

2009 DRAFTING REQUEST

Bill

Received: **01/12/2009**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Radcliffe (608) 266-7461**

By/Representing: **Steve Boe**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Real Estate - miscellaneous
Courts - torts**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Radcliffe@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Economic loss doctrine in residential real estate transactions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 01/13/2009	bkraft 01/13/2009		_____			
/1			rschluet 01/13/2009	_____	lparisi 01/13/2009	sbasford 01/13/2009	

FE Sent For: **NONE**

<END>

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/?	pkahler	1 bjk 1/13					

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STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

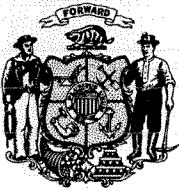
LRB

LRB-0689 An

↓

State Rep. Mark Radcliffe
~~Bill~~

Economic loss doctrine in residential
real estate transactions



State of Wisconsin
2009 - 2010 LEGISLATURE

1451/1
LRB-0689/1
PJK&PJH:bjk:md
L-stayp

2009 BILL

SAV

(w 1-13)

regen.

1 AN ACT to create 895.10 of the statutes; relating to: a tort action for intentional
2 misrepresentation in a residential real estate transaction.

Analysis by the Legislative Reference Bureau

In *Below v. Norton*, 2008 WI 77, 751 N.W. 2d 351, the Wisconsin Supreme Court determined that the economic loss doctrine bars a homebuyer from recovering in tort for an intentional misrepresentation concerning the property made by the seller of the property. Under the judicially created economic loss doctrine, a purchaser of a product that is defective may not recover from the seller on a tort theory, such as an action for damages for fraud or intentional misrepresentation, for damages that are solely economic; the recovery is limited to damages for a breach of contract. Before *Below*, with respect to real estate sales, the economic loss doctrine applied only to commercial transactions.

This bill reverses the decision in *Below* by providing that, in addition to any other remedies that are available, a transferee (purchaser) in a residential real estate transaction may maintain an action in tort against the transferor (seller) of the real estate for fraud committed, or an intentional misrepresentation made, by the transferor in the residential real estate transaction. The bill defines a residential real estate transaction as a real estate transfer for which a real estate condition report is required, which is, generally, a transfer of previously inhabited real property.

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

BILL

1 **SECTION 1.** 895.10 of the statutes is created to read:

2 **895.10 Tort actions in residential real estate transactions.** (1) In this
3 section, "residential real estate transaction" means a real estate transfer to which
4 s. 709.01 (1) applies.

5 (2) In addition to any other remedies available under law, a transferee in a
6 residential real estate transaction may maintain an action in tort against the real
7 estate transferor for fraud committed, or an intentional misrepresentation made, by
8 the transferor in the residential real estate transaction.

9 **SECTION 2. Initial applicability.**

10 (1) This act first applies to residential real estate transactions that are
11 completed on the effective date of this subsection.

12

(END)

Basford, Sarah

From: Boe, Steve
Sent: Tuesday, January 13, 2009 1:03 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-1451/1 Topic: Economic loss doctrine in residential real estate transactions

Please Jacket LRB 09-1451/1 for the ASSEMBLY.