposal system on the property or any out-of-service septic system that serves the property and that is not closed or abandoned according to applicable regulations? | .... | .... | .... |
| | Septic system defects may include items such as backups in toilets or in the basement; exterior ponding, overflows, or backups; or defective or missing baffles. | | | |
| D6. | Are you aware of underground or aboveground fuel storage tanks on or previously located on the property? (If “yes,” the owner, by law, may have to register the tanks with the Wisconsin Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708, whether the tanks are in use or not. Regulations of the Wisconsin Department of Agriculture, Trade and Consumer Protection may require the closure or removal of unused tanks.) | .... | .... | .... |
| D7. | Are you aware of defects in the underground or aboveground fuel storage tanks on or previously located on the property? | .... | .... | .... |
| | Defects in underground or aboveground fuel storage tanks may include items such as abandoned tanks not closed in conformance with applicable local, state, and federal law; leaking; corrosion; or failure to meet operating standards. | | | |
| D8. | Are you aware of an “LP” tank on the property? (If “yes,” specify in the additional information space whether the owner of the property either owns or leases the tank.) | .... | .... | .... |
| D9. | Are you aware of defects in an “LP” tank on the property? | | | |
| D10. | Explanation of “yes” responses | | | |
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E. TAXES, SPECIAL ASSESSMENTS, PERMITS, ETC.

| 5 Updated 21–22 Wis. Stats. | DISCLOSURES BY OWNERS OF REAL ESTATE | 709.03 | | |
|-----------------------------|---|---------------|------|------|
| | | YES | NO | N/A |
| E1. | Have you received notice of property tax increases, other than normal annual increases, or are you aware of a pending property reassessment? | .... | .... | .... |
| E2. | Are you aware that remodeling was done that may increase the property’s assessed value? | .... | .... | .... |
| E3. | Are you aware of pending special assessments? | .... | .... | .... |
| E4. | Are you aware that the property is located within a special purpose district, such as a drainage district, that has the authority to impose assessments against the real property located within the district? | .... | .... | .... |
| E5. | Are you aware of any proposed construction of a public project that may affect the use of the property? | .... | .... | .... |
| E6. | Are you aware of any remodeling, replacements, or repairs affecting the property’s structure or mechanical systems that were done or additions to this property that were made during your period of ownership without the required permits? | .... | .... | .... |
| E7. | Are you aware of any land division involving the property for which a required state or local permit was not obtained? | | | |
| E8. | Explanation of “yes” responses | | | |
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| F. LAND USE | | | | |
| | | YES | NO | N/A |
| F1. | Are you aware of the property being part of or subject to a subdivision homeowners’ association? | | | |
| F2. | If the property is not a condominium unit, are you aware of common areas associated with the property that are co-owned with others? | .... | .... | .... |
| F3. | Are you aware of any zoning code violations with respect to the property? | .... | .... | .... |
| F4. | Are you aware of the property or any portion of the property being located in a floodplain, wetland, or shoreland zoning area? | .... | .... | .... |
| F5. | Are you aware of nonconforming uses of the property? A nonconforming use is a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform to the use restrictions in the current ordinance. | .... | .... | .... |
| F6. | Are you aware of conservation easements on the property? A conservation easement is a legal agreement in which a property owner conveys some of the rights associated with ownership of his or her property to an easement holder such as a governmental unit or a qualified nonprofit organization to protect the natural habitat of fish, wildlife, or plants or a similar ecosystem, preserve areas for outdoor recreation or education, or for similar purposes. | .... | .... | .... |
| F7. | Are you aware of restrictive covenants or deed restrictions on the property? | .... | .... | .... |
| F8. | Other than public rights-of-way, are you aware of nonowners having rights to use part of the property, including, but not limited to, private rights-of-way and easements other than recorded utility easements? | .... | .... | .... |
| F9. | Are you aware of the property being subject to a mitigation plan required under administrative rules of the Wisconsin Department of Natural Resources related to county shoreland zoning ordinances, which obligates the owner of the property to establish or maintain certain measures related to shoreland conditions and which is enforceable by the county? | .... | .... | .... |

| 709.03 DISCLOSURES BY OWNERS OF REAL ESTATE | | Updated 21–22 Wis. Stats. 6 | | |
|---|--|-----------------------------|------|------|
| | | YES | NO | N/A |
| F10. | <p>The use value assessment system values agricultural land based on the income that would be generated from its rental for agricultural use rather than its fair market value. When a person converts agricultural land to a non agricultural use (e.g., residential or commercial development), that person may owe a conversion charge. For more information visit https://www.revenue.wi.gov/Pages/FAQS/slf-useassmt.aspx or (608) 266–2486.</p> <p>a. Are you aware of all or part of the property having been assessed as agricultural land under Wis. Stat. s. 70.32 (2r) (use value assessment)?</p> <p>b. Are you aware of the property having been assessed a use–value assessment conversion charge relating to this property? (Wis. Stat. s. 74.485 (2))</p> <p>c. Are you aware of the payment of a use–value assessment conversion charge having been deferred relating to this property? (Wis. Stat. s. 74.485 (4))</p> | .... | .... | .... |
| F11. | <p>Is all or part of the property subject to or in violation of a farmland preservation agreement?</p> <p>Early termination of a farmland preservation agreement or removal of land from such an agreement can trigger payment of a conversion fee equal to 3 times the class 1 “use value” of the land. Visit https://datcp.wi.gov/Pages/Programs_Services/FarmlandPreservation.aspx for more information.</p> | .... | .... | .... |
| F12. | Is all or part of the property subject to, enrolled in, or in violation of the Forest Crop Law, Managed Forest Law, the Conservation Reserve Program, or a comparable program? | .... | .... | .... |
| F13. | Are you aware of a dam that is totally or partially located on the property or that an ownership in a dam that is not located on the property will be transferred with the property because it is owned collectively by members of a homeowners’ association, lake district, or similar group? (If “yes,” contact the Wisconsin Department of Natural Resources to find out if dam transfer requirements or agency orders apply.) | .... | .... | .... |
| F14. | <p>Are you aware of boundary or lot line disputes, encroachments, or encumbrances (including a joint driveway) affecting the property?</p> <p>Encroachments often involve some type of physical object belonging to one person but partially located on or overlapping on land belonging to another; such as, without limitation, fences, houses, garages, driveways, gardens, and landscaping. Encumbrances include, without limitation, a right or claim of another to a portion of the property or to the use of the property such as a joint driveway, liens, and licenses.</p> | .... | .... | .... |
| F15. | Are you aware there is not legal access to the property? | .... | .... | .... |
| F16. | <p>Are you aware of federal, state, or local regulations requiring repairs, alterations, or corrections of an existing condition?</p> <p>This may include items such as orders to correct building code violations.</p> | .... | .... | .... |
| F17. | Are you aware of a pier attached to the property that is not in compliance with state or local pier regulations? See http://dnr.wi.gov/topic/waterways for more information. | .... | .... | .... |
| F18. | Are you aware of a written agreement affecting riparian rights related to the property? | .... | .... | .... |

7 Updated 21–22 Wis. Stats. **DISCLOSURES BY OWNERS OF REAL ESTATE** 709.03

| | | YES | NO | N/A |
|------|--|------|------|------|
| F19. | Are you aware that the property abuts the bed of a navigable waterway that is owned by a hydroelectric operator? | .... | .... | .... |

Under Wis. Stat. s. 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a hydroelectric operator, as defined in s. 30.132 (1) (b), may be required to ask the permission of the hydroelectric operator to place a structure on the bed of the waterway.

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|------|--|------|------|------|
| F20. | Are you aware of one or more burial sites on the property? (For information regarding the presence, preservation, and potential disturbance of burial sites, contact the Wisconsin Historical Society at 800–342–7834 or www.wihist.org/burial–information.) | | | |
|------|--|------|------|------|

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|------|--------------------------------------|--|--|--|
| F21. | Explanation of “yes” responses | | | |
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G. ADDITIONAL INFORMATION

| | | YES | NO | N/A |
|-----|---|------|------|------|
| G1. | Have you filed any insurance claims relating to damage to this property or premises within the last five years? | | | |

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|-----|---|------|------|------|
| G2. | Are you aware of a structure on the property that is designated as a historic building or that all or any part of the property is in a historic district? | | | |
|-----|---|------|------|------|

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|-----|--|------|------|------|
| G3. | Are you aware of any agreements that bind subsequent owners of the property, such as a lease agreement or an extension of credit from an electric cooperative? | | | |
|-----|--|------|------|------|

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|-----|---|------|------|------|
| G4. | Is the owner a foreign person, as defined in 26 USC 1445 (f)? (E.g., a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate.) | | | |
|-----|---|------|------|------|

Section 1445 of the Internal Revenue Code (26 USC 1445), also known as the Foreign Investment In Real Property Tax Act or FIRPTA, provides that a transferee (buyer) of a U.S. real property interest must be notified in writing and must withhold tax if the transferor (seller) is a foreign person, unless an exception under FIRPTA applies to the transfer.

| | | | | |
|-----|---|------|------|------|
| G5. | Are you aware of other defects affecting the property? | .... | .... | .... |
| | Other defects might include items such as drainage easement or grading problems; excessive sliding, settling, earth movements, or upheavals; or any other defect or material condition. | | | |

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|-----|--|--|--|--|
| G6. | The owner has owned the property for years. | | | |
|-----|--|--|--|--|

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|-----|---|--|--|--|
| G7. | The owner has lived in the property for years. | | | |
|-----|---|--|--|--|

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|-----|--------------------------------------|--|--|--|
| G8. | Explanation of “yes” responses | | | |
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OWNER’S CERTIFICATION

NOTE: Wisconsin Statute section 709.035 requires owners who, prior to acceptance of a purchase contract or an option to purchase, obtain information that would change a response on this report to submit a complete amended report or an amendment to the previously completed report to the prospective buyer within 10 days of acceptance.

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

Owner Date

CERTIFICATION BY PERSON SUPPLYING INFORMATION

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

Person Items Date

Person Items Date

Person Items Date

BUYER’S ACKNOWLEDGEMENT

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

History: 1991 a. 162; 1995 a. 27 ss. 7067, 9116 (5), 9130 (4); 1995 a. 180; 2007 a. 121; 2009 a. 211; 2011 a. 32, 107; 2013 a. 304; 2017 a. 222, 338; 2021 a. 47, 96; 2021 a. 238 s. 45; 2021 a. 239 s. 74.

There is nothing in this section or s. 709.02 that requires a seller to provide details of specific safety and health hazards associated with any property defect. Sellers of real estate are required to disclose general descriptions of potential defects in the property. In the case of a natural gas pipeline, this chapter does not require a seller to disclose all potential problems that could foreseeably arise as a result of the pipeline’s presence. *Hoekstra v. Guardian Pipeline, LLC*, 2006 WI App 245, 298 Wis. 2d 165, 726 N.W.2d 648, 03–2809.

Section 709.02 (1) and the statutory form under this section clearly set out the reasonable expectation regarding who may rely on a real estate condition report. In s. 709.02 (1), “prospective buyer” refers specifically to a buyer already in contract with the seller. Thus, that term in the context of the statute must be limited to a future buyer within the specific transaction at issue. The statutes establish that a seller must reasonably expect reliance by only the prospective buyer in the current transaction. *Pagoudis v. Keidl*, 2023 WI 27, 406 Wis. 2d 542, 988 N.W.2d 606, 20–0225.

709.033 Vacant land disclosure report form. The report required under s. 709.02 with respect to real property, as defined in s. 709.001 (5) (b), shall be in substantially the following form and shall include at least all of the following information:

VACANT LAND DISCLOSURE REPORT

DISCLAIMER

THIS DISCLOSURE 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 PARTY IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT THE PARTIES MAY WISH TO OBTAIN.

A buyer who does not receive a fully completed copy of this report within 10 days after the acceptance of the contract of sale or option contract for the above–described real property has the right to rescind that contract (Wis. Stat. s. 709.02), provided the owner is required to provide this report under Wisconsin Statutes chapter 709.

NOTICE TO PARTIES REGARDING ADVICE OR INSPECTIONS

Real estate licensees may not provide advice or opinions concerning whether or not an item is a defect for the purposes of this report or concerning the legal rights or obligations of parties to a transaction. The parties may wish to obtain professional advice or inspections of the property and to include appropriate provisions in a contract between them with respect to any advice, inspections, defects, or warranties.

A. OWNER’S INFORMATION

A1. In this form, “aware” means the “owner(s)” have notice or knowledge.

A2. 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.

A3. In this form, “owner” means the person or persons, entity, or organization that is the owner of the above–described real property.

An “owner” who transfers real estate that does not include any buildings is required to complete this report.

Exceptions: An “owner” who is a personal representative, trustee, conservator, or fiduciary appointed by or subject to supervision by a court, and who has never occupied the property transferred is not required to complete this report. An “owner” who transfers property that has not been inhabited or who transfers property in a manner that is exempt from the real estate transfer fee is not required to complete this report. (Wis. Stat. s. 709.01)

A4. The owner represents that to the best of the owner’s knowledge, the responses to the following questions have been accurately checked as “yes,” “no,” or “not applicable (N/A)” to the property being sold. If the owner responds to any question with “yes,” the owner shall provide, in the additional information area of this form, an explanation of the reason why the response to the question is “yes.”

A5. If the transfer is of a condominium unit, the property to which this form applies is the condominium unit, the common elements of the condominium, and any limited common elements that may be used only by the owner of the condominium unit being transferred.

A6. The owner discloses the following information with the knowledge that, even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the property. The owner hereby authorizes the owner’s agents and the agents of any prospective buyer to provide a copy of this report, and to disclose any information in the report, to any person in connection with any actual or anticipated sale of the property.

CAUTION: The lists of defects following each question below are examples only and are not the only defects that may properly be disclosed in response to each respective question.

B. ENVIRONMENTAL

9 Updated 21–22 Wis. Stats. DISCLOSURES BY OWNERS OF REAL ESTATE 709.033

| | | YES | NO | N/A |
|-----|--|------|------|------|
| B1. | Are you aware of a material violation of an environmental rule or other rule or agreement regulating the use of the property? | .... | .... | .... |
| B2. | Are you aware of a defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the property, lead in soil, or other potentially hazardous or toxic substances on the property? | .... | .... | .... |
| B3. | Are you aware of the manufacture of methamphetamine or other hazardous or toxic substances on the property? | .... | .... | .... |
| B4. | Are you aware of subsoil conditions that would significantly increase the cost of development, including, but not limited to, subsurface foundations or waste material; any type of fill; dumpsites where pesticides, herbicides, fertilizer, or other toxic or hazardous materials or containers for these materials were disposed of in violation of manufacturer or government guidelines or other laws regulating such disposal; high groundwater; adverse soil conditions, such as low load-bearing capacity, earth or soil movement, settling, upheavals, or slides; excessive rocks or rock formations; or other soil problems? | .... | .... | .... |
| B5. | Are you aware of a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of hazardous or toxic substances on neighboring properties? | .... | .... | .... |
| B6. | Are you aware of brownfields (abandoned, idled, or underused land that may be subject to environmental contamination) or other contaminated land on the property, or that contaminated soils on the property have been cleaned up under the Petroleum Environmental Cleanup Fund Act (PECFA), a Wisconsin Department of Natural Resources (DNR) remedial or cleanup program, the DATCP Agricultural Chemical Cleanup Program, or other similar program? | .... | .... | .... |
| B7. | Explanation of “yes” responses | | | |
| | | | | |
| | | | | |

C. WELLS, SEPTIC SYSTEMS, STORAGE TANKS

| | | YES | NO | N/A |
|-----|--|------|------|------|
| C1. | Are you aware of underground storage tanks presently or previously on the property for storage of flammable or combustible liquids, including, but not limited to, gasoline or heating oil? (If “yes,” the owner, by law, may have to register the tanks with the Wisconsin Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708, whether the tanks are in use or not. Wisconsin Department of Agriculture, Trade and Consumer Protection regulations may require the closure or removal of unused tanks.) | .... | .... | .... |
| C2. | Are you aware of defects in the underground or aboveground fuel storage tanks on or previously located on the property? Defects in underground or aboveground fuel storage tanks may include items such as abandoned tanks not closed in conformance with applicable local, state, and federal law; leaking; corrosion; or failure to meet operating standards. | .... | .... | .... |
| C3. | Are you aware of defects in a well on the property or a well that serves the property, including unsafe well water due to contaminants such as coliform, nitrates, or atrazine, or any out-of-service wells or cisterns that are required to be abandoned (see s. NR 812.26, Wis. Adm. Code) but that are not closed or abandoned according to applicable regulations? | .... | .... | .... |

709.033 DISCLOSURES BY OWNERS OF REAL ESTATE Updated 21–22 Wis. Stats. 10

| | | YES | NO | N/A |
|-----|---|------------|-----------|------------|
| C4. | Are you aware of a joint well serving this property? | .... | .... | .... |
| C5. | Are you aware of a defect relating to a joint well serving this property? | .... | .... | .... |
| C6. | Are you aware of defects in any septic system or other private sanitary disposal system on the property or any out-of-service septic system that serves the property and that is not closed or abandoned according to applicable regulations? | .... | .... | .... |
| C7. | Explanation of “yes” responses | | | |
| | | | | |
| | | | | |

D. TAXES, SPECIAL ASSESSMENTS, PERMITS, ETC.

| | | YES | NO | N/A |
|-----|---|------------|-----------|------------|
| D1. | Have you received notice of a property tax increase, other than normal annual increases, or are you aware of a pending property tax reassessment? | .... | .... | .... |
| D2. | Are you aware of pending special assessments? | .... | .... | .... |
| D3. | Are you aware of the property being located within a special purpose district, such as a drainage district, that has the authority to impose assessments against the real property located within the district? | .... | .... | .... |
| D4. | Are you aware of any land division involving the property for which required state or local permits were not obtained? | .... | .... | .... |
| D5. | Are you aware of impact fees or another condition or occurrence that would significantly increase development costs or reduce the value of the property to a reasonable person with knowledge of the nature and scope of the condition or occurrence? | .... | .... | .... |
| D6. | Are you aware of proposed, planned, or commenced public improvements or public construction projects that may result in special assessments or that may otherwise materially affect the property or the present use of the property? | .... | .... | .... |
| D7. | Explanation of “yes” responses | | | |
| | | | | |
| | | | | |

E. LAND USE

| | | YES | NO | N/A |
|-----|--|------------|-----------|------------|
| E1. | Are you aware of the property being part of or subject to any subdivision homeowners’ associations? | .... | .... | .... |
| E2. | If the property is not a condominium unit, are you aware of common areas associated with the property that are co-owned with others? | .... | .... | .... |
| E3. | Are you aware that all or a portion of the property is in a floodplain, wetland, or shoreland zoning area under local, state, or federal regulations? | .... | .... | .... |
| E4. | Are you aware of any zoning code violations with respect to the property? | .... | .... | .... |
| E5. | Are you aware of nonconforming uses of the property? A nonconforming use is a use of land that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform to the use restrictions in the current ordinance. | .... | .... | .... |

| 11 Updated 21–22 Wis. Stats. | | DISCLOSURES BY OWNERS OF REAL ESTATE | | | 709.033 |
|------------------------------|---|--------------------------------------|------|------|---------|
| | | YES | NO | N/A | |
| E6. | Are you aware of conservation easements on the property? A conservation easement is a legal agreement in which a property owner conveys some of the rights associated with ownership of the property to an easement holder such as a governmental unit or a qualified nonprofit organization to protect the natural habitat of fish, wildlife, or plants or a similar ecosystem, preserve areas for outdoor recreation or education, or for similar purposes. | .... | .... | .... |  |
| E7. | Are you aware of restrictive covenants or deed restrictions on the property? | .... | .... | .... |  |
| E8. | Other than public rights-of-way, are you aware of nonowners having rights to use part of the property, including, but not limited to, private rights-of-way and easements other than recorded utility easements? | .... | .... | .... |  |
| E9. | Are you aware of the property being subject to a mitigation plan required under administrative rules of the Wisconsin Department of Natural Resources related to county shoreland zoning ordinances, which obligates the owner of the property to establish or maintain certain measures related to shoreland conditions and which is enforceable by the county? | .... | .... | .... |  |
| E10. | The use value assessment system values agricultural land based on the income that would be generated from its rental for agricultural use rather than its fair market value. When a person converts agricultural land to a non agricultural use (e.g., residential or commercial development), that person may owe a conversion charge. For more information visit https://www.revenue.wi.gov/Pages/FAQS/slf-useassmt.aspx or (608) 266–2486. | | | | |
| | a. Are you aware of all or part of the property having been assessed as agricultural land under Wis. Stat. s. 70.32 (2r) (use value assessment)? | .... | .... | .... |  |
| | b. Are you aware of the property having been assessed a use value assessment conversion charge relating to this property? (Wis. Stat. s. 74.485 (2)) | .... | .... | .... |  |
| | c. Are you aware of the payment of a use value assessment conversion charge having been deferred relating to this property? (Wis. Stat. s. 74.485 (4)) | .... | .... | .... |  |
| E11. | Is all or part of the property subject to or in violation of a farmland preservation agreement? Early termination of a farmland preservation agreement or removal of land from such an agreement can trigger payment of a conversion fee equal to 3 times the class 1 “use value” of the land. Visit https://datcp.wi.gov/Pages/Programs_Services/FarmlandPreservation.aspx for more information. | .... | .... | .... |  |
| E12. | Is all or part of the property subject to, enrolled in, or in violation of the Forest Crop Law, Managed Forest Law, the Conservation Reserve Program, or a comparable program? | .... | .... | .... |  |
| E13. | Are you aware of a dam that is totally or partially located on the property or that an ownership in a dam that is not located on the property will be transferred with the property because it is owned collectively by members of a homeowners’ association, lake district, or similar group? (If “yes,” contact the Wisconsin Department of Natural Resources to find out if dam transfer requirements or agency orders apply.) | .... | .... | .... |  |

709.033 DISCLOSURES BY OWNERS OF REAL ESTATE Updated 21–22 Wis. Stats. 12

| | | YES | NO | N/A |
|------|--|------------|-----------|------------|
| E14. | Are you aware of boundary or lot line disputes, encroachments, or encumbrances (including a joint driveway) affecting the property? Encroachments often involve some type of physical object belonging to one person but partially located on or overlapping on land belonging to another, such as, without limitation, fences, houses, garages, driveways, gardens, and landscaping. Encumbrances include, without limitation, a right or claim of another to a portion of the property or to the use of the property such as a joint driveway, liens, and licenses. | .... | .... | .... |
| E15. | Are you aware there is not legal access to the property? | .... | .... | .... |
| E16. | Are you aware of a pier attached to the property that is not in compliance with state or local pier regulations? See http://dnr.wi.gov/topic/waterways for more information. | .... | .... | .... |
| E17. | Are you aware of a written agreement affecting riparian rights related to the property? | .... | .... | .... |
| E18. | Are you aware that the property abuts the bed of a navigable waterway that is owned by a hydroelectric operator? Under Wis. Stat. s. 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a hydroelectric operator, as defined in s. 30.132 (1) (b), may be required to ask the permission of the hydroelectric operator to place a structure on the bed of the waterway. | .... | .... | .... |
| E19. | Are you aware of one or more burial sites on the property? (For information regarding the presence, preservation, and potential disturbance of burial sites, contact the Wisconsin Historical Society at 800–342–7834 or www.wihist.org/burial-information.) | .... | .... | .... |
| E20. | Are you aware of archeological artifacts, mineral rights, orchards, or endangered species on the property? | .... | .... | .... |
| E21. | Are you aware of existing or abandoned manure storage facilities located on the property? | .... | .... | .... |
| E22. | Are you aware that all or part of the property is enrolled in the managed forest land program? The managed forest land program is a landowner incentive program that encourages sustainable forestry on private woodlands by exempting the landowner from the payment of property taxes in exchange for the payment of a lower acreage share payment and compliance with certain conservation practices. Orders designating lands as managed forest lands remain in effect for 25 or 50 years. When ownership of land enrolled in the managed forest land program changes, the new owner must sign and file a report of the change of ownership on a form provided by the Wisconsin Department of Natural Resources (DNR) and pay a fee. By filing this form, the new owner agrees to comply with the management plan for the land and the managed forest land program rules. The DNR Division of Forestry monitors forest management plan compliance. Changes that a landowner makes to property that is subject to an order designating it as managed forest land, or to its use, may jeopardize benefits under the program or cause the property to be withdrawn from the program and may result in the assessment of penalties. For more information, call your local DNR forester or visit http://dnr.wi.gov/topic/forestry.html. | .... | .... | .... |
| E23. | Explanation of “yes” responses | | | |
| | | | | |
| | | | | |

F. ADDITIONAL INFORMATION

| | | YES | NO | N/A |
|------|--|------|------|------|
| F1. | Are you aware of high voltage electric (100 kilo volts or greater) or steel natural gas transmission lines located on, but not directly serving, the property? | .... | .... | .... |
| F2. | Are you aware of flooding, standing water, drainage problems, or other water problems on or affecting the property? | .... | .... | .... |
| F3. | Are you aware of material damage from fire, wind, flood, earthquake, expansive soil, erosion, or landslide? | .... | .... | .... |
| F4. | Are you aware of significant odor, noise, water diversion, water intrusion, or other irritants emanating from neighboring property? | .... | .... | .... |
| F5. | Are you aware of significant crop damage from disease, insects, soil contamination, wildlife, or other causes; diseased or dying trees or shrubs; or substantial injuries or disease in livestock on the property or neighboring property? | .... | .... | .... |
| F6. | Utility Connections. Are you aware that the property is connected to the following utilities on the property or at the lot line? (If “yes,” indicate where the utility is located.) | | | |
| | a. Electricity ..... | .... | .... | .... |
| | b. Municipal water ..... | .... | .... | .... |
| | c. Telephone ..... | .... | .... | .... |
| | d. Cable television ..... | .... | .... | .... |
| | e. Natural gas ..... | .... | .... | .... |
| | f. Municipal sewer ..... | .... | .... | .... |
| F7. | Are you aware of any agreements that bind subsequent owners of the property, such as a lease agreement or an extension of credit from an electric cooperative? | .... | .... | .... |
| F8. | Are you aware of other defects affecting the property? Other defects may include items such as animal, reptile, or insect infestation; drainage easement or grading problems; excessive sliding; or any other defect or material condition. | .... | .... | .... |
| F9. | Are you aware of a government agency, court order, or federal, state, or local regulations requiring repair, alteration, or correction of an existing condition? | .... | .... | .... |
| F10. | Is the owner a foreign person, as defined in 26 USC 1445 (f)? (E.g., a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate.) Section 1445 of the Internal Revenue Code (26 USC 1445), also known as the Foreign Investment In Real Property Tax Act or FIRPTA, provides that a transferee (buyer) of a U.S. real property interest must be notified in writing and must withhold tax if the transferor (seller) is a foreign person, unless an exception under FIRPTA applies to the transfer. | .... | .... | .... |
| F11. | The owner has owned the property for years. | | | |
| F12. | Explanation of “yes” responses | | | |
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OWNER’S CERTIFICATION

NOTE: Wisconsin Statute section 709.035 requires owners who, prior to acceptance of a purchase contract or an option to purchase, obtain information that would change a response on this report to submit a complete amended report or an amendment to the previously completed report to the prospective buyer within 10 days of acceptance.

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

Owner Date

CERTIFICATION BY PERSON SUPPLYING INFORMATION

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

Person Items Date
 Person Items Date
 Person Items Date

BUYER’S ACKNOWLEDGEMENT

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

History: 2011 a. 107; 2013 a. 165 s. 115; 2013 a. 304; 2017 a. 338; 2021 a. 47, 96; 2021 a. 238 s. 45.

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

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

History: 1995 a. 180.

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

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

709.05 Right to rescind. (1) Except as provided in sub. (2) (b), if a buyer receives a report after submission of a contract of sale or option contract to the owner or the owner’s agent, the buyer may, after receipt of that report by the prospective buyer and before the applicable deadline, rescind in writing a contract of sale or option contract if a defect, as defined in the report, is disclosed, without any liability on his or her part, and a buyer is entitled to the return of any deposits or option fees paid in the transaction. A prospective buyer who receives a report that is incomplete or that contains an inaccurate assertion that an item is not applicable and who is not aware of the defects that the owner failed to disclose may, within 2 business days after receipt of that report, rescind in writing a contract of sale or option contract without any liability on his or her part and is entitled to the return of any deposits or option fees paid in the transaction. A report under s. 709.03 or 709.033 is considered complete only if the owner answered, or supplied information under s. 709.035 for, each item on the report.

(2) (a) 1. Except as provided in subd. 2., a buyer may not rescind a contract of sale or option contract under this section if

he or she receives a complete report before submitting the contract of sale or option contract to the owner or the owner’s agent.

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

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

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

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

History: 1991 a. 162; 1995 a. 180; 2021 a. 96.

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

History: 1991 a. 162.

709.07 Liability precluded. An owner is not liable for an error or omission in a report under s. 709.03 or 709.033 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, by a licensed engineer, professional land surveyor, as defined in s. 443.01 (7m), structural pest control operator, or qualified 3rd party, or by a contractor about matters within the scope of the contractor’s occupation.

History: 1991 a. 162; 1999 a. 150 s. 672; 2011 a. 107; 2013 a. 358.

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

History: 1991 a. 162.