



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-4498/P1  
FFK&KRP:emw

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Recommendations on drafting language that allows the to trump the language in the burial sites bill. The language is exactly the same as the bill, but it has the same effective date but includes a reference to the old RECR format.

1 **AN ACT to repeal 440.975 (3) (c); to repeal and recreate 709.03 and 709.033;**  
2 **and to create 440.97 (2m) and 440.975 (3) (cm) of the statutes; relating to:** real  
3 **estate disclosure reports, the written reports of home inspectors, and providing**  
4 **an exemption from emergency rule procedures.**

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*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

5 **SECTION 1.** 440.97 (2m) of the statutes is created to read:  
6 **440.97 (2m) "Defect"** means a condition of an improvement to residential real  
7 **property or of any component of an improvement to residential real property if any**  
8 **of the following applies:**  
9 (a) **The condition significantly impairs the health or safety of an occupant of**  
10 **the property.**

Please draft section 1 as proposed (see enclosed). The intent is to be substantially similar to the definition in the state-approved offer.

1 (b) The condition, if not repaired, removed, or replaced, significantly shortens  
2 or adversely affects the expected normal life of the improvement or the component  
3 of the improvement.

4 SECTION 2. 440.975 (3) (c) of the statutes is repealed.

5 SECTION 3. 440.975 (3) (cm) of the statutes is created to read:

6 440.975 (3) (cm) Describes any defect that is detected by the home inspector  
7 during his or her home inspection. A home inspector is not required to use the term  
8 "defect" in describing a defect in the written report required under this subsection.  
9 A home inspector may not use the term "defect" in a written report required under  
10 this subsection unless that use is consistent with s. 440.97 (2m).

11 SECTION 4. 709.03 of the statutes is repealed and recreated to read:

12 **709.03 Residential real estate condition report form.** The report  
13 required under s. 709.02 with respect to real property, as defined in s. 709.001 (5) (a),  
14 shall be in substantially the following form and shall include at least all of the  
15 following information:

16 REAL ESTATE CONDITION REPORT

17  
18 DISCLAIMER

19 THIS CONDITION REPORT CONCERNS THE REAL PROPERTY LOCATED AT  
20 .... IN THE .... (CITY) (VILLAGE) (TOWN) OF ...., COUNTY OF ...., STATE OF  
21 WISCONSIN. THIS REPORT IS A DISCLOSURE OF THE CONDITION OF THAT  
22 PROPERTY IN COMPLIANCE WITH SECTION 709.02 OF THE WISCONSIN  
23 STATUTES AS OF .... (MONTH), .... (DAY), .... (YEAR). IT IS NOT A WARRANTY  
24 OF ANY KIND BY THE OWNER OR ANY AGENTS REPRESENTING ANY PARTY

Place  
in  
lowercase  
so it's  
easier  
to  
read

*Lower Case*

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

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

\*\*\*\*NOTE: I changed "subject to" to "required to provide this report under." Okay? *yes*

7

8 NOTICE TO PARTIES REGARDING ADVICE OR INSPECTIONS

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

\*\*\*\*NOTE: Please confirm that the first sentence of the notice is consistent with your  
intent. *yes*

15

16 A. OWNER'S INFORMATION

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

18 A2. In this form, "defect" means a condition that would have a significant adverse  
19 effect on the value of the property; that would significantly impair the health or  
20 safety of future occupants of the property; or that if not repaired, removed, or  
21 replaced would significantly shorten or adversely affect the expected normal life of  
22 the premises.

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

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

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

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

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

21 A6. The owner discloses the following information with the knowledge that, even  
22 though this is not a warranty, prospective buyers may rely on this information in  
23 deciding whether and on what terms to purchase the property. The owner hereby  
24 authorizes the owner's agents and the agents of any prospective buyer to provide a  
25 copy of this report, and to disclose any information in the report, to any person in

1 connection with any actual or anticipated sale of the property.

2

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

6

7

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.	....	....	....

\*\*\*\*NOTE: The examples given for C1 overlap with this question. They both include roof leaks. Is that okay? *delete C1 overlap*

		YES	NO	N/A
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) <del>that is included in the sale?</del> 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.	....	....	....

\*\*\*\*NOTE: This question includes a reference to "the sale." The form is required to be used in situations other than sales, such as an exchange. Is the reference to "the sale" okay? This also applies to B9. *delete in B3, since B9 is talking about personal property I would leave it as-is.*

		YES	NO	N/A
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.	....	....	....
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.	....	....	....

		YES	NO	N/A
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. ss. 101.149 and 101.647). <span style="margin-left: 400px;">ch. 101</span>	....	....	....
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.	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; roof, basement, window, or plumbing leaks; overflow from sinks, bathtubs, or sewers; or other water or moisture intrusions or conditions?	....	....	....
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.	....	....	....

\*\*\*\*NOTE: I changed premises to property in C2 and C3 for consistency. Okay? yes

		YES	NO	N/A
C3.	Are you aware of the presence of asbestos or asbestos-containing materials on the property?	....	....	....
C4.	Are you aware of unsafe concentrations of, <i>or a defect caused by</i> unsafe conditions relating to, or the storage of hazardous or toxic substances on neighboring properties?	....	....	....
<i>Cx. combine?</i>	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?	....	....	....
	Such defects may include items such as environmental hazards resulting from an adjacent or nearby dump, gas station, or commercial or industrial business that improperly uses or handles toxic substances.			
<i>5</i>	Are you aware of current or previous termite, powderpost beetle, or carpenter ant infestations or defects caused by animal, reptile, or insect infestations?	....	....	....
<i>6</i>	Are you aware of water quality issues caused by unsafe concentrations of or unsafe conditions relating to lead?	....	....	....
<i>7</i>	Are you aware of the manufacture of methamphetamine or other hazardous or toxic substances on the property?	....	....	....
<i>8</i>	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 the well, including unsafe well water? <i>on the property or serving the property</i>	....	....	....
	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 <i>that serves the property and</i> 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.)	....	....	....

		YES	NO	N/A
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.**

		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?	....	....	....

\*\*\*\*NOTE: Is "proposed or" omitted from this question intentionally? See D2 on the vacant land disclosure report. *yes per the bill author. D2 should have proposed deleted.*

		YES	NO	N/A
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 remodeling affecting the property's structure or mechanical systems that was 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.	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.	Are you aware of nonowners having rights to use part of the property, including, but not limited to, 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?	....	....	....
F10.	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 nonagricultural use (e.g., residential or commercial development), that person may owe a conversion charge. For more information visit <a href="https://www.revenue.wi.gov/Pages/FAQS/slf-useassmt.aspx">https://www.revenue.wi.gov/Pages/FAQS/slf-useassmt.aspx</a> 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)) 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 <a href="https://datcp.wi.gov/Pages/Programs_Services/FarmlandPreservation.aspx">https://datcp.wi.gov/Pages/Programs_Services/FarmlandPreservation.aspx</a> for more information.	....	....	....

F11.  
Is all or part of the property subject to or in violation of a farmland preservation agreement?

\*\*\*\*NOTE: Please confirm that the question in E12 of the vacant land disclosure report was intentionally omitted from this form. No it was not.

F1/12

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?

YES NO N/A  
....

F1/13

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.)

....

F1/14

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.

F1/15

Are you aware there is not legal access to the property?

....

F1/16

Are you aware of federal, state, or local regulations requiring repairs, alterations, or corrections of an existing condition?

....

This may include items such as orders to correct building code violations.

F1/17

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/recreation/piers.html>.

....

\*\*\*\*NOTE: Please confirm the website address.

simplify to: <http://dnr.wi.gov/topic/waterways/>

F1/18

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](http://www.wihist.org/burial-information).)

YES NO N/A  
....

F1/19

Explanation of "yes" responses .....

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G. ADDITIONAL INFORMATION

G1.

Have you filed any insurance claims relating to damage to this property or premises within the last five years?

YES NO N/A  
....

G2.

Are you aware of a structure on the property that is designated as a historic building or that part of the property is in a historic district?

....

G3.

Are you aware of other defects affecting the property? *all or any*

....

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.

G4.

The owner has owned the property for ... years.

		YES	NO	N/A
G5.	The owner has lived in the property for .... years.			
G6.	Explanation of "yes" responses .....			
	.....			
	.....			

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*modify for buyer consistency with 709.035*

**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 <sup>complet amended</sup> a new report or an amended report <sup>to the</sup> to the prospective buyer <sup>within 10 days of acceptance.</sup>

*previously completed report*

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**

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

4 I acknowledge receipt of a copy of this statement.

5 Prospective buyer ..... Date .....

6 Prospective buyer ..... Date .....

7 Prospective buyer ..... Date .....

8 SECTION 5. 709.033 of the statutes is repealed and recreated to read:

9 709.033 Vacant land disclosure report form. The report required under  
10 s. 709.02 with respect to real property, as defined in s. 709.001 (5) (b), shall be in  
11 substantially the following form and shall include at least all of the following  
12 information:

13 VACANT LAND DISCLOSURE REPORT

14  
15 DISCLAIMER

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

*lowercase*

24 A buyer who does not receive a fully completed copy of this report within 10 days after  
25 the acceptance of the contract of sale or option contract for the above-described real

1 property has the right to rescind that contract (Wis. Stat. s. 709.02), provided the  
2 owner is required to provide this report under Wisconsin Statutes chapter 709.

3  
4 NOTICE TO PARTIES REGARDING ADVICE OR INSPECTIONS

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

11  
12 A. OWNER'S INFORMATION

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

14 A2. In this form, "defect" means a condition that would have a significant adverse  
15 effect on the value of the property; that would significantly impair the health or  
16 safety of future occupants of the property; or that if not repaired, removed, or  
17 replaced would significantly shorten or adversely affect the expected normal life of  
18 the premises.

\*\*\*\*NOTE: Is "premises" the correct term for vacant land? yes

19 A3. In this form, "owner" means the person or persons, entity, or organization that  
20 is the owner of the above-described real property.

21 An "owner" who transfers real estate that does not include any buildings is required  
22 to complete this report.

\*\*\*\*NOTE: I changed this to reflect an owner of real property under s. 709.001 (5)  
(b). Okay? yes

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

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

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

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

22  
23 CAUTION: The lists of defects following each question below are examples only and  
24 are not the only defects that may properly be disclosed in response to each respective  
25 question.

1

2

**B. ENVIRONMENTAL**

		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, <del>settling</del> <i>settling</i> , 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 .....			
	.....			
	.....			

3

4

**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.	....	....	....

		YES	NO	N/A
C3.	Are you aware of defects in any well, 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?	....	....	....
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 is not closed or abandoned according to applicable regulations that serves this property?	....	....	....
C7.	Explanation of "yes" responses .....			
	.....			
	.....			

*a well on the property or serving the property*

*that serves the property and*

1  
2

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 <del>proposed</del> or 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?	....	....	....
<del>D4.</del>	<del>Are you aware of any proposed construction of a public project that may affect the use of the property?</del>	....	....	....
D/4	Are you aware of any land division involving the property for which required state or local permits were not obtained?	....	....	....
D/5	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?	....	....	....
D/6	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?	....	....	....

\*\*\*\*NOTE: There seems to be some overlap between this question and D4, specifically related to construction of a public project and its effect on the use of the property. *delete D4*

		YES	NO	N/A
D/7	Explanation of "yes" responses .....			
	.....			
	.....			

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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.	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?	....	....	....
<del>E5.</del>	<del>Are you aware of the property or any portion of the property being located in a floodplain, wetland, or shoreland zoning area?</del>	<del>....</del>	<del>....</del>	<del>....</del>

\*\*\*NOTE: This seems to be duplicative of the question in E3. If so, which question would you like to eliminate? Yes

		YES	NO	N/A
E <del>5</del> 5	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.	....	....	....
E <del>6</del> 6	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.	....	....	....
E <del>7</del> 7	Are you aware of restrictive covenants or deed restrictions on the property?	....	....	....
E <del>8</del> 8	Are you aware of nonowners having rights to use part of the property, including, but not limited to, rights-of-way and easements other than recorded utility easements?	....	....	....
E <del>9</del> 9	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?	....	....	....
E <del>10</del> 10	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 nonagricultural use (e.g., residential or commercial development), that person may owe a conversion charge. For more information visit <a href="https://www.revenue.wi.gov/Pages/FAQS/slf-useassmt.aspx">https://www.revenue.wi.gov/Pages/FAQS/slf-useassmt.aspx</a> 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))	....	....	....

		YES	NO	N/A
Ex. 11	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 <a href="https://datcp.wi.gov/Pages/Programs_Services/FarmlandPreservation.aspx">https://datcp.wi.gov/Pages/Programs_Services/FarmlandPreservation.aspx</a> for more information.	....	....	....
E16.12	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?	....	....	....
E16.13	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.)	....	....	....
E16.14	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.	....	....	....
E16.15	Are you aware there is not legal access to the property?	....	....	....
E17.16	Are you aware of a pier attached to the property that is not in compliance with state or local pier regulations? See <a href="http://dnr.wi.gov/topic/Waterways/recreation/piers.html">http://dnr.wi.gov/topic/Waterways/recreation/piers.html</a> .	....	....	....
E18.17	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 <a href="http://www.wihist.org/burial-information">www.wihist.org/burial-information</a> .)	....	....	....
E16.18	Are you aware of archeological artifacts, mineral rights, orchards, or endangered species on the property?	....	....	....
E20.19	Are you aware of existing or abandoned manure storage facilities located on the property?	....	....	....

E20 (number is missing)

	YES	NO	N/A
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>.

E22: Are you aware of a land division or subdivision for which the required state or local approvals were not obtained?	....	....	....
---	------	------	------

*duplicate to D5*

E23. E21

Explanation of "yes" responses .....

.....

.....

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F. ADDITIONAL INFORMATION

	YES	NO	N/A
F1. Are you aware of high voltage electric (100 kilovolts 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 .....	....	....	....

- |      |  | YES  | NO   | N/A  |
|------|--|------|------|------|
| F7.  | Are you aware of other defects affecting the property?<br>Other defects may include items such as animal, reptile, or insect infestation; <del>invasive species affecting waterways, such as plants,</del> drainage easement or grading problems; excessive sliding, settling, earth movements, upheavals, or other soil problems; deed restriction violations; or any other defect or material condition. | .... | .... | .... |
| F8.  | Are you aware of a government agency, court order, or federal, state, or local regulations requiring repair, alteration, or correction of an existing condition?   | .... | .... | .... |
| F9.  | The owner has owned the property for .... years.   |      |      |      |
| F10. | Explanation of "yes" responses .....   |      |      |      |
- delete per author in previous discussions, all others are duplicate*

1

2

**OWNER'S CERTIFICATION**

\*\*\*\*NOTE: This form does not include a note about section 709.035 and the requirement to submit a new or amended report to a prospective buyer. Okay? *Let's add the revised version on page 11*

3

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.

5

Owner ..... Date .....

6

Owner ..... Date .....

7

Owner ..... Date .....

8

9

**CERTIFICATION BY PERSON SUPPLYING INFORMATION**

10

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.

14

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

15

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

16

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

1

2

**BUYER'S ACKNOWLEDGEMENT**

3

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.

6

I acknowledge receipt of a copy of this statement.

7

Prospective buyer ..... Date .....

8

Prospective buyer ..... Date .....

9

Prospective buyer ..... Date .....

10

**SECTION 6. Nonstatutory provisions.**

11

(1) REAL ESTATE CONDITION AND VACANT LAND DISCLOSURE REPORTS.

12

Notwithstanding section 709.035 of the statutes, a property owner who furnished to a prospective buyer of the property an original or amended report before the effective date of this subsection need only submit an amended report with respect to the information required under section 709.03 (form) of the statutes, 2015 stats., or by section 709.033 (form) of the statutes, 2015 stats.

13

14

15

16

\*\*\*NOTE: This nonstatutory language clarifies that a property owner who submitted a report prior to July 1, 2018, does not need to provide an amended report that complies with the recreated forms. Any required amendments apply only to information required under the current forms. Arguably this language is not required because s. 709.035 requires an owner to submit an amendment if the owner obtains information or becomes aware of any condition that would change a response on the *completed report*. In this case, the completed report would be a report under s. 709.03, 2015 stats., or s. 709.033, 2015 stats. Please let me know if you would like to include this or similar clarifying language or whether you are comfortable relying on the language in s. 709.035.

17

(2) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,

18

the department of safety and professional services may promulgate rules governing

19

the information about defects that a home inspector is required to provide to a client

20

concerning the results of a home inspection under sections 440.974 (1) (c) and

1 440.975 (3) (cm) of the statutes for the period before the effective date of permanent  
2 rules promulgated under section 440.974 (1) (c) of the statutes but not to exceed the  
3 period authorized under section 227.24 (1) (c) of the statutes, subject to extension  
4 under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2)  
5 (b), and (3) of the statutes, the department is not required to provide evidence that  
6 promulgating a rule under this subsection as an emergency rule is necessary for the  
7 preservation of the public peace, health, safety, or welfare and is not required to  
8 provide a finding of emergency for a rule promulgated under this subsection.

\*\*\*\*NOTE: This draft includes emergency rule-making authority for DSPS to promulgate emergency rules until permanent rules are promulgated. This provision maintains the requirements for DSPS to prepare a statement of the scope of the emergency rules and for the emergency rules to be presented to the governor for approval. Please let me know if this is consistent with your intent or if you would like to further expedite DSPS's ability to promulgate rules by avoiding either or both of those requirements. *If it can be further expedited for the sake of clarity in rules,*

9 **SECTION 7. Initial applicability.** *then yes.*

10 (1) REAL ESTATE CONDITION AND VACANT LAND DISCLOSURE REPORTS. The treatment  
11 of sections 709.03 and 709.033 of the statutes first applies to reports that are  
12 furnished on the effective date of this subsection.

13 **SECTION 8. Effective date.**

14 (1) This act takes effect on July 1, 2018.

15

(END)



## Definition Consistency in the Offer to Purchase and Home Inspector Report

### Impact on the real estate transaction

One of the biggest disputes between buyers and sellers in a real estate transaction is whether a condition of the property constitutes a "defect." Whether it's an old roof, a leaky basement, cracked window pane, or wiring upgrade, buyers and sellers often disagree whether a condition is significant enough to require the condition to be remedied. However, under current Wisconsin law, this common dispute is made more problematic by the fact the definition of "defect" in the standard offer to purchase is different from the definition of "defect" used in most home inspection reports.

While the law provides what items home inspectors must inspect, the law does not require uniformity in how the report is presented. Instead each inspector chooses how to organize their report and present the discussion in the report. This proposal is not suggesting any uniformity to the report other than creating consistency in the use of the word "defect." In an effort to "fix" this combative transactional issue, the WRA and the Wisconsin Home Inspectors Association have worked together to create a definition of "defect" for the inspector report that compliments the definition of "defect" in the offer to purchase.

### Recommendation

- (1) Modify the statute to change by substantially matching the definition of "defect" in the home inspector report to the definition of "defect" in the offer to purchase so that the offer and home inspection report use the same terminology.
- (2) Authorize any necessary administrative rule changes to be made so consistency exists in statute and rule as to the definition and inspection report.

### Definition of "defect" in the offer to purchase

Lines 182-184 of the WB-11 Residential Offer to Purchase defines "defect" as: "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."

### Proposal

#### Create a definition for "defect" in the home inspector statute of Wis. Stat. § 440.97

"Defect" means a condition of any component of an improvement 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 component of the improvement.

#### Include a reference in Wis. Stat. § 440.975(3)(c) to the use of defect in the report

The relevant information from the statute is included for reference. The underlined portion provides the recommended additions and strikethrough deletions.

Use  
this  
in the  
draft  
in lieu  
of language  
in section  
1.