



## Disclosures Regarding Water Quality Issues

Disclosure of water quality issues such as lead in drinking water or a community being in violation of Wisconsin’s safe drinking water rules may require disclosure by a seller or licensee.

### Licensee disclosure obligations

Licensees are required to disclose known material adverse facts (MAF) and information suggesting material adverse facts. (See Wis. Admin. Code § REEB 24.07(1) — (3) and Wis. Stat. § 452.133(1)(c)).

If a competent licensee knows or is aware of an adverse fact that is material to the buyer, the licensee must disclose that fact. An adverse fact will fit one or more of the following parameters:

- Has a significant adverse effect on the value of the property.
- Significantly reduces the structural integrity of the property.
- Presents a significant health risk to the occupants of the property.
- Is information indicating that a party to the transaction is not able to or does not intend to meet their obligations under the contract.

If a party to the transaction were to so indicate, or if a competent licensee would generally recognize that an adverse fact is of such importance that it would affect a reasonable party's decision to enter into a contract or would affect the party's decision about the terms of the contract, the fact is both adverse and material. If this fact is both adverse and material, then Wis. Admin. Code § REEB 24.07(2) requires the licensee to timely disclose the fact in writing to all parties to the transaction, even if the client would direct the licensee not to disclose.

If the licensee knows or is aware of information suggesting the possibility of a MAF, Wis. Admin. Code § REEB 24.07(3) states that the licensee will be practicing competently if the licensee makes timely written disclosure of the information suggesting the MAF to all parties to the transaction, recommends the parties obtain expert assistance to inspect or investigate for the possible MAF, and, if directed by the parties, drafts appropriate inspection or investigation contingencies.

Scenario	Disclosure Required?*
Listing agent has confirmation from the city the lateral pipes running to the property are made of lead.	Arguably a MAF that must be disclosed
Listing agent has knowledge of testing results from a deal that fell apart during the time of the agent's listing that demonstrated unsafe levels of lead in the water.	Arguably a MAF that must be disclosed
Known testing results for surrounding or adjacent properties demonstrating unsafe levels of lead in the water	Arguably information suggesting a MAF that must be disclosed
A news article or well publicized local government proposition that the community in which a property is located is discussing the need to replace older lead laterals due to general concerns about possible lead contamination and possible responsibility by the property owner to help incur the replacement cost	Arguably a possible MAF or information suggesting a MAF likely should be disclosed
Stories about Flint, Michigan or some other nearby community that has a lead contamination problem	Arguably not a MAF and probably does not need to be disclosed

\* Note: Individual facts and circumstances may alter the statement above. Furthermore, the licensee may not be obligated to disclose if seller discloses the full nature and extent of the information.

## **Licensees do not have an obligation to research or investigate**

Real estate firms and agents are not required to investigate independently whether a property has poor water quality or lead pipes. When taking a listing, a licensee conducts a competent, diligent inspection of the property and asks the seller for a written report regarding property condition. The seller will be responsible for his or her disclosures, or failure to disclose.

The licensee then compares the seller's disclosures with the licensee's observations or other information known to the licensee from sources such as an expert or government agency report. If the seller's disclosure is incomplete, inaccurate or inconsistent with the licensee's observations and information, a written material adverse fact disclosure letter may be prepared by the licensee to make a disclosure of items that are material adverse facts or information suggesting material adverse facts. These disclosures should be factual in nature and may include copies of, or links to, expert or government information or reports. This licensee's duty to disclose trumps any request by the seller not to disclose. The licensee and firm may use the WRA's Disclosure of Material Adverse Fact (WRA-DMAF) form found in ZipForm.

### Resources:

- Information about Wisconsin's current drinking water and groundwater issues can be found at: <http://dnr.wi.gov/topic/DrinkingWater/QualityData.html>.
- A consumer may contact the municipality or visit its website to obtain the Consumer Confidence Report (CCR).
- DNR's informational page as to regarding drinking water and lead can be found at <http://dnr.wi.gov/topic/DrinkingWater/lead.html>.