



## 2011 ASSEMBLY BILL 163

May 31, 2011 – Introduced by Representatives STEINEKE, RIVARD, BIES, KERKMAN, MOLEPSKE JR, NASS, A. OTT and STASKUNAS, cosponsored by Senators GROTHMAN, OLSEN and SCHULTZ. Referred to Committee on Housing.

1     **AN ACT** *to amend* chapter 709 (title), 709.01 (1), 709.02 (1), 709.02 (2) (intro.),  
2             709.03 (intro.) and 709.07; and *to create* 709.001 and 709.033 of the statutes;  
3     **relating to:** a disclosure report for sellers of vacant land.

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### *Analysis by the Legislative Reference Bureau*

Under current law, with certain exceptions, owners selling certain residential real property must give prospective buyers a form, known as the real estate condition report, on which the owner discloses certain conditions of the real property of which the owner is aware. The property to which the report applies is property that includes one to four dwelling units and that has been inhabited. A dwelling unit is defined as a structure or part of a structure that is used as a home or residence or sleeping place by one person or by two or more persons maintaining a common household. The report must be given to a prospective buyer no later than ten days after the seller has accepted an offer to purchase, creating a contract of sale. A prospective buyer may rescind a contract of sale if he or she does not receive a report within the specified time or if he or she timely receives a report but it is incomplete or discloses a defect of which the buyer was not aware.

This bill creates a vacant land disclosure report, similar to the real estate condition report, on which the owner of the property must disclose certain conditions of the property of which the owner is aware. For example, the owner must disclose whether he or she is aware of underground storage tanks on the property; of any planned public improvements that may result in special assessments; of any significant odor, noise, water intrusion, or other irritants coming from neighboring

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property; of any burial sites or archeological artifacts on the property; of whether the property is connected to electricity, cable, municipal water and sewer, telephone service, or natural gas; or of whether the land is in a certified farmland preservation zoning district or subject to a farmland preservation agreement. The property to which the vacant land disclosure report applies is property that does not include any buildings. The provisions in current law that apply to the real estate condition report regarding the timing for providing a report and rescinding a contract of sale on the basis of not receiving a report on time or receiving an incomplete report or a report that discloses a defect also apply to the new vacant land disclosure report.

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

1           **SECTION 1.** Chapter 709 (title) of the statutes is amended to read:

2   **CHAPTER 709**

3   **DISCLOSURES BY OWNERS OF**

4   **RESIDENTIAL REAL ESTATE**

5           **SECTION 2.** 709.001 of the statutes is created to read:

6           **709.001 Definitions.** In this chapter:

7           **(1)** “Condominium unit” or “unit” has the meaning given for “unit” in s. 703.02

8 (15).

9           **(2)** “Dwelling unit” has the meaning given in s. 101.61 (1).

10          **(3)** “Public agency” has the meaning given in s. 66.0825 (3) (h).

11          **(4)** “Qualified 3rd party” has the meaning given in s. 452.23 (2) (b).

12          **(5)** “Real property” means either of the following:

13          (a) Real property that includes 1 to 4 dwelling units, but excluding property  
14 that has not been inhabited.

15          (b) Real property that does not include any buildings.

16          **(6)** “Time-share property” has the meaning given in s. 707.02 (32).

17          **SECTION 3.** 709.01 (1) of the statutes is amended to read:

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

7           **SECTION 4.** 709.02 (1) of the statutes is amended to read:

8           709.02 (1) In regard to transfers described in s. 709.01, the owner of the  
9 property shall furnish, not later than 10 days after acceptance of a contract of sale  
10 or option contract, to the prospective buyer of the property a completed copy of the  
11 report under s. 709.03 or 709.033, whichever is applicable, subject to s. 709.035,  
12 except that the owner may substitute for any entry information supplied by a  
13 licensed engineer, land surveyor, or structural pest control operator ~~or,~~ by an  
14 individual who is a qualified 3rd party, ~~as defined in s. 452.23 (2) (b), or by a~~  
15 ~~contractor about matters within the scope of the contractor's occupation, if the~~  
16 ~~information is in writing and is furnished on time and if the entry to which it relates~~  
17 ~~is identified, and except that the owner may substitute for any entry information~~  
18 ~~supplied by a public agency, as defined in s. 66.0825 (3) (h). Information that~~  
19 ~~substitutes for an entry on the report under s. 709.03 or 709.033 and that is supplied~~  
20 ~~by a person specified in this section may be submitted and certified on a~~  
21 ~~supplemental report prepared by the person, as long as the information otherwise~~  
22 ~~satisfies the requirements under this section. A prospective buyer who does not~~  
23 ~~receive a report within the 10 days may, within 2 business days after the end of that~~  
24 ~~10-day period, rescind the contract of sale or option contract by delivering a written~~  
25 ~~notice of rescision to the owner or to the owner's agent.~~

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1           **SECTION 5.** 709.02 (2) (intro.) of the statutes is amended to read:

2           709.02 (2) (intro.) In regard to a transfer of a condominium unit, as defined in  
3 s. 703.02 (15), the owner shall furnish, in addition to and at the same time as the  
4 information required under sub. (1), all the following information as an addendum  
5 to the real estate condition report under s. 709.03 or 709.033:

6           **SECTION 6.** 709.03 (intro.) of the statutes is amended to read:

7           **709.03 Report Residential real estate condition report form.** (intro.)

8           The report required under s. 709.02 with respect to real property as defined in s.  
9 709.001 (5) (a) shall be in substantially the following form and shall include at least  
10 all of the following information:

11           **SECTION 7.** 709.033 of the statutes is created to read:

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

16   VACANT LAND DISCLOSURE REPORT

17   DISCLAIMER

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

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1 SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT THE  
2 PRINCIPALS MAY WISH TO OBTAIN.

3 **OWNER'S INFORMATION**

4 B. 1. In this form, "am aware" means have notice or knowledge. In this form,  
5 "defect" means a condition that would have a significant adverse effect on the value  
6 of the property; that would significantly impair the health or safety of future  
7 occupants of the property; or that if not repaired, removed, or replaced would  
8 adversely affect the use of the property.

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

15 B. 3. The owner represents that to the best of his or her knowledge the  
16 responses to the following statements have been accurately noted as "yes," "no," or  
17 "not applicable" to the property being sold. If the owner responds to any statement  
18 with "yes," the owner shall provide, in the additional information area of this form,  
19 an explanation of the reason why the response to the statement is "yes."

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

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|       |   | <b>YES</b> | <b>NO</b> | <b>N/A</b> |
|-------|---|------------|-----------|------------|
| C. 1. | I am 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.   | ....       | ....      | ....       |
| C. 2. | I am aware of a government agency, court order, or federal, state, or local regulations requiring repair, alteration, or correction of an existing condition.   | ....       | ....      | ....       |
| C. 3. | I am aware of a land division or subdivision for which required state or local approvals were not obtained.   | ....       | ....      | ....       |
| C. 4. | I am aware that all or a portion of the property is in a floodplain, wetland, or shoreland zoning area under local, state, or federal regulations.  | ....       | ....      | ....       |
| C. 5. | I am aware that all or part of the property is subject to, or in violation of, an agricultural conservation easement or a farmland preservation agreement with the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) or under a county farmland preservation plan (also see item D. 2.), or enrolled in, or in violation of, a forest cropland, managed forest land (see s. 710.12, Wis. stats.), conservation reserve, or other comparable program. | ....       | ....      | ....       |
| C. 6. | I am aware of a boundary or lot dispute, an encroachment, an encumbrance, a joint driveway, or a violation of the fence laws under ch. 90, Wis. stats.  | ....       | ....      | ....       |
| C. 7. | I am aware of a material violation of an environmental rule or other rule or agreement regulating the use of the property.  | ....       | ....      | ....       |
| C. 8. | I am aware of any condition constituting a significant health risk or safety hazard for occupants of the property.  | ....       | ....      | ....       |

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|        |  | <b>YES</b> | <b>NO</b> | <b>N/A</b> |
|--------|--|------------|-----------|------------|
| C. 9.  | I am 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 Commerce at P.O. Box 7970, Madison, Wisconsin, 53707, whether the tanks are in use or not. Regulations of the Wisconsin Department of Commerce may require the closure or removal of unused tanks.) | ....       | ....      | ....       |
| C. 10. | I am aware of a defect or contamination caused by unsafe concentrations of, or unsafe conditions relating to, pesticides, herbicides, fertilizer, radon, radium in water supplies, lead or arsenic in soil, or other potentially hazardous or toxic substances on the premises.  | ....       | ....      | ....       |
| C. 11. | I am aware that methamphetamine or other hazardous or toxic substances have been manufactured on the property.   | ....       | ....      | ....       |
| C. 12. | I am aware of high voltage electric (100 kilovolts or greater) or steel natural gas transmission lines located on, but not directly serving, the property.   | ....       | ....      | ....       |
| C. 13. | I am 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.   | ....       | ....      | ....       |
| C. 14. | I am aware of defects in any septic system or other sanitary disposal system on the property or any out-of-service septic system that is not closed or abandoned according to applicable regulations.  | ....       | ....      | ....       |

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|        |   | <b>YES</b> | <b>NO</b> | <b>N/A</b> |
|--------|---|------------|-----------|------------|
| C. 15. | I am 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, or slides; or excessive rocks or rock formations. | ....       | ....      | ....       |
| C. 16. | I am 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 action program, the DATCP Agricultural Chemical Cleanup Program, or other similar program.  | ....       | ....      | ....       |
| C. 17. | I am aware that there is no legal access to the property by vehicle from public roads.  | ....       | ....      | ....       |
| C. 18. | I am aware that the property is subject to any of the following: a homeowners' association; a common area shared or co-owned with another; a zoning violation or nonconforming use; a right-of-way; a restrictive covenant; an easement, including a conservation easement; an easement maintenance agreement; or use of a part of the property by a nonowner, other than a recorded utility easement.  | ....       | ....      | ....       |
| C. 19. | I am aware that the property is located within a special purpose district, such as a drainage district, lake district, sanitary district, or sewer district, that has the authority to impose assessments against real property located within the district.  | ....       | ....      | ....       |



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|        |  | <b>YES</b> | <b>NO</b> | <b>N/A</b> |
|--------|--|------------|-----------|------------|
| C. 20. | I have received notice of a property tax increase, other than a normal annual increase, or am aware of a completed or pending property reassessment or a proposed or pending special assessment.   | ....       | ....      | ....       |
| C. 21. | I am aware of burial sites, archeological artifacts, mineral rights, orchards, or endangered species on the property.  | ....       | ....      | ....       |
| C. 22. | I am aware of flooding, standing water, drainage problems, or other water problems on or affecting the property.   | ....       | ....      | ....       |
| C. 23. | I am aware of material damage from fire, wind, flood, earthquake, expansive soil, erosion, or landslide.   | ....       | ....      | ....       |
| C. 24. | I am aware of significant odor, noise, water intrusion, or other irritants emanating from neighboring property.  | ....       | ....      | ....       |
| C. 25. | I am aware of significant crop damage from disease, insects, soil contamination, wildlife, or other causes; diseased trees; or substantial injuries or disease in livestock on the property or neighboring property.   | ....       | ....      | ....       |
| C. 26. | I am aware of existing or abandoned manure storage facilities.   | ....       | ....      | ....       |
| C. 27. | I am aware that the property is subject to a mitigation plan required under administrative rules of DNR related to county shoreland zoning ordinances, which obligates the owner of the property to establish or maintain certain measures related to shoreland conditions and which is enforceable by the county. | ....       | ....      | ....       |
| C. 28. | I am aware that a pier attached to the property is not in compliance with state or local pier regulations. See <a href="http://dnr.wi.gov/">http://dnr.wi.gov/</a> for information.  | ....       | ....      | ....       |
| C. 29. | I am 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.   | ....       | ....      | ....       |

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C. 30. I am aware of other defects affecting the property. ....

1

**ADDITIONAL INFORMATION**

|   | <b>YES</b> | <b>NO</b> | <b>N/A</b> |
|---|------------|-----------|------------|
| D. 1. <u>Use-Value Assessments.</u> 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, such as residential or commercial development, that person may owe a conversion charge. To obtain more information about the use-value law or conversion charge, contact the Wisconsin Department of Revenue's (DOR's) equalization section at (608) 266-2149 or visit: <a href="http://www.revenue.wi.gov/faqs/slf/useassmt.html">http://www.revenue.wi.gov/faqs/slf/useassmt.html</a> . |            |           |            |
| a. I am aware that all or part of the land has been assessed as agricultural land under s. 70.32 (2r), Wis. stats.  | ....       | ....      | ....       |
| b. I am aware that the owner has been assessed a use-value conversion charge under s. 74.485 (2), Wis. stats.   | ....       | ....      | ....       |
| c. I am aware that the payment of a use-value conversion charge has been deferred under s. 74.485 (4), Wis. stats.  | ....       | ....      | ....       |
| D. 2. <u>Farmland Preservation.</u> Rezoning a property zoned farmland preservation to another use, early termination of a farmland preservation agreement, or removal of land from a farmland preservation agreement can trigger payment of a conversion fee equal to 3 times the class 1 "use value" of the land. For more information, call (608) 224-4500 or visit: <a href="http://workinglands.wi.gov">http://workinglands.wi.gov</a> .   |            |           |            |
| a. I am aware that the property is in a certified farmland preservation zoning district or is subject to a farmland preservation agreement.   | ....       | ....      | ....       |
| D. 3. <u>Utility Connections.</u> I am aware that the property is connected to the following utilities on the property or at the lot line:  |            |           |            |
| a. Electricity.   | ....       | ....      | ....       |

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|  |            |           |            |
|--|------------|-----------|------------|
|  | <b>YES</b> | <b>NO</b> | <b>N/A</b> |
|--|------------|-----------|------------|

|                      |      |      |      |
|----------------------|------|------|------|
| b. Municipal water.  | .... | .... | .... |
| c. Telephone.        | .... | .... | .... |
| d. Cable television. | .... | .... | .... |
| e. Natural gas.      | .... | .... | .... |
| f. Municipal sewer.  | .... | .... | .... |

D. 4. The owner has owned the property for ....years.

D. 5. Explanation of "yes" responses. (See B.3.) .....  
.....  
.....

1 **NOTICE REGARDING SEX OFFENDER REGISTRY**

2 E. The prospective buyer may obtain information about the sex offender  
3 registry and persons registered with the registry by contacting the Wisconsin  
4 Department of Corrections at (608) 240-5830 or by visiting  
5 <http://www.widocoffenders.org>.

6 **OWNER'S CERTIFICATION**

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

9 Owner .... Date ....

10 Owner .... Date ....

11 **CERTIFICATION BY PERSON SUPPLYING**

12 **INFORMATION**

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

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

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**SECTION 7**

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

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

3 NOTICE REGARDING ADVICE OR INSPECTIONS

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

9 BUYER'S ACKNOWLEDGEMENT

10 I. 1. The prospective buyer acknowledges that technical knowledge such as  
11 that acquired by professional inspectors may be required to detect certain defects  
12 such as floodplain status.

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

14 Prospective buyer ... Date ...

15 Prospective buyer ... Date ...

16 Prospective buyer ... Date ...

17 SECTION 8. 709.07 of the statutes is amended to read:

18 **709.07 Liability precluded.** An owner is not liable for an error or omission  
19 in a report under s. 709.03 or 709.033 if the owner had no knowledge of that error  
20 or omission, if the error or omission was based on information provided by a public  
21 agency, ~~as defined in s. 66.0825 (3) (h), or~~ by a licensed engineer, land surveyor,  
22 structural pest control operator, or qualified 3rd party, ~~as defined in s. 452.23 (2) (b),~~  
23 or by a contractor about matters within the scope of the contractor's occupation.

24 SECTION 9. Initial applicability.

