

CHAPTER 709

DISCLOSURES BY OWNERS OF RESIDENTIAL REAL ESTATE

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

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

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

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

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

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

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

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

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

(b) The name and address of the condominium association; a statement specifying whether the association is self–managed or has hired or retained management; and the name, address, and

telephone number of the individual who may be contacted as a representative of the association regarding the sale, in particular, or the condominium, in general.

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

(d) A copy of the executive summary required under s. 703.33 (1) (h).

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

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

There is nothing in s. 709.02 or 709.03 that requires a seller to provide details of specific safety and health hazards associated with any property defect. Sellers of real estate are required to disclose general descriptions of potential defects in the property. In the case of a natural gas pipeline, ch. 709 does not require a seller to disclose all potential problems that could foreseeably arise as a result of the pipeline's presence. Hoekstra v. Guardian Pipeline, LLC, 2006 WI App 245, 298 Wis. 2d 165, 726 N.W.2d 648, 03–2809.

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

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

REAL ESTATE CONDITION REPORT

DISCLAIMER

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

OWNER'S INFORMATION

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

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

B. 3. The owner represents that to the best of his or her knowledge the responses to the following statements have been accurately noted as "yes", "no" or "not applicable" to the property being sold. If the owner responds to any statement with "yes", the

owner shall provide, in the additional information area of this form, an explanation of the reason why the response to the statement is “yes”.

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

		YES	NO	N/A
C. 1.	I am aware of defects in the roof.	....	....	....
C. 2.	I am aware of defects in the electrical system.	....	....	....
C. 3.	I am aware of defects in part of the plumbing system (including the water heater, water softener and swimming pool) that is included in the sale.	....	....	....
C. 4.	I am aware of defects in the heating and air conditioning system (including the air filters and humidifiers).	....	....	....
C. 5.	I am aware of defects in the well, including unsafe well water.	....	....	....
C. 6.	I am aware that this property is served by a joint well.	....	....	....
C. 7.	I am aware of defects in the septic system or other sanitary disposal system.	....	....	....
C. 8.	I am aware of underground or aboveground fuel storage tanks on the property. (If “yes”, the owner, by law, may have to register the tanks with the department of commerce at P.O. Box 7970, Madison, Wisconsin, 53707, whether the tanks are in use or not. Regulations of the department of commerce may require the closure or removal of unused tanks.	....	....	....
C. 9.	I am aware of an “LP” tank on the property. (If “yes”, specify in the additional information space whether the owner of the property either owns or leases the tank.	....	....	....
C. 10.	I am aware of defects in the basement or foundation (including cracks, seepage and bulges).	....	....	....
C. 11.	I am aware that the property is located in a floodplain, wetland or shoreland zoning area.	....	....	....
C. 12.	I am aware of defects in the structure of the property.	....	....	....
C. 13.	I am aware of defects in mechanical equipment included in the sale either as fixtures or personal property.	....	....	....
C. 14.	I am aware of boundary or lot line disputes, encroachments or encumbrances (including a joint driveway).	....	....	....
C. 15.	I am aware of a defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, lead in paint, lead in soil, lead in water supplies or plumbing system or other potentially hazardous or toxic substances on the premises.	....	....	....
C. 16.	I am aware of the presence of asbestos or asbestos-containing materials on the premises.	....	....	....
C. 17.	I am aware of a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic substances on neighboring properties.	....	....	....
C. 18.	I am aware of current or previous termite, powder-post beetle or carpenter ant infestations.	....	....	....
C. 19.	I am aware of defects in a wood-burning stove or fireplace or of defects caused by a fire in a stove or fireplace or elsewhere on the property.	....	....	....
C. 20.	I am aware either that remodeling affecting the property’s structure or mechanical systems was done or that additions to this property were made during my period of ownership without the required permits.	....	....	....
C. 21.	I am aware of federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.	....	....	....
C. 22.	I have received notice of property tax increases, other than normal annual increases, or am aware of a pending property reassessment.	....	....	....
C. 23.	I am aware that remodeling that may increase the property’s assessed value was done.	....	....	....
C. 24.	I am aware of proposed or pending special assessments.	....	....	....

		YES	NO	N/A
C. 24m.	I am aware that the property is located within a special purpose district, such as a drainage district, that has the authority to impose assessments against the real property located within the district.	....	....	....
C. 25.	I am aware of the proposed construction of a public project that may affect the use of the property.	....	....	....
C. 26.	I am aware of subdivision homeowners' associations, common areas co-owned with others, zoning violations or nonconforming uses, rights-of-way, easements or another use of a part of the property by nonowners, other than recorded utility easements.	....	....	....
C. 26m.	I am aware that the property is subject to a mitigation plan required under administrative rules of the department of natural resources related to county shoreland zoning ordinances, which obligates the owner of the property to establish or maintain certain measures related to shoreland conditions and which is enforceable by the county.			
C. 27.	I am aware of other defects affecting the property.	....	....	....

ADDITIONAL INFORMATION

		YES	NO	N/A
D. 1.	I am aware that a structure on the property is designated as a historic building or that part of the property is in a historic district.	....	....	....
D. 2.	The owner has lived on the property for ....years.			
D. 3.	Explanation of "yes" responses. (See B. 3.)			
			
			
			

OWNER'S CERTIFICATION

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

Owner Date

Owner Date

CERTIFICATION BY PERSON SUPPLYING INFORMATION

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

Person	Items	Date
Person	Items	Date
Person	Items	Date

NOTICE REGARDING ADVICE OR INSPECTIONS

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

BUYER'S ACKNOWLEDGEMENT

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

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

Prospective buyer Date

Prospective buyer Date

Prospective buyer Date

History: 1991 a. 162; 1995 a. 27 ss. 706.7, 9116 (5), 9130 (4); 1995 a. 180; 2007 a. 121; 2009 a. 211.

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

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

- (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 and who is not aware of the defects that the owner failed to disclose may, within 2 business days after receipt of that report, rescind in writing a contract of sale or option contract without any liability on his or her part and is entitled to the return of any deposits or option fees paid in the transaction.

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

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

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

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

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

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

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

History: 1991 a. 162.

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

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

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

History: 1991 a. 162.