



# LEGAL UPDATE

SEPTEMBER 2021, 21.09

## A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

### Home Inspection Reports

In June 2021, a new law went into effect that changed the requirements for what must be included in a home inspection report prepared by a Wisconsin-registered home inspector. The law was aimed at helping consumers understand their home inspection reports by creating some consistency in the contents of the report and the use of the word “defect” while still allowing home inspectors to maintain their style and customization when preparing the report.



#### REALTOR® Practice Tip

For a history of recent changes to laws regulating home inspectors, see “The Rumor Mill Stops Here” in the May 2021 *Wisconsin Real Estate Magazine* at [www.wra.org/WREM/May21/RumorMill](http://www.wra.org/WREM/May21/RumorMill).

### Use of the Word “Defect” in the Home Inspection Report

A home inspector will label items as defects based on the home inspector’s judgment at the time of the inspection. A home inspector is not making any representation that there will not be any defects in the future. A home inspector identifies conditions that are defects as of the day of the inspection and is not making any warranties as to the future condition of the property.

The home inspector definition of “defect” means a condition of any component of an improvement that a home inspector determines, on the basis of the home inspector’s judgment on the day of an inspection, would significantly impair the health or safety of occupants of a 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. See Wis. Stat. § 440.97 (2m).

### Buyer Objection to Items in the Home Inspection Report

Per the terms of the WB-11 Residential Offer to Purchase, if a buyer includes an inspection contingency, the buyer’s offer is contingent on having a Wisconsin-registered home inspector conduct an inspection, which discloses no defects. After the inspection, the buyer’s home inspector will provide a report to the buyer. The report will identify defects

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as determined by the home inspector based on the home inspector’s judgment on the day of the inspection. The buyer may also object to items not labeled as defects if they rise to the meet the definition of defect in the buyer’s offer to purchase. The WB-11 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.” A significant distinction between this definition and the home inspector’s definition is the value component. A buyer can object to conditions that would have a “significant adverse effect on the value” of the property. A home inspector cannot comment on the value of the property or its components. Because of this, there may be items in the home inspector’s report that would affect the value of the property but are not labeled defects. This means that a buyer can object to items that are defects but that are not labeled as defects by the home inspector.

### Required Components in the Home Inspection Report

A home inspector must label defects as such in the home inspection report. Additionally, a home inspection report must include a summary page and statutorily required language. Beyond those requirements, the

home inspector can design the home inspection report in any manner desired by the home inspector. Unlike real estate licensees who must use approved forms, there is not an “approved form” for the home inspector’s report.

The addition of the summary page requirement as of June 2021 was an attempt to further consumer protection in the home inspection process. Home inspection reports can be long. They can seem complicated to a buyer who may not have much experience with the mechanical or structural components of a property. In addition to labeling defects as defects, a home inspector now must include a summary page with the buyer’s home inspection report. The summary page could be more than one page depending on its contents, and the goal is to give the buyer a “road map” of the report by not only identifying defects and other items of concern but also providing the buyer with reference points within the home inspection report where the buyer can obtain more detail on the items identified as defects or other concerns.

At minimum, every home inspector report will include the following:

- Property address
- Home inspector’s name
- Date of the home inspection
- Name(s) of the individual(s) who prepared the report
- Date the report was prepared or revised

As of June 1, 2021, every home inspector report will include a summary page with the following:

- List of conditions including at least all of the following:
  - List of conditions, labeled as defects, that are observed under par. (cm) to be defects, as defined in s. 440.97 (2m).
  - Items not labeled as defects:
    - Listing of components needing repair
    - Components needing further evaluation
    - Items to monitor
    - Maintenance items
- References to the page, heading or item number in the detailed account for further information
- Certain notices/statements including:
  - NOTE: This summary page is provided for convenience and is not a substitute for reading the entire report and should not be relied upon as the complete list for the client’s reference.



- For the purposes of the report, “defect,” as defined in section 440.97 (2m), Wis. Stats., means a condition of any component of an improvement that a home inspector determines, on the basis of the home inspector’s judgment on the day of an inspection, would significantly impair the health or safety of occupants of a 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. The contract of sale may define “defect” to also include a condition that would have a significant adverse effect on the value of the property, but such a condition may not be labeled a defect in the report unless it meets the definition in section 440.97 (2m), Wis. Stats.
- NOTE: A home inspector may not report on the market value or marketability of a property or whether a property should or should not be purchased.

## Understanding Wisconsin Home Inspection Reports

The real estate licensees involved in the transaction and the home inspector should know what should be included in the home inspector’s report, but a buyer or seller may not know what to expect. To help educate buyers and sellers about what to expect in a home inspection report, the WRA has created a consumer handout titled Understanding Wisconsin Home Inspection Reports. This handout was designed for consumers in the transaction. It can be provided to buyers seeking to purchase a home to help educate the buyer about what should be in the buyer’s inspection report. It may also be provided to a seller to help the seller understand what will or should be in the buyer’s home inspection report. This handout highlights that defects must be labeled as defects and that there must be a summary page and the components required in the summary page.

Understanding Wisconsin Home Inspection Reports also offers helpful recommendations to both the buyer and the seller if the home inspection report does not meet the statutory requirements. If a buyer receives an inspection report that does not measure up to the statutorily required components of an inspection report prepared by a Wisconsin home inspector, one option is for the buyer to contact the home inspector and ask the home inspector to correct the report. If the seller receives a report that does not comply, one option for a seller is to inform the buyer the report is defective and request that the buyer contact the buyer’s home inspector and ask for a corrected report. The handout also provides contact information for the Department of Safety and Professional Services (DSPS), which regulates home inspectors, so that a party may report a non-complying inspector to the DSPS. Finally, the handout provides a reference and link to the law regulating home inspectors. The Understanding Wisconsin Home Inspection Reports is available on the WRA’s Home Inspection Resources page at [www.wra.org/Resources/Transactional/Home\\_Inspections\\_Resources](http://www.wra.org/Resources/Transactional/Home_Inspections_Resources).



### REALTOR® Practice Tip

The WRA Home Inspections Resources page at [www.wra.org/Resources/Transactional/Home\\_Inspections\\_Resources](http://www.wra.org/Resources/Transactional/Home_Inspections_Resources) has resources for consumers and agents alike. There are additional *Legal Updates* and articles from the *Wisconsin Real Estate Magazine* for agents and handouts and brochures for consumers that explain the home inspection process.

## Using Another Buyer's Home Inspection Report

Buyers sometimes end up in possession of a home inspection report prepared for and paid for by another buyer. Often this is because a previous transaction did not move forward based on items found in that inspection report. For example, a seller accepts an offer with an inspection contingency, the buyer issues a Notice of Defects based on the home inspector's report, and either the seller did not have the right to cure, or the seller did have the right to cure but chose not to cure. Wis. Stat. § 709.035 creates an obligation for a seller who has completed a Real Estate Condition Report (RECR) to complete an amended report or amend an existing report if the seller becomes aware of information that would change the seller's response to an item on a previously completed report. Often the seller obtains this added information, necessitating a new RECR or an amendment to an existing report after a buyer has a home inspection. Some sellers choose to amend an existing RECR by incorporating the former buyer's home inspection report into the seller's RECR. The listing agent may then provide that amended RECR to new prospective buyers.



### REALTOR® Practice Tip

An agent may not simply provide a former buyer's home inspection report to new prospective buyers due to the agent's duty of confidentiality that is owed to all parties in a transaction and continues to be owed after the transaction is over. If the seller, however, amends the seller's RECR or completes a new report and incorporates the former buyer's home inspection report, an agent may provide that new or amended condition report to other prospective buyers. The seller does not owe a duty of confidentiality to the former buyer unless the offer to purchase included a provision creating a duty of confidentiality for the seller or a provision that prohibited a seller from providing the former buyer's RECR to new, potential buyers.

A buyer in receipt of a former buyer's inspection report may be tempted to rely on that report in conjunction with the seller's RECR and bypass the buyer's opportunity to include an inspection contingency. A buyer may think that between the seller's RECR and the former buyer's inspection report, the buyer has all the information necessary to understand the condition of the property and to know what additional contingencies, if any, the buyer would like to include in the buyer's offer based on the information at hand. A buyer may also be motivated to omit an inspection contingency when a buyer has the former buyer's inspection report to save money that the buyer would spend on a new inspection. This is risky for the buyer. Inspectors differ. While all home inspectors must meet the registration requirements to be registered with the DSPS, home inspectors, like real estate licensees, may have varying levels of skills and different opinions about whether something is a defect. Two different home inspectors may inspect the same property and have different opinions on which items are defects.

Perhaps more importantly for a buyer relying on a former buyer's inspection report, the statutes regulating home inspectors provide the home inspector will not be liable to subsequent buyers for any errors or omissions contained in the first buyer's inspection report. The new buyer may be advised to obtain the buyer's own inspection if the buyer would like to preserve the right to file a claim against the home inspector for any oversights in the report. A buyer who receives a copy of a former buyer's inspection report should be advised that the former buyer's inspection report is provided for information only and is not a substitute for the buyer obtaining the buyer's own inspection report. A buyer who receives a former buyer's inspection report can use it to decide what contingencies beyond the home inspection contingency to include in the buyer's offer. For example, if the former buyer's home inspection report noted an issue with the seller's backyard deck, the buyer could include a contingency in the offer to have a person competent to inspect and repair decks complete an inspection of the deck and provide the buyer with an estimate of repair costs. The contingency could even possibly set a dollar limit for the repairs where the buyer could issue a notice objecting to the estimated repair amount if it exceeds the amount negotiated in the offer.

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