



Luther S. Olsen

State Senator

14th District

TO: Senate Committee on Utilities & Housing
FROM: Senator Luther Olsen
DATE: January 23, 2020
SUBJECT: Testimony in favor of Senate Bill 549.

Thank you Chairman LeMahieu and the Senate Committee on Utilities and Housing for holding a hearing and allowing me to testify in favor of Senate Bill 549.

Currently, sellers of residential property and vacant land are required to complete a disclosure report relating to their property. This legislation was drafted in consultation with the Wisconsin Realtors Association to address four main updates to the Real Estate Disclosure Reports (Wis. Stat. Ch. 709).

The first change deals with inconsistent statutes as related to the return of earnest money to the buyer in cases where the buyer has the right to rescind the offer. This issue is remedied by making statutes consistent in Section 1 of the bill.

The second change relates to completing the entire condition report. Currently, some sellers simply "X" out the entire report section. This is problematic as it does not answer the questions posed to the seller and does not provide the buyer with complete information. The bill clarifies in section 2 that a seller must complete all the fields in the condition report otherwise the report will be considered incomplete.

The third change deals with confusion relating to whether or not sellers have to disclose public rights-of-way on the disclosure report. Sections 3 and 6 clarify that the question applies only to private rights-of-way.

The final change adds a questions to the condition report. Currently, Federal law imposes a withholding tax on foreign sellers when they sell real property under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). People buying U.S. real estate from foreign sellers are required to withhold 15% of the amount realized to ensure IRS taxation of the gains realized on the sale. The buyer is the responsible party and may be held liable for the tax if they fail to withhold the proper amount when the seller is a "foreign person" as defined in FIRPTA. Therefore, the bill adds a question to the condition report that a seller must disclose if they are a "foreign person" for purposes of federal taxation. This is an important designation for federal tax purposes.

These changes to the real estate disclosure reports will provide clarity to both buyers and sellers and ensures more transparency throughout the process

Thank you, members. I ask for your support and would be more than happy to answer any questions.



CODY HORLACHER

STATE REPRESENTATIVE • 33RD ASSEMBLY DISTRICT

(608) 266-5715
Toll-Free: (888) 529-0033
Rep.Horlacher@legis.wi.gov

P.O. Box 8952
Madison, WI 53708-8952

January 23rd, 2020

Chairman LeMahieu and Senate Utilities and Housing Committee Members,

Thank you for holding a Public Hearing on SB 549 related to real estate disclosure reports.

This bill was drafted in consultation with the Wisconsin Realtors Association and makes necessary modifications to the real estate disclosure reports. These changes will provide clarity to both buyers and sellers and ensure more transparency throughout the process.

I am honored to have worked with both Representative Stuck and Senator Olsen on this legislation.

SB 549 addresses four main updates to the Real Estate Disclosure Reports (Wis. Stat. Ch. 709):

1. **Issue 1:** State statutes are inconsistent as related to the return of earnest money to the buyer in cases where the buyer has the right to rescind the offer. This issue is remedied and the statutes are made consistent in Section 1 of the bill.
2. **Issue 2:** Currently, when completing the condition report some sellers simply “X” out the entire report section. This is problematic as it does not answer the questions posed to the seller and does not provide the buyer with complete information. The bill clarifies in section 2 that a seller must complete all the fields in the condition report otherwise the report will be considered incomplete.
3. **Issue 3:** Currently sellers are confused about whether or not they have to disclose public rights-of-way on the disclosure report. Sections 3 and 6 clarify that the question applies only to private rights-of-way.
4. **Issue 4:** Federal law imposes a withholding tax on foreign sellers when they sell real property under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). People buying U.S. real estate from foreign sellers are required to withhold 15% of the amount realized to ensure IRS taxation of the gains realized on the sale. The buyer is the responsible party and may be held liable for the tax if the buyer fails to withhold the proper amount if the seller is a “foreign person” as defined in FIRPTA. The bill adds a question to the condition report that a seller must disclose if they are a “foreign person” for purposes of federal taxation. This is an important designation for federal tax purposes.

Thank you for your time and I am available to answer any questions you may have.



To: Senate Committee on Utilities and Housing

From: Cori Lamont, Senior Director of Legal and Public Affairs
Tom Larson, Senior Vice President of Legal and Public Affairs

Date: January 23, 2020

RE: SB 549 – Real Estate Disclosure Reports

Last session the legislature passed 2017 Wisconsin Act 338, which in part provided a more user-friendly report for a seller to complete when selling residential or vacant land. Since the implementation on July 1, 2018 of the revised Real Estate Condition Report and Vacant Land Disclosure Report reports, the WRA has discovered the need to correct one statutory inconsistency, clarify a practice issue, address one minor technical modification to a question for clarification, and to add a new disclosure.

1. Inconsistency in the statute

Two different sections of Wisconsin Statute Chapter 709 provide a buyer a two-business day right to rescind the offer or option in writing but provide inconsistent results as to the return of the buyer's earnest money when the buyer exercises those rights.

For instance, Wis. Stat. § 709.05 permits a buyer to automatically get their earnest money back if the buyer exercises their rescission rights when a) the buyer receives a report after the submission of an offer or option if a defect as defined in the report is disclosed, b) the buyer receives an incomplete report or inaccurate assertion that an item is not applicable, or c) the buyer receives an amended report disclosing a defect that was not previously disclosed.

Interestingly, Wis. Stat. § 709.02(1) also affords the buyer a two-business day right to rescind in writing if the buyer does not receive the report within 10 days after acceptance of the offer or option, but does not provide the buyer the right to automatically receive the earnest money back after exercising these rights.

As a result, the two sections of the statute are inconsistent creating confusion for the parties.

AB 596 amends Wis. Stat. § 709.02(1) to authorize the buyer to receive their earnest money back if the buyer has the right to rescind the offer, creating consistency between Wis. Stat. § 709.05 and Wis. Stat. § 709.02(1).

2. Clarify practice issue

Some sellers provide an "X" through the entire report or strike a line through all "N/A" responses, rather than answering the specific questions. This practice creates ambiguity as to whether the seller has provided the buyer a completed report.

AB 596 clarifies if the seller provides a report with strikethroughs or unanswered questions that the form is incomplete, the buyer then has certain statutory direction in Wis. Stat. § 709.05(1) as to their rescission rights.

3. Technical modification

When sellers are completing the current report, sellers are unsure as to whether they are required to disclose public rights-of-ways. However, the question was intended to ask the seller about private rights-of-ways impacting the land.

AB 596 modifies the items in the land use disclosure to the reports to specify the disclosure applies to private, not public rights-of-ways.

4. New disclosure

Federal law imposes a withholding tax on foreign sellers when they sell real property, and requires buyers involved in such transactions to potentially be responsible for the tax.

The sale of a United States real property interest by a foreign seller is subject to income tax withholding under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). FIRPTA authorized the United States to tax "foreign people" selling United States real property interests. A "foreign person" is defined in FIRPTA as a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate. It does not include a resident alien individual. U.S. green card holders, U.S. citizens and non-citizens who fulfill the requirement of the substantial presence test are not subject to FIRPTA.

People buying United States real estate interests from foreign sellers, certain purchasers' agents, and settlement officers are required to withhold 15 percent of the amount realized to ensure Internal Revenue Service (IRS) taxation of the gains realized on the sale. Under FIRPTA, the buyer is the withholding agent. The buyer must find out if the seller is a foreign person. If the seller is a foreign person and the buyer fails to withhold, the buyer may be held liable for the tax.

Although at this time, these transactions are infrequent due to the significant consequences for buyers failing to comply with FIRPTA, the newly revised WB-11 Residential Offer to Purchase required for use by Wisconsin real estate licensees as of January 1, 2020 includes a FIRPTA provision on lines 516-536.

AB 596 adds FIRPTA as a disclosure to the reports to help in determining if the seller is a foreign person for tax purposes.