



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4498/P3/P4
FFK&KP:emw
Rmr

En 12-5
out today

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV
RWF

- 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.

Analysis by the Legislative Reference Bureau

This bill updates the real estate disclosure report forms and changes the requirements for a report submitted to a client by a registered home inspector.

Under current law, with certain exceptions, an owner selling residential real property or vacant land must give a prospective buyer a form, known as a real estate condition report for residential real property and known as the vacant land disclosure report for vacant land, on which the owner discloses certain conditions of, and other information about, the real property of which the owner is aware. This bill makes various technical changes to these forms, including grouping questions into substantive categories, providing examples of different types of defects, and providing additional instructions and explanatory material. The updated forms include the disclosures required under current law. In addition to making technical changes, the bill requires additional disclosures regarding the owner's awareness of certain conditions related to the property, including 1) defects related to smoke detectors or carbon monoxide detectors or violations of state or local smoke detector or carbon monoxide detector laws; 2) unsafe levels of mold or other moisture intrusions or conditions; 3) defects in, as opposed to just the presence of, underground or aboveground fuel storage tanks; and 4) burial sites on the property.

The bill also adjusts the contents that a report submitted by a registered home inspector to a client is required to contain. Under the bill, a report by a home inspector must describe each defect detected during a home inspection. The bill defines a "defect" as a condition of ^{any} a component of an improvement that would significantly impair the health or safety of future occupants or that, if not repaired, removed, or replaced, would significantly shorten or adversely affect the expected normal life of the component of the improvement. The bill also provides that a home inspector may use the term "defect" in a written home inspection report only if the use is consistent with the bill's definition of "defect."

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

1 **SECTION 1.** 440.97 (2m) of the statutes is created to read:

2 **440.97 (2m)** "Defect" means a condition of ^{any} a component of an improvement that
3 would significantly impair the health or safety of future occupants of a property or
4 that, if not repaired, removed, or replaced, would significantly shorten or adversely
5 affect the expected normal life of the component of the improvement.

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

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

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

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

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

1 REAL ESTATE CONDITION REPORT

2
3 DISCLAIMER

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

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

15
16 NOTICE TO PARTIES REGARDING ADVICE OR INSPECTIONS

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

23
24 A. OWNER'S INFORMATION

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

1 A2. In this form, “defect” means a condition that would have a significant adverse
2 effect on the value of the property; that would significantly impair the health or
3 safety of future occupants of the property; or that if not repaired, removed, or
4 replaced would significantly shorten or adversely affect the expected normal life of
5 the premises.

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

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

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

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

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

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

7
8 CAUTION: The lists of defects following each question below are examples only and
9 are not the only defects that may properly be disclosed in response to each respective
10 question.

11 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.	....	....	....
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. 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.	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; 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.	....	....	....
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?	....	....	....

		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.)	....	....	....

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

		YES	NO	N/A
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 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))	....	....	....
F11.	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/FarmlandPreservati.on.aspx for more information.	....	....	....
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.)	....	....	....

		YES	NO	N/A
F14.	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.	....	....	....
F15.	Are you aware there is not legal access to the property?	....	....	....
F16.	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.	....	....	....
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 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 .)
F19.	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?
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?	....	....	....
G3.	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.	....	....	....
G4.	The owner has owned the property for years.			
G5.	The owner has lived in the property for years.			
G6.	Explanation of "yes" responses			
			
			

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OWNER'S CERTIFICATION

5 **NOTE:** Wisconsin Statute section 709.035 requires owners who, prior to acceptance
6 of a purchase contract or an option to purchase, obtain information that would

1 change a response on this report to submit a complete amended report or an
2 amendment to the previously completed report to the prospective buyer within 10
3 days of acceptance.

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

6 Owner Date

7 Owner Date

8 Owner Date

9

10 **CERTIFICATION BY PERSON SUPPLYING INFORMATION**

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

15 Person Items Date

16 Person Items Date

17 Person Items Date

18

19 **BUYER'S ACKNOWLEDGEMENT**

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

23 I acknowledge receipt of a copy of this statement.

24 Prospective buyer Date

25 Prospective buyer Date

1 Prospective buyer Date

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

3 **709.033 Vacant land disclosure report form.** The report required under
4 s. 709.02 with respect to real property, as defined in s. 709.001 (5) (b), shall be in
5 substantially the following form and shall include at least all of the following
6 information:

7 **VACANT LAND DISCLOSURE REPORT**

8
9 **DISCLAIMER**

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

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

21
22 **NOTICE TO PARTIES REGARDING ADVICE OR INSPECTIONS**

23 Real estate licensees may not provide advice or opinions concerning whether or not
24 an item is a defect for the purposes of this report or concerning the legal rights or
25 obligations of parties to a transaction. The parties may wish to obtain professional

1 advice or inspections of the property and to include appropriate provisions in a
2 contract between them with respect to any advice, inspections, defects, or
3 warranties.

4
5 **A. OWNER'S INFORMATION**

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

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

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

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

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

22 A4. The owner represents that to the best of the owner's knowledge, the responses
23 to the following questions have been accurately checked as "yes," "no," or "not
24 applicable (N/A)" to the property being sold. If the owner responds to any question

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

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

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

13
 14 CAUTION: The lists of defects following each question below are examples only and
 15 are not the only defects that may properly be disclosed in response to each respective
 16 question.

17
 18 **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?	....	....	....

		YES	NO	N/A
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			
			
			

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

		YES	NO	N/A
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			
			
			

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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			
			
			

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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.	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.			

		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.	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?	....	....	....
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.)	....	....	....

		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 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.)	....	....	....
E18.	Are you aware of archeological artifacts, mineral rights, orchards, or endangered species on the property?	....	....	....
E19.	Are you aware of existing or abandoned manure storage facilities located on the property?	....	....	....
E20.	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
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 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?	....	....	....

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

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OWNER'S CERTIFICATION

3

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.

8

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.

10

Owner Date

11

Owner Date

1 Owner Date

2

3 CERTIFICATION BY PERSON SUPPLYING INFORMATION

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

8 Person Items Date

9 Person Items Date

10 Person Items Date

11

12 BUYER'S ACKNOWLEDGEMENT

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

16 I acknowledge receipt of a copy of this statement.

17 Prospective buyer Date

18 Prospective buyer Date

19 Prospective buyer Date

20 SECTION 6. Nonstatutory provisions.

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

22 Notwithstanding section 709.035 of the statutes, a property owner who furnished to
23 a prospective buyer of the property an original or amended report before the effective
24 date of this subsection need only submit an amended report with respect to the

1 information required under section 709.03 (form) of the statutes, 2015 stats., or by
2 section 709.033 (form) of the statutes, 2015 stats.

****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.

3 (2) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
4 the department of safety and professional services may promulgate rules governing
5 the information about defects that a home inspector is required to provide to a client
6 concerning the results of a home inspection under sections 440.974 (1) (c) and
7 440.975 (3) (cm) of the statutes for the period before the effective date of permanent
8 rules promulgated under section 440.974 (1) (c) of the statutes but not to exceed the
9 period authorized under section 227.24 (1) (c) of the statutes, subject to extension
10 under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2)
11 (b), and (3) of the statutes, the department is not required to provide evidence that
12 promulgating a rule under this subsection as an emergency rule is necessary for the
13 preservation of the public peace, health, safety, or welfare and is not required to
14 provide a finding of emergency for a rule promulgated under this subsection.
15 Notwithstanding section 227.24 (1) (e) 1d. and 1g. of the statutes, for emergency
16 rules promulgated under this subsection, the department is not required to prepare
17 and obtain approval of a statement of scope of the rules or to submit the proposed
18 rules in final draft form to the governor for approval.

19 **SECTION 7. Initial applicability.**



Per Anna - make a / 1
no charges



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4498/P4 /1
FFK&KP:emw

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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.

Analysis by the Legislative Reference Bureau

This bill updates the real estate disclosure report forms and changes the requirements for a report submitted to a client by a registered home inspector.

Under current law, with certain exceptions, an owner selling residential real property or vacant land must give a prospective buyer a form, known as a real estate condition report for residential real property and known as the vacant land disclosure report for vacant land, on which the owner discloses certain conditions of, and other information about, the real property of which the owner is aware. This bill makes various technical changes to these forms, including grouping questions into substantive categories, providing examples of different types of defects, and providing additional instructions and explanatory material. The updated forms include the disclosures required under current law. In addition to making technical changes, the bill requires additional disclosures regarding the owner's awareness of certain conditions related to the property, including 1) defects related to smoke detectors or carbon monoxide detectors or violations of state or local smoke detector or carbon monoxide detector laws; 2) unsafe levels of mold or other moisture intrusions or conditions; 3) defects in, as opposed to just the presence of, underground or aboveground fuel storage tanks; and 4) burial sites on the property.

1 information required under section 709.03 (form) of the statutes, 2015 stats., or by
2 section 709.033 (form) of the statutes, 2015 stats.

3 (2) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
4 the department of safety and professional services may promulgate rules governing
5 the information about defects that a home inspector is required to provide to a client
6 concerning the results of a home inspection under sections 440.974 (1) (c) and
7 440.975 (3) (cm) of the statutes for the period before the effective date of permanent
8 rules promulgated under section 440.974 (1) (c) of the statutes but not to exceed the
9 period authorized under section 227.24 (1) (c) of the statutes, subject to extension
10 under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2)
11 (b), and (3) of the statutes, the department is not required to provide evidence that
12 promulgating a rule under this subsection as an emergency rule is necessary for the
13 preservation of the public peace, health, safety, or welfare and is not required to
14 provide a finding of emergency for a rule promulgated under this subsection.
15 Notwithstanding section 227.24 (1) (e) 1d. and 1g. of the statutes, for emergency
16 rules promulgated under this subsection, the department is not required to prepare
17 and obtain approval of a statement of scope of the rules or to submit the proposed
18 rules in final draft form to the governor for approval.

19 **SECTION 7. Initial applicability.**

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

23 **SECTION 8. Effective date.**

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

25 (END)

Walker, Dan

From: Schwarz, Anna
Sent: Thursday, December 07, 2017 10:39 AM
To: LRB.Legal
Subject: Draft Review: LRB -4498/1

Please Jacket LRB -4498/1 for the ASSEMBLY.