



**WISCONSIN
REALTORS®
ASSOCIATION**

FEB 13 1998

2-16-98

2.12.98

Dear Rep. Owens:

Just wanted to again thank you for all your help and support in passing AB 334. We couldn't have passed it w/ such overwhelming support w/out your personal help. Thanks for everything!

Nike Theo

WISCONSIN ASSEMBLY ROLL CALL
1997-98 SESSION
SPEAKER JENSEN

SEQUENCE NO. 274
FEBRUARY 11, 1998
1:50 PM

AB 334
VRAKAS, D.

PASSAGE
AB 334 REGULATION OF HOME
INSPECTORS

AYES - 91 NAYS - 5 NOT VOTING - 2 PAIRED - 0

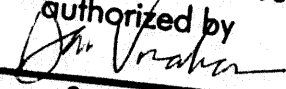
A	N	NV	NAME	A	N	NV	NAME	A	N	NV	NAME
A			AINSWORTH, J. (R)	A			JESKEWITZ, S. (R)	A			POTTER, R. (D)
A			ALBERS, S. (R)	A			JOHNSRUD, D. (R)	A			POWERS, M. (R)
A			BALDWIN, T. (D)	A			KAUFERT, D. (R)	A			REYNOLDS, M. (D)
	X		BAUMGART, J. (D)	A			KEDZIE, N. (R)	A			RILEY, A. (D)
A			BLACK, S. (D)	A			KELSO, C. (R)	A			ROBSON, J. (D)
	N		BOCK, P. (D)	A			KLUSMAN, J. (R)	A			RYBA, J. (D)
A			BOYLE, F. (D)	A			KREIBICH, R. (R)	A			SCHAFFER, C. (R)
A			BRANDEMUEHL, D. (R)	A			KREUSER, J. (D)	A			SCHNEIDER, M. (D)
A			CARPENTER, T. (D)		N		KRUG, S. (D)	A			SERATTI, L. (R)
A			COGGS, S. (D)	A			KRUSICK, M. (D)	A			SKINDRUD, R. (R)
A			CULLEN, D. (D)	A			KUNICKI, W. (D)	A			SPILLNER, J. (R)
A			DOBYNS, J. (R)	A			LA FAVE, J. (D)	A			SPRINGER, T. (D)
	N		DUEHOLM, R. (D)	A			LADWIG, B. (R)	A			STASKUNAS, T. (D)
A			DUFF, M. (R)	A			LASEE, F. (R)	A			STEINBRINK, J. (D)
A			FOTI, S. (R)	A			LAZICH, M. (R)	A			SYKORA, T. (R)
A			FREESE, S. (R)	A			LEHMAN, J. (D)	A			TRAVIS, D. (D)
A			GARD, J. (R)	A			LEHMAN, M. (R)	A			TURNER, R. (D)
A			GOETSCH, R. (R)	A			LINTON, B. (D)	A			UNDERHEIM, G. (R)
A			GREEN, M. (R)		N		LORGE, W. (R)	A			URBAN, F. (R)
A			GRONEMUS, B. (D)	A			MEYER, M. (D)	A			VANDER LOOP, W. (D)
A			GROTHMAN, G. (R)	A			MORRIS-TATUM J. (D)	A			VRAKAS, D. (R)
A			GUNDERSON, S. (R)	A			MURAT, W. (D)	A			WALKER, S. (R)
A			HAHN, E. (R)	A			MUSSER, T. (R)	A			WARD, D. (R)
A			HANDRICK, J. (R)		X		NASS, S. (R)	A			WASSERMAN, S. (D)
A			HANSON, D. (D)		N		NOTESTEIN, B. (D)	A			WIECKERT, S. (R)
A			HARSDORF, S. (R)	A			OLSEN, L. (R)	A			WILLIAMS, A. (D)
A			HASENOHRL, D. (D)	A			OTT, A. (R)	A			WOOD, W. (D)
A			HEBL, T. (D)	A			OTTE, C. (R)	A			YOUNG, L. (D)
A			HOVEN, T. (R)	A			OURADA, T. (R)	A			YOUNG, R. (D)
A			HUBER, G. (D)	A			OWENS, C. (R)	A			ZIEGELBAUER, R. (D)
A			HUBLER, M. (D)	A			PLALE, J. (D)	A			ZUKOWSKI, R. (R)
A			HUEBSCH, M. (R)	A			PLOUFF, J. (D)	A			SPEAKER (R)
A			HUTCHISON, D. (R)	A			PORTER, C. (R)				

VACANT DISTRICTS - 82.



February 7, 1998

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authorized by



Signature

Wisconsin Association of Home Inspectors
Legislative Committee

The Honorable Daniel P. Vrakas
Room 123 West
State Capitol

Re: Substitute Amendment to 1997 AB 334, LRBs0339/6

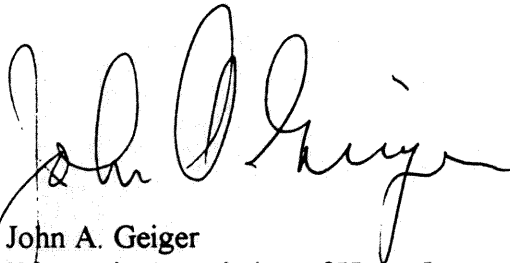
Dear Representative Vrakas:

The final form of AB 334 (LRBs0339/6) has the support of the Wisconsin Association of Home Inspectors (WAHI). The changes made since the original bill was introduced have resulted in a bill which will provide an improved level of home inspection services to home buyers in Wisconsin.

Home inspectors, however, are concerned that the rules to be promulgated by the Department of Regulation and Licensing reflect the best interest of home buyers and home inspectors. We trust that the Assembly Housing Committee will consider input from home inspectors in regard to the rule making process in the coming months and years. As you can appreciate, the rule making process is nearly as important as the bill itself. Poorly written rules could affect the rights of home buyers and could also place unnecessary responsibilities and burdens on inspectors.

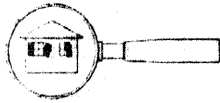
The Legislative Committee of WAHI appreciates all the hard work you have put into crafting this final bill.

Sincerely,



John A. Geiger
Wisconsin Association of Home Inspectors
Legislative Committee Chairperson

FEB 4 1998



Residential Inspections

7125 Paghams Drive, Madison, WI., 53719 (608) 274-2747

WRA now teams with landlords to get rid of State Energy Inspectors!

Will you as a representative, punish consumers by endorsing their requests?

There are some representatives and senators which have already endorsed the introduction of AB668 with no apparent consideration for those who will have to pay the unnecessary, high, energy bills!

I "am" a landlord who also happens to be a state energy inspector and a home inspector. As a landlord, I believe renters should be treated with respect. Many landlords do not feel this way. Through greed, they only care about how much money they can extract from a building even if it means neglect of the property. It is because of "these" types of landlords that we have consumer protection laws requiring energy inspections. Energy loss and resulting "high" heat bills paid by "tenants" (not landlords or the WRA) can develop quite rapidly when buildings are neglected, regardless of how old or new a building is.

The only way to protect tenants from unscrupulous landlords is to keep the existing energy laws. The proposed *modification* with AB668 is paramount to *elimination* of these laws. Don't support it. The existing laws are only a small inconvenience on us landlords compared to how much energy is saved as well as the end benefit to the consumer/renter.

The WRA's attacks are now revealing their lack of concern for "renting" consumers (AB668) as much as their lack of concern for home "buying" consumers (AB334). The WRA is already attempting to push through a poorly written home inspectors bill which assaults the inspection industry and the home buyers we protect. Is it any surprise that the WRA does not want inspectors involved in rental property sales either? This new proposal would eliminate "most" energy inspections, hurt the renters we protect, and completely waste energy that they themselves would never want to pay for. Pardon the allegory, but one might compare the WRA's actions toward inspectors with those of someone in the middle east. Both attacks against inspectors are clearly based on *self interest* rather than the best interest and good of the people.

What motive would they have for trying so hard to eliminate inspectors? Hmmm.....

I am open and willing to discuss the affects that these bills will have on both consumers and inspectors.

Sincerely,

Dan Schilling

cc: State Representatives and Senators, Housing Committee Members, Wisconsin Association of Home Inspectors, Members of the South Central Wisconsin Council of Home Inspectors, Tenant Resource Center, Department of Commerce, Mike Theo, Rick Staff, Janet Swandby, Ed Marion.

Zibrowski, Jacque

From: Matthias, Mary
Sent: Tuesday, February 03, 1998 2:02 PM
To: Zibrowski, Jacque
Subject: RE: AB 620

PREPARE YOURSELF!!! It is in proofreading right now and I'll probably get it to you in an hour or so. I'll send 11 copies again.

Another thing- just this morning I spotted a technical goof in the AB 334 sub. The drafter forgot to take out lines 17 to 19 on page 8. Those lines aren't necessary because the sub deleted the requirement for inspectors to inspect for the presence of hazardous substances. If its OK with Rep. Owens, I (or Rep. Vrakas) will explain the issue to the Committee and if they concur, when they vote to introduce the sub it will be with the understanding that those lines will not be included. We don't need to write up an amendment or anything. This is standard procedure for this kind of problem. Rep. Vrakas would like the Committee to proceed in this fashion. Could you run this by Rep. Owens when you have a chance and let me know if she has any objections?
Thanks.

Mary Matthias
Senior Staff Attorney
Wisconsin Legislative Council Staff
Ph.608-266-0932
Fax:608-266-3830
e-mail:mary.matthias@legis.state.wi.us

-----Original Message-----

From: Zibrowski, Jacque
Sent: Tuesday, February 03, 1998 1:51 PM
To: Matthias, Mary
Subject: RE: AB 620

Thanks for passing this along to me...I will show it to Carol as well.

Are you going to bring the memo for AB 334 to the executive session tomorrow, or should I prepare myself to send it to committee members this afternoon?

From: Matthias, Mary
Sent: Tuesday, February 03, 1998 1:09 PM
To: Zibrowski, Jacque
Subject: FW: AB 620

Jacque-I thought you might like to see this.



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: February 3, 1998

TO: REPRESENTATIVE CAROL OWENS, CHAIRPERSON; AND MEMBERS
OF THE ASSEMBLY COMMITTEE ON HOUSING

FROM: Mary Matthias, Senior Staff Attorney

SUBJECT: 1997 Assembly Bill 334, Relating to the Regulation of Home Inspectors, and
LRB-0339/5, An Assembly Substitute Amendment to 1997 Assembly Bill 334

This memorandum describes 1997 Assembly Bill 334 (the Bill), relating to the regulation of home inspectors and LRB-0339/5 (the substitute amendment), an Assembly substitute amendment to the Bill. 1997 Assembly Bill 334 was introduced on May 1, 1997 by Representative Vrakas and others; cosponsored by Senator Wineke and others. It was referred to the Assembly Committee on Housing, which held a public hearing on the Bill on October 16, 1997.

1. Requirement to be Registered as a Home Inspector

The Bill does not require an individual to be registered as a home inspector in order to conduct home inspections for compensation. However, the Bill provides that no individual may use the title "Wisconsin registered home inspector" or use any title or description that implies that he or she is registered with the state as a home inspector or represent himself or herself to be registered with the state as a home inspector unless the individual is registered with the state as a home inspector.

The Bill further provides that a business entity may use the title "Wisconsin registered home inspectors" to describe the business entity's services if *one* business representative of the business entity is registered as a home inspector with the state.

The substitute amendment requires an individual to be registered as a home inspector in order to conduct home inspections for compensation. In addition, the substitute amendment provides that no individual may use the title "home inspector," use any title or description that implies that he or she is a home inspector or represent himself or herself to be a home inspector unless the individual is registered as a home inspector with the state.

The substitute amendment provides that no business entity may provide home inspection services unless *each* of the home inspectors employed by the business entity is registered with the state as a home inspector. The substitute amendment provides that no business entity may use the title "home inspectors" to describe the business entity's services, unless *each* of the home inspectors employed by the business entity is registered with the state as a home inspector.

The substitute amendment provides that registration as a home inspector is *not* required for any of the following:

a. An individual who conducts a home inspection while lawfully practicing within the scope of a license, permit or certificate granted to that individual by a state governmental agency.

b. An individual who constructs, repairs or maintains improvements to residential real property, if the individual conducts home inspections only as part of his or her business of constructing, repairing or maintaining improvements to real property and if the individual does not describe himself or herself as a registered home inspector or convey the impression that he or she is a registered home inspector.

c. An individual who conducts home inspections in the normal course of his or her employment as an employe of a federal, state or local governmental agency.

2. Registration Qualifications

The Bill provides that the Department of Regulation and Licensing (DRL) must register an individual as a home inspector if the individual does all of the following:

- a. Submits an application for registration on a form provided by DRL.
- b. Pays the registration fee set forth in the statutes.
- c. Subject to ss. 111.321, 111.322 and 111.335, Stats., submits evidence satisfactory to the department that he or she does not have an arrest or conviction record.¹
- d. Passes the examination described in Section 3., below.

1. *Section 111.321, Stats.*, provides, in pertinent part, that no licensing agency or other person may engage in any act of employment discrimination against any individual on the basis of arrest or conviction record. *Section 111.322, Stats.*, provides, in pertinent part, that it is employment discrimination to refuse to license any individual because of arrest or conviction record. *Section 111.335, Stats.*, provides, in pertinent part, that it is not "employment discrimination because of arrest record" to: (a) request an applicant for a license to supply information regarding a record of a pending charge; (b) refuse to license an individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the licensed activity; or (c) to refuse to license or bar from licensing, any individual who has been convicted of any felony, misdemeanor or other offense, the circumstances of which substantially relate to the circumstances of the licensed activity.

The substitute amendment contains provisions identical to *items a., b. and d.*, above. The substitute amendment *does not contain item c., but, instead*, contains the following provision:

- Submits evidence satisfactory to the department that he or she is not subject to a pending criminal charge, or has not been convicted of a felony, misdemeanor or other offense, the circumstances of which substantially relate to the practice of home inspection.

3. Examinations

The Bill provides that no person may be registered with the state as a home inspector unless he or she passes an examination approved by DRL. The Bill provides that the department must conduct examinations for home inspector registration at least semi-annually at times and places determined by DRL. The Bill provides that an individual is not eligible for examination unless an individual has satisfied the requirements for registration described in Section 2., above, other than successful completion of an examination, at least 30 days before the date of examination.

The substitute amendment contains the *same provisions* regarding examinations and, *in addition*, provides that in approving the home inspector examination, DRL must consider the use of an examination that is similar to the examination that is required for membership in the American Society of Home Inspectors.

4. Fees for Registration as a Home Inspector

Under *the Bill* and the *substitute amendment*, an applicant for initial registration as a home inspector is required to pay \$39. In addition, DRL may charge a fee for the required examination. [s. 440.05 (1), Stats.]

The Bill and the *substitute amendment* also both establish a biennial registration renewal fee of \$41.

5. Promulgation of Rules by DRL

The Bill requires DRL to promulgate rules necessary to administer subch. X of ch. 440, Stats., created by the Bill, including rules to establish all of the following:

- a. Standards for acceptable examination performance by an applicant for registration.
- b. Standards for the practice of home inspection by home inspectors, subject to the standards of practice established by the Bill.
- c. The information that a home inspector is required to provide to a client concerning the results of the home inspection, subject to the provision of the Bill relating to the information required to be included in a home inspection report.

The substitute amendment contains provisions identical to *items a., b. and c.*, above, required by the Bill and, *in addition*, requires DRL to promulgate rules which establish standards for specifying the mechanical and structural components of improvements to residential real property that are included in a home inspection.

Further, the substitute amendment provides that the rules promulgated by DRL may *not* require a home inspector to use a specified form for the home inspection report provided to a client.

6. Continuing Education Requirements

The Bill provides that DRL may promulgate rules establishing continuing education requirements for home inspectors. The Bill provides that DRL may require continuing education if it is necessary to preserve the public health, safety or welfare or to ensure competency of home inspectors.

The substitute amendment does *not* contain these provisions but, instead, *requires* DRL to promulgate rules establishing continuing education requirements for home inspectors. The substitute amendment provides that those rules must require the completion of at least 20 hours of continuing education during each calendar year.

7. Standards of Practice

The Bill requires a home inspector to perform a reasonably competent and diligent inspection to detect observable conditions of an improvement to residential real property that he or she is inspecting and provides that a reasonably competent and diligent inspection is not required to be technically exhaustive. The Bill defines "reasonably competent and diligent inspection" as an inspection that complies with the standards established by the Bill and the rules promulgated by DRL.

The substitute amendment contains the *same provisions* and, *in addition*, provides that except for removing an access panel that is normally removed by an occupant of residential real property, a home inspector is not required to disassemble any component of an improvement to residential real property.

8. Required Elements of Home Inspection Report

The Bill provides that after concluding a home inspection, a home inspector must submit a written report to the client that does all of the following:

- a. Lists the components of an improvement to residential real property that the home inspector is required to inspect under the rules promulgated by DRL.
- b. Lists the components of an improvement to residential real property that the home inspector has inspected.

c. Describes any condition of an improvement to residential real property or of any component of an improvement to residential real property that is detected by the home inspector during his or her home inspection and that, if not repaired, will have a significant adverse effect on the life expectancy of the improvement or the component of the improvement.

d. Describes any condition of an improvement to residential real property or of any component of an improvement to residential real property that is detected by the home inspector during his or her home inspection and that constitutes a significant health hazard to any occupant of the improvement inspected.

The substitute amendment requires a home inspection report to include items a., b. and c., above, which are required by the Bill. The substitute amendment *does not* contain *item d.*, above, and, thus, the substitute amendment *does not* require a home inspection report to describe any significant health hazards.

In addition, the substitute amendment requires a home inspection report to provide any other information that the home inspector is required to provide under the rules promulgated by DRL.

9. Items on Which a Home Inspector is Not Required to Report

The Bill provides that a home inspector is not required to report on any of the following:

a. The life expectancy of an improvement to residential real property or a component of an improvement to residential real property.

b. The cause of the need for any major repair to an improvement to residential real property of a component of an improvement to residential real property.

c. The method of making any repair or correction, the materials needed for any repair or correction or the cost of any repair or correction.

d. The suitability for any specialized use of an improvement to residential real property.

e. Whether an improvement to residential real property or a component of an improvement to residential real property complies with applicable regulatory requirements.

f. The condition of any component of an improvement to residential real property that the home inspector was not required to inspect under the rules promulgated pursuant to the provisions created by the Bill.

The substitute amendment contains the same provisions.

10. Items on Which a Home Inspector is Prohibited From Reporting

The Bill provides that a home inspector is prohibited from reporting, either in writing or verbally, on any of the following:

- a. The market value or the marketability of a property.
- b. Whether a property should or should not be purchased.

The substitute amendment contains the same provisions.

11. Things Which a Home Inspector is Not Prohibited From Doing

The Bill provides that a home inspector is *not* prohibited from doing any of the following:

- a. Reporting observations or conditions in addition to those required by the provisions created in the Bill or the rules promulgated pursuant to the provisions created by the Bill.
- b. Excluding a component of an improvement to residential real property from the inspection, if requested to do so by his or her client.
- c. Engaging in an activity that requires an occupation credential if he or she holds the necessary credential.

The substitute amendment contains the same provisions.

12. Things Which a Home Inspector is Not Required To Do

The Bill provides that a home inspector is not required to do any of the following:

- a. Offer a warranty or guaranty of any kind.
- b. Calculate the strength, adequacy or efficiency of any component of an improvement to residential real property.
- c. Enter any area or perform any procedure that may damage an improvement to residential real property or a component of an improvement to residential real property or enter any area or perform any procedure that may be dangerous to the home inspector or to other persons.
- d. Operate any component of an improvement to residential real property that is inoperable.
- e. Operate any component of an improvement to residential real property that does not respond to normal operating controls.
- f. Disturb insulation or move personal items, furniture, equipment, vegetation, soil, snow, ice or debris that obstructs access to or visibility of an improvement to residential real property to a component of an improvement to residential real property.

g. Determine the effectiveness of a component of an improvement to residential real property that was installed to control or remove suspected hazardous substances.

h. Predict future conditions, including the failure of a component of an improvement to residential real property.

i. Project or estimate the operating costs of a component of an improvement to residential real property.

j. Evaluate acoustic characteristics of a component of an improvement to residential real property.

k. Inspect for the presence or absence of pests, including rodents, insects and wood-damaging organisms.

l. Inspect cosmetic items, underground items or items not permanently installed.

The substitute amendment contains the *same provisions* and, *in addition*, provides that a home inspector is *not required* to inspect for the presence of any hazardous substances.

The substitute amendment further provides that a home inspector is not required to have the technical knowledge, skills or training required to conduct a technically exhaustive analysis for detecting hazardous substances. (It should be noted that, although the author of the Bill intended to delete this provision from the substitute amendment, it was inadvertently retained. It is anticipated that this provision will not be included in the introduced substitute amendment.)

13. Conflicts of Interest

The Bill provides that a home inspector may not provide home inspection services to a client when the home inspector has a conflict of interest that may adversely affect the client's interest, unless the Wisconsin registered home inspector has the prior written consent of the client.

The Bill also provides that a person may not act as a home inspector in connection with a transaction in which he or she was also a principal, appraiser or broker without full disclosure to and the written consent of all the parties to the transaction.

The substitute amendment does not contain these provisions but, instead, provides that a home inspector may not perform a home inspection for a client with respect to a transaction if the home inspector, a member of the home inspector's immediate family or an organization or business entity in which the home inspector has an interest, is a party to the transaction and has an interest that is adverse to that of the client, unless the home inspector obtains the written consent of the client.

The substitute amendment further provides that a home inspector may not accept any compensation from more than one party to a transaction for which the home inspector has

provided home inspection services without the written consent of all the parties to the transaction.

14. Kickbacks

The Bill prohibits a home inspector from paying, in full or in part, for a home inspection, a fee, a commission, or compensation as a referral or finder's fee, to any person who is not a Wisconsin registered home inspector.

The substitute amendment does not contain this provision but provides, instead, that a home inspector may not pay, to any person who is not a home inspector, any fee, commission or compensation for a referral and may not receive any fee, commission or compensation in exchange for providing a referral for the performance of any construction, repairs, maintenance or improvements regarding improvements to residential real property that the home inspector has inspected.

15. Liability of Home Inspectors

The Bill provides that an action to recover damages for any act or omission of a home inspector, relating to a home inspection that he or she conducts, must be commenced within two years after the cause of action accrues or be barred.

The Bill also provides that a home inspector is not liable to a person for damages that arise from an act or omission relating to a home inspection that he or she conducts if that person is not a party to the transaction for which the home inspection is conducted.

The substitute amendment contains the same provisions and, *in addition*, provides that the two-year period of limitations for the commencement of actions to recover damages for any act or omission of a home inspector relating to a home inspection *may not be reduced by agreement*.

16. Disclaimers or Limitations of Liability in an Agreement to Conduct a Home Inspection

The Bill provides that no home inspector may include, as a term or condition in an agreement to conduct a home inspection, any provision that disclaims the liability or limits the amount of damages for liability of the home inspector for his or her negligence or intentional wrongdoing.

The substitute amendment does not contain this provision but provides, instead, that no home inspector may include, as a term or condition in an agreement to conduct a home inspection, any provision that disclaims the liability or limits the amount of damages for liability, of the home inspector for his or her *failure to comply with the standards of practice prescribed in this subchapter or in rules promulgated under this subchapter*. ("This subchapter" refers to subch. X of ch. 440, Stats., which is created by the Bill and the substitute amendment.)

17. Discipline of Home Inspectors and Prohibited Acts

The Bill provides that DRL may make investigations or conduct hearings to determine whether a violation of the provisions created by the Bill or by any rules promulgated under the provisions created by the Bill has occurred. The Bill provides that the DRL may reprimand a home inspector, deny, limit, suspend or revoke a home inspector's certificate if it finds that the applicant or the home inspector has done any of the following:

- a. Made a material misstatement in an application for a certificate or renewal of a certificate.
- b. Engaged in conduct while practicing as a Wisconsin registered home inspector that evidences a lack of knowledge or ability to apply professional principles or skills.
- c. Subject to ss. 111.321, 111.322 and 111.335,² been arrested or convicted of an offense committed while registered as a home inspector.
- d. Advertised in a manner that is false, deceptive or misleading.
- e. Advertised, practiced or attempted to practice as a Wisconsin registered home inspector under another person's name.
- f. Allowed his or her name to be used by another person while the other person was practicing or attempting to practice as a Wisconsin registered home inspector.
- g. Subject to ss. 111.321, 111.322 and 111.34,³ practiced as a Wisconsin registered home inspector while the individual's ability to practice was impaired by alcohol or other drugs.
- h. Acted as a Wisconsin registered home inspector in connection with a transaction in which he or she was also a principal, appraiser or broker without full disclosure to and the written consent of all parties to the transaction.

2. *Section 111.321, Stats.*, provides, in pertinent part, that no licensing agency or other person may engage in any act of employment discrimination against any individual on the basis of arrest or conviction record. *Section 111.322, Stats.*, provides, in pertinent part, that it is employment discrimination to refuse to license any individual because of arrest or conviction record. *Section 111.335, Stats.*, provides, in pertinent part, that it is not "employment discrimination because of arrest record" to: (a) request an applicant for a license to supply information regarding a record of a pending charge; (b) refuse to license an individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the licensed activity; or (c) to refuse to license or bar from licensing, any individual who has been convicted of any felony, misdemeanor or other offense, the circumstances of which substantially relate to the circumstances of the licensed activity.

3. *Section 111.321, Stats.*, provides, in pertinent part, that no licensing agency may engage in any act of employment discrimination against any individual on the basis of use or nonuse of lawful products off the employer's premises during nonworking hours. *Section 111.322, Stats.*, provides, in pertinent part, that it is employment discrimination to refuse to license any individual based on use or nonuse of lawful products off the employer's premises during nonworking hours. *Section 111.34, Stats.*, contains provisions which generally prohibit employment discrimination because of handicap and sets forth exceptions to that prohibition.

i. Performed, or agreed to perform, for compensation any repairs, maintenance or improvements on any property less than two years after he or she conducts a home inspection, without the written consent of the property owner given before the home inspection occurred.

j. Prevented or attempted to prevent a client from providing a copy of, or any information from, a home inspection report done by the Wisconsin registered home inspector in connection with a transaction to any interested party to the transaction.

k. Failed to provide a home inspection report to a client by the date agreed on by the Wisconsin registered home inspector and the client or, if no date was agreed on, within a reasonable time after completing the inspection.

l. Paid in full or in part, for a home inspection, a fee, a commission, or compensation as a referral or finder's fee, to any person who is not a Wisconsin registered home inspector.

m. Violated this subchapter or any rule promulgated under this subchapter.

The substitute amendment contains the same provisions, except that item h. reads as follows:

h. Acted as a home inspector in connection with a transaction in which he or she is also an appraiser or broker.

In addition, the substitute amendment does not contain item l., relating to kickbacks. However, the substitute amendment does contain prohibitions against kickbacks, as described in Section 11., above.

18. Procedure and Penalties

The Bill and the substitute amendment contain identical provisions regarding the discipline and penalties which may be imposed against home inspectors by DRL and the procedures which DRL must follow when imposing discipline or penalties against home inspectors. Specifically, the Bill and the substitute amendment provide that if DRL finds that a home inspector has violated any provision of subch. X of ch. 440, as created by the Bill or the substitute amendment or rules promulgated by DRL, the department may do any of the following:

a. Reprimand the home inspector or deny, limit, suspend or revoke a home inspector's certificate. (The certificate is the home inspection credential issued by DRL.)

b. Assess against the home inspector a forfeiture of not more than \$1,000 for each separate offense.

c. Place a copy of any complaint received by DRL against the home inspector, the inspector's response to the complaint and a copy of any records of the department concerning the complaint in a registry information file established by DRL. The Bill and the substitute amendment set forth the procedures to be followed by DRL if it chooses to establish a registry information file.

The Bill and the *substitute amendment* provide that DRL may, as a condition of removing a limitation on a home inspector's certificate or of reinstating a certificate that has been suspended or revoked, do any of the following:

a. Require the home inspector to obtain insurance against loss, expense and liability resulting from errors and omissions or neglect in the performance of services as a home inspector.

b. Require the home inspector to file with DRL a bond that is furnished by a company authorized to do business in the state and is in an amount approved by the department.

19. Annual Report to be Submitted by DRL

The Bill does not require DRL to submit an annual report to the Legislature.

The substitute amendment requires DRL to submit an annual report to the Legislature that describes all of the following:

a. The number of home inspectors who are registered in Wisconsin.

b. The number and nature of complaints regarding home inspections that are received by DRL from clients of home inspectors.

c. The number and nature of complaints regarding home inspections that are received by the department from persons who are not clients of home inspectors.

d. An estimate of the cost of complying with this subchapter that is incurred by home inspectors.

e. The cost incurred by DRL in carrying out its duties relating to home inspectors under subch. X of ch. 440, Stats., as created by the substitute amendment.

20. DRL Advisory Committee

The Bill directs the secretary of DRL to establish a committee to advise DRL in promulgating rules relating to the regulation of home inspectors. The committee is to consist of five home inspectors and three public members, and the secretary of DRL, or a person designated by the secretary, is to serve as the nonvoting chairperson of the committee.

The substitute amendment contains the same provisions as the Bill, except that the substitute amendment provides that there are to be *six home inspectors*, rather than five, on the committee.

21. Sunset Provisions

The Bill provides that subch. X of ch. 440, Stats., as created by the Bill, does not apply after June 30, 2003. The Bill further provides that DRL must promulgate rules establishing a

procedure for DRL to review whether the continued registration of home inspectors after June 30, 2003, will serve the interests of the public and the home inspection profession. The Bill requires DRL to conduct the review no later than June 30, 2000, and provides that DRL may propose legislation to repeal or extend the sunset date specified in the Bill.

The substitute amendment does not contain these provisions.

MM:wu:rv:ksm;wu

Vote Record

Assembly Committee on Housing

Date: 2/4/98
 Moved by: Wieckert Seconded by: Morris-Tatum
 AB: 334 Clearinghouse Rule: _____
 AB: _____ SB: _____ Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: LRBs0339/5 (noted on page 8, lines 17-19 to be deleted) LRBs0339/6 is the corrected asa - use on report and record.
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- | | |
|--|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input checked="" type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrence |
| | <input type="checkbox"/> Confirmation |

Committee Member	Aye	No	Absent	Not Voting
Rep. Carol Owens, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Steven Foti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Daniel Vrakas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Steve Wieckert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Johnnie Morris-Tatum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. John La Fave	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Leon Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tammy Baldwin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>9</u>	<u>0</u>	<u>0</u>	<u>0</u>

* Chair asked unanimous consent for introduction of ^{assembly} substitute amendment LRBs0339/5. **GRANTED**

Motion Carried Motion Failed

Vote Record

Assembly Committee on Housing

Date: 2/4/98
 Moved by: Foti Seconded by: Kedzie
 AB: 334 Clearinghouse Rule: _____
 AB: _____ SB: _____ Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- Passage *(as amended)*
 - Indefinite Postponement
 - Introduction
 - Tabling
 - Adoption
 - Concurrence
 - Rejection
 - Nonconcurrency
 - Confirmation

Committee Member	Aye	No	Absent	Not Voting
Rep. Carol Owens, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Steven Foti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Daniel Vrakas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Steve Wieckert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Johnnie Morris-Tatum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. John La Fave	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Leon Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tammy Baldwin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	9	0	0	0

Motion Carried

Motion Failed



**WISCONSIN
REALTORS®
ASSOCIATION**

4801 Forest Run Road, Suite 201
Madison, Wisconsin 53704-7337
608-241-2047 • in WI 1-800-279-1972
Fax 608-241-2901 • E-mail wra@wra.org
URL <http://www.wra.org>

DAVE STARK, GRI, President

WILLIAM MALKASIAN, CAE, Executive Vice President

TO: Assembly Housing Committee

FROM: Michael Theo, Vice President for Public Affairs

DATE: February 3, 1998

RE: AB 334 – Regulation of Home Inspectors

The Wisconsin REALTORS Association (WRA) strongly encourages your support for AB 334 as amended by Assembly Substitute Amendment 1 – legislation regulating Wisconsin home inspectors.

Since the October 16, 1997, public hearing, Representative Vrakas has facilitated numerous meetings aimed at finding a consensus between opponents and proponents of the bill. ASA 1 represents that consensus and thus enjoys the full support of the WRA as well as the Wisconsin Association of Home Inspectors.

Also, since the public hearing, the Attorney General's office has also announced its support for the legislation, joining the Department of Regulation and Licensing which remains a strong supporter of the bill.

Changes in the Substitute Amendment

The discussions that led to the consensus embodied in ASA 1 focused on how to insure consumer protection without exposing inspectors to unreasonable liability. ASA 1 achieves the necessary balance by clarifying inspection duties required of state registered inspectors. Most importantly, the substitute amendment limits inspectors' liability to the standards of practice defined in the bill and the subsequent administrative rules. This language recognizes that a home inspector is only required to conduct an inspection for all observable defects and is not required to conduct an invasive, technically exhaustive analysis.

ASA 1 also changes the bill from "voluntary" to "mandatory" registration. This point was raised by the Department of Regulation and Licensing and agreed to by all the parties as an important key to protecting consumers.

Finally, ASA 1 removes the sunset provision contained in the original bill and replaces it with a detailed review by the Department regarding the effectiveness of the regulations.

Conclusion

AB 334, with the adoption of ASA 1, addresses all the major concerns raised by individuals and organizations that testified before the committee in the fall. We encourage your support for this important, pro-consumer legislation.

February 1, 1998

FEB 1 1998



Representative Carol Owens
Assembly Housing Committee
P.O. Box 8953
Madison, WI 53708

Dear Representative Owens:

We, the members of the South Central Wisconsin Council of Home Inspectors (SCWCHI), are writing to support legislation regulating Home Inspectors in Wisconsin. ***It is our concern that all parties, involved in a real estate transaction, receive fair and equitable treatment under the Law.*** Assembly Bill 334 and Senate Bill 186 presently before your committee does not fully meet that criteria. It is our concern that these bills reflect more of the interest of the ***Wisconsin Realtors Association***, than that of Home Inspectors and the Home Buyers of Wisconsin.

The South Central Wisconsin Council of Home Inspectors was formed by area home inspection companies in order: ***to promote professionalism in the home inspection industry through group dynamics and accountability; to provide educational information and counseling to member inspectors; and to provide an avenue for two-way communication between home inspectors and people outside the industry.*** Members of SCWCHI are affiliated members of both the Greater Madison Board of Realtors and the Wisconsin Realtors Association.

We know that you have the best interest of Wisconsin citizens in mind. We, the members of SCWCHI have the same concerns.

Sincerely,

AmeriSpec Home Inspection Service

Michael Gebben

MTT Consultants

Nick Smith

Home Check, Inc

Gary Mason

Assurance Inspection Service

Dick Horan

Madison Code Review

Steven Callaway

Home Team Inspection Service

Nathan Johnson

Home Inspection Service

Todd Hanson

EMF Home Inspections

Mark Fredenberg

Newcomers Inspection Service

Mark Jankowski

Residential Inspections

Dan Schilling

Construction Consulting Services

Norbert Lovata Ph.D.

Troia's Home Inspection Service

Jim Troia

FEB 2 1998

Zibrowski, Jacque

From: Gary D. Mason[SMTP:garymason@hotmail.com]
Sent: Sunday, February 01, 1998 9:12 PM
To: Rep.Owens
Subject: AB334 and SB186

February 1, 1998

Representative Carol Owens
Assembly Housing Committee
P.O. Box 7882
Madison, WI 53707

Dear Representative Owens:

We, the members of the South Central Wisconsin Council of Home Inspectors (SCWCHI), are writing to support legislation regulating Home Inspectors in Wisconsin. It is our concern that all parties, involved in a real estate transaction, receive fair and equitable treatment under the Law. Assembly Bill 334 and Senate Bill 186 presently before your committee does not fully meet that criteria. It is our concern that these bills reflect more of the interest of the Wisconsin Realtors Association, than that of Home Inspectors and the Home Buyers of Wisconsin.

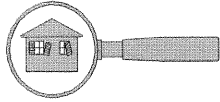
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We know that you have the best interest of Wisconsin citizens in mind. We, the members of SCWCHI have the same concerns.

Sincerely,

AmeriSpec Home Inspection Service
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Mark Fredenberg
Newcomers Inspection Service
Mark Jankowski
Residential Inspections
Dan Schilling
Construction Consulting Services
Norbert Lovata Ph.D.
Troia's Home Inspection Service
Jim Troia



Residential Inspections

1-13-98

JAN 13 1998

Carol 1054

SAK

7125 Pagham Drive, Madison, WI., 53719 (608) 274-2747

TO: Dan Vrakas
FROM: Dan Schilling
DATE: January 12, 1998
RE: Suggestions/concerns about WRA response letter of Dec. 23, 1997.

Page 1) WRA emphatically stated, and I quote this,

“We believe the issue of the duty to inspect for hazardous substances is already fully addressed in AB334 at s.440.975(6), which reads:

440.975(6), This section does not require a home inspector to do any of the following:
(m) Inspect for the presence of any suspected hazardous substances.

Dan, if what they say is indeed truth, in that it is “already fully addressed”, why then would we be listening to them as they try to keep contrary language in three other areas of this bill? If I were a defendant in a frivolous law suit, this would represent “three to one odds” that I and my insurance company would lose big time. I would appreciate a clear answer from you on this.

Page 2) The very suggestion that we should have additional “health” language in our bill, simply because realtors do, is erroneous when interpreted. Please consider:

A. The obvious implication for a realtor is that they should not “knowingly withhold” health hazard information from potential buyers. Perfectly fair and very understandable, isn’t it? Agents have the benefit of researching this information on the property and communicating directly with the seller who possesses this knowledge. Plus, they are receiving commissions which are 10 to 200 times higher than a home inspector for doing so.

B. The implication for a home inspector is totally different, simply because we are “inspectors”. Any judge would immediately hold us to much higher standards implicit with what we do. Home inspectors do not have the same privilege of knowing the history of the property and of direct communication with the sellers who possess this knowledge.

Dan, I am sure you can see that this issue of making home inspectors ambiguously liable for health inspections is unreasonable even though the mentioned clause for agents is perfectly understandable. Also, if the agent knowingly broke the disclosure law, why should a home inspector be liable for it? Home inspectors will never accept becoming “implied” health inspectors. The bill needs to be limited to what is required of home inspectors, not forcing liability (direct or implied) for items not required.

Page 3) The WRA has again, inappropriately, suggested that home inspectors are not interested in consumer protection but rather inspector protection. Let's look for truth by way of simple illustration. If the real wolf were not devouring the sheep, we would not have a need for shepherds, would we? A wolf in sheep's clothing is nothing new, even children learn of them in fairy tales. The question is... Will the real wolf, please stand up? I for one inspector, will not tolerate being accused by the WRA when we all know who has been taking advantage of consumers! It should be obvious that if the current bill were truly about consumers, we would have consumers and home inspectors working together. Instead, we have the WRA trying to railroad a bill to the floor. It is clearly a *blatant* conflict of interest to have the WRA involved in a bill for consumers and home inspectors. Home inspectors ARE for consumer protection. That is what we do. It is also evident by the fact that home inspectors have acquiesced to almost everything else in the bill.

Page 3) Concerning liability for possible cases of inspector negligence. There is room for agreement here if the language were worded properly. I offer the following suggestions for drafting language that will work for everybody, providing the WRA has no ulterior motives:

1. It only makes sense that inspectors should assume some liability for what they "do". It also should make perfect sense to everyone, that liability should not be directly stated or even implied concerning what home inspectors are not required to do.
2. Inspectors must inspect 400-500 components on an average home. It is therefore *unrealistic* to assume every single defect could be discovered during a standard home inspection where technically exhaustive inspection is not requested or being paid for. The bill must incorporate language that states: "A home inspector is liable, only when a defect can be proven to have been clearly visible and in existence at the time of the inspection and would have had a significant influence on the decision to purchase had the client been made aware." I think inspectors would agree with this.
3. Currently, home inspectors carry insurance to cover gross acts of negligence. This is the same liability they should continue to have, and I believe are willing to accept, in AB334. Most inspectors carry a \$1,000.00 deductible. Perhaps we could use this as a bench mark for determining the difference between a significant act of negligence and a minor act. NOTE: A benchmark established in the bill would also make it easier for registering complaints and implementing penalties through the department. It would eliminate the nuisance of frivolous complaints. I also believe we should make it mandatory that inspectors carry insurance or show proof of insurability. (I think NJ requires 10K in asset ownership.)
4. Provided that the language was written perfectly clear (as it should be), there would be no need for a "time" limitation or a "monitory" limitation on this liability. This should make it much easier to write the language and eliminate infringement on other established laws.

Dan, the health issue is very clear and easy correct in the existing draft. The general liability will be tougher to write in clarity but I am sure it can be done. Lastly, both ASHI and NAHI standards require 250 fee paid inspections to be conducted before becoming a registered home inspector. I trust Wisconsin will have a standard for "on-site" experience beyond simply passing an exam.

cc: Mike Theo, Rick Staff, Janet Swandby, Ed Marion, Wisconsin Association of Home Inspectors, Members of the South Central Wisconsin Council of Home Inspectors, Housing Committee Representatives.



Residential Inspections

7125 Pagham Drive, Madison, WI, 53719 (608) 274-2747

TO: Housing Committee Representatives
 FROM: Dan Schilling
 DATE: January 2, 1998
 RE: AB334 (Home Inspectors Bill)

Dear Representative,

As a Wisconsin home inspector who is in touch with many inspectors in our state and across the country, I have great concern for the pushing through of AB334 without due consideration to the unrealistic liability it includes for home inspectors. Inspector liability desired *only* by the wolves of Wisconsin Realtors Assoc.

What thinking person would allow wolves to *maneuver* shepherds out of business when all the sheep are safe? Even more unbelievable, the wolves are maneuvering shepherds in the name of "sheep protection"! So it is with the WRA being involved in the inspectors bill! You have got to understand this. Some home inspectors have already sold or gone out of business because of the absurd liability the WRA is trying to push through. Many existing inspectors are talking about what they will do for their families when they are pushed out of business by this bill, and others are beginning to get downright angry!

Home inspectors have already agreed to regulation even though there are no statistics to validate a need for it. This of itself is a milestone. We have already agreed to 1) state registration, 2) a strict code of ethics, 3) state imposed penalties, 4) trade standards, 5) state exams for entrance, 6) continuing education. What we will "never" agree to is this absurd liability being pushed on us by the WRA in the current wording of AB334.

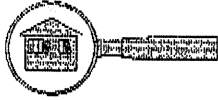
Consumers are willing to spend \$2-300.00 for a comprehensive overview inspection of the structural and mechanical components of a home. They should not be "forced" because of law, to pay us thousands of dollars for undesired/unrequested work; in response to our being "forced" to assume foolish liability. Namely, liability associated with health inspections and technically exhaustive inspection work.

Example: The bill clearly says that home inspectors are not required to inspect for substances hazardous to health during a structural/mechanical home inspection, yet, the WRA is insisting on language that says we are. WRA wants to keep this language in the bill, in three other areas. Would you want to be paying legal fees to attorneys to defend you against such ambiguous language? One trip to court could put a home inspector right out of business! We are not health inspectors!

If consumers will not pay home inspectors for what the law demands of us, then home inspectors will be GONE, and the WRA will again have a feeding frenzy on their "cash cow" consumers! Their dream comes true! The realtors I work with (those who truly care about buyers), are not for the bill the way it is written. I was even told by one famous and honest realtor in Madison, "Don't let the WRA get away with it!"

The WRA is interested in driving a wedge between home inspectors and consumers because of their obvious greed and lust for control. What these young bucks do not have is the foresight to understand the ramifications this will have on the entire Wisconsin real estate market. Home inspectors will not tolerate it.

If this bill goes to the floor the way it is, I fear we may lose our opportunity of *cooperation* with Wisconsin home inspectors, damage the real estate industry, as well as lose any hope for the good aspects of the bill. This could potentially be the *blunder of the year* for state representatives. Please read the attached letter written to Dan Vrakas. I would be glad to sit down and speak intelligently with any of you who will talk.



Residential Inspections

7125 Pagharn Drive, Madison, WI., 53719 (608) 274-2747

TO: Representative Dan Vrakas
FROM: Dan Schilling
DATE: December 31, 1997
RE: AB334

Dear Dan,

We believe the time has come for you to stop listening to the WRA's *dunghill* of double talk. They are simply playing a game of semantics while presenting language that gives the exact same bill. I do not know if they are truly as adolescent as they appear or if they simply feel they can continually wear you down until you cave in. Perhaps you are no stranger to this behavior, but I would be getting angry with them for "politely" treating you like a dolt. Surely, you must have enough experience to see through this.

On a brighter note, I am getting good feedback from inspectors concerning the bill. More and more inspectors seem to be in favor of it if it is properly written. The South Central Wisconsin Council of Home Inspectors will be meeting again on January 8, 1998. We will be allocating some time to discuss the bill.

- I want to be perfectly clear regarding any thoughts of pushing this bill through on Jan 8. If you push this bill through committee and on to the floor just to satisfy the greed of the WRA, you will be doing so in the face of hundreds of Wisconsin home inspectors whose families and livelihoods are threatened and at the same time while *removing* any hope of "true" consumer protection. Personally, I would perceive this as a much greater danger than the yelling of two young men behaving like children, who want to have "their way". Please don't "rush" this bill into major embarrassment. Just because you have the votes to "push" it through, does not make it the intelligent thing to do at this time!

I have been told by both republican and democratic senate offices that they will not consider a bill that has not been agreed upon at your level. At the senate hearing, Gwen Moore asked me specifically to work with you to resolve the unrealistic, liability issues of AB334.

There are no screaming consumers who have been victimized by home inspectors! The only ones yelling are the boys from WRA. There is absolutely no reason to rush a poorly written bill to the floor. (Unless of course you are only a WRA pawn. I hope not.) You know full well that the way this bill is written, it is not for home inspectors or consumers. Period. The only beneficiaries will be the WRA and ambulance attorneys. This is why they are pushing you so hard! It is time for you to stand up and be a man here!

We admit that most home inspectors are novice at legislation, but we are not going to play dead for you or the WRA. We are more than willing to work with you in any way we can with the understanding that as our "representative", you will be doing what is best for consumers and home inspectors rather than the WRA. However, the very appearance that you are brown nosing yourself for the WRA in the face of all reality and common sense, certainly makes you suspect. In fact, to be perfectly honest, we do not know whether your allegiance is more focused on a political contribution or on what is best for the people of Wisconsin. Therefore, we are in process of uniting every home inspector in the state. We will be using every political connection, media, and other resources to make sure home inspectors, their families and the consumers we protect, do not get "screwed", by you or WRA.

Dan, this is a bill for the home inspectors and consumers of Wisconsin. It is a direct conflict of interest for realtors to dictate here. It is up to you to do what is best for the people of Wisconsin.

cc: WAHI (Wisconsin Association of Home Inspectors), Janet Swandby, Ed Marion, SCWCHI (South Central Wisconsin Council of Home Inspectors), Senators Moore, Plaszke, Grobschmidt, Winick, Fitzgerald, Weedon, Representatives Owens, Wieckert, Foti, Kedsie, Morris-Tatem, Lafave, Young, Baldwin.

NOV 25 1997



ANTHONY J. STASKUNAS

STATE REPRESENTATIVE • 15TH ASSEMBLY DISTRICT

November 25, 1997

Representative Carol Owens, Chair
Assembly Housing Committee
105 West, State Capitol
Madison, WI HAND DELIVERED

Dear Representative Owens:

James Maletta, a constituent of mine who is associated with a home inspection company, recently wrote me with his analysis of AB-321 and AB-334. Since both of these bills are currently before the Assembly Housing Committee, I am forwarding his comments to you for your consideration.

Thank you for considering Mr. Maletta's analysis.

Sincerely,

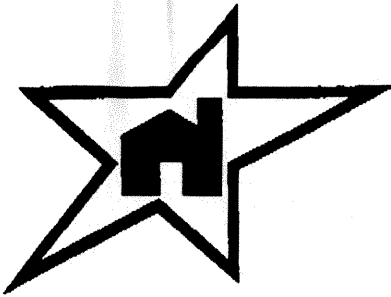
TONY STASKUNAS
State Representative
15th Assembly District

TS:mjt

Enclosure

OFFICE: P.O. BOX 8953 • MADISON, WI 53708 • (608) 266-0620
HOME: 2323 SOUTH 80TH STREET • WEST ALLIS, WI 53219 • (414) 541-9440
LEGISLATIVE HOTLINE: (MESSAGE SERVICE) 1-800-362-9472 • FAX: (608) 266-7038

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**NORTH STAR HOME INSPECTION COMPANY**

2376 South 63rd Street
West Allis, Wisconsin 53219
(414) 543-1099

The Guiding Light For Home Buyers

November 9, 1997

Mr. Anthony Staskunas, State Representative
P.O. Box 8953
Madison, WI 53708

Dear Tony:

My thanks to you and your staff for the prompt response to my recent request for information on the Assembly bills regarding home inspection regulation. There is quite a bit of difference between the two bills and in my view both of them are lacking in certain aspects. I would like to share a few ideas with you in the hope of stimulating some discussion toward a meeting of the minds on some legislation which addresses chief concerns of both parties without creating another bureaucratic entity and more regulation than is really needed. In my opinion, AB321 does not do enough to protect Wisconsin consumers from potential problems with inadequate home inspections, but AB334 does too much to regulate a profession which has a good track record with consumers.

Let me begin by commenting on AB321. In Section 1(3), I believe it is inappropriate for an inspector to pay any kind of fee, commission or rebate to any source for inspection referrals even if the client is informed. This section should be amended to prohibit such practice without any exception. As a consumer protection measure, this bill should also include a requirement that the inspector must carry at least a minimum level of general and professional liability insurance in order to practice as a home inspector. I would suggest a level of \$300,000 as a minimum requirement. As an additional consumer protection, AB321 should be amended to state that no home inspector may limit his/her liability for negligence to less than \$1,500 or 10 times the inspection fee paid--whichever is greater. I understand some inspectors attempt to limit liability to a refund of the fee paid. This is hardly adequate or fair to the consumer.

On the other side of the liability issue is the position of AB334. This bill does not allow a home inspector to limit liability for error or omission at all. This is a position most of us in the profession feel is not at all reasonable. One could reasonably compare home inspection to insurance. Even a well financed insurance company is allowed to put limits on how much coverage it will provide a homeowner for the premium paid. The home inspector should be expected to back his/her work to a reasonable limit. The seller of the property (and to some degree the Realtor) needs to be maintained as the party with primary responsibility for disclosure of the real condition of the property. After all, the seller has had more contact than the home inspector with the property (most of the time). At 6% commission, a broker will get \$6,000.00 for selling a \$100,000 house. The inspector will typically get \$200 to \$250 for the inspection on the same property. There needs to be economic justice in distributing liability risk among the parties involved in a transaction. AB334 attempts to shift most of the liability for property defects onto the party which in fact has the least financial benefit in the transaction.

Market research done for Wisconsin Electric as part of its effort to set up TrueView Home Inspection indicates that the average home inspector in this area does about 200 inspections per year. The typical fee is about \$200. This means that the typical home inspector is doing about \$40,000 in gross receipts for

inspections each year plus fees for other services such as Rental weatherization, radon, lead paint testing etc. which some offer in addition to regular inspections. It is pretty common for an inspector to have business operation expenses of around 30% of gross receipts annually. The typical home inspector is not the kind of deep pockets operation that can afford to offer a consumer an inspection with unlimited liability. For example, my own E&O insurance premium runs a little over \$2,500 per year to cover just me. This is expensive enough, but if AB334 is put into effect as written, you can be sure the premiums will go up substantially.

This increased cost will be passed on to the consumer. Its effect will be to make home inspections substantially more expensive and possibly even unaffordable to some groups. I do a great deal of work with lower income first time home buyers through several home buyer counseling agencies in this area. These people are typically purchasing from lower priced, older housing stock which has often been neglected by prior owners. These buyers need the protection of a professional home inspection. I can afford to give it to them now at a discounted fee with a limit of liability at \$2,000.00. I know for a fact that will not be the case under AB334. This is a hidden cost to Wisconsin consumers which does not appear in the fiscal estimate for this bill.

In reading AB334, I find very little to which I object. Most of the bill itemizes what will and will not be done by a home inspector. This detail is very similar to the standards of practice and code of ethics of such professional associations as the American Society of Home Inspectors (ASHI) and the National Association of Home Inspectors (NAHI). Much of this could be incorporated into AB321 as it will probably end up as part of the promulgated rules anyhow. I think section 440.977 of AB334 should be part of any bill passed. It should also contain a clause forbidding a Realtor or seller from making an inspection report available to prospective buyers without the written permission of the home inspector. I have had the interesting experience of getting phone calls from people who went to an open house for a home and were given a copy of an inspection report I wrote for some prospective buyers about 6 weeks prior. The seller informed me that the real estate agent told her to print up copies and give it out. This sort of practice exposes the inspector to liability from people who did not even pay for the service rendered. It is a violation of the confidential nature of the report. Both sides of this issue need to be addressed.

In AB334 440.978 (sub. 2b) there is a phrase "evidences a lack of knowledge . . ." I think this phrase is too ambiguous and it opens up the inspector to the possibility of vindictive action by a Realtor or seller who disagrees with an inspector's opinion on one particular item even if it is not a major item. It would be more reasonable to phrase it something like this: "Engaged in conduct . . . that evidences a pattern of professional ignorance or lack of ability to apply professional principles or skills." If a person can document a pattern of inappropriate behavior rather than an isolated incident this would certainly be grounds for disciplinary action.

In AB334 440.798(2h) it makes reference to acting as an inspector when one is a broker. I think that in any final bill passed, licensed brokers or real estate agents should not be permitted to practice as inspectors no matter what their relation to the transaction. This kind of overlap of functions in the transaction only serves to further confuse buyers and it is open to abuse. Dual agency is nutty enough among Realtors, we do not need it among home inspectors. Realtors should not be home inspectors and home inspectors should not be Realtors.

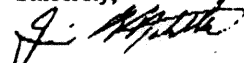
AB334 bestows upon those who register the right to use the title "Wisconsin Registered home inspector". It also forbids non-registered inspectors from using any title which might give the impression one is registered with the state when one is not. The National Association of Home Inspectors has a special upper level professional designation RRI for Registered Real Estate Inspector. This title pre-dates this bill, but the way it is written, any inspector who advertises his/her RRI designation is open to disciplinary action under this bill. This bill does not make registration mandatory for all home inspectors. With the increased liability exposure, examination requirements, fees and paperwork it certainly does not offer an established inspector any reason to register.

There is one last issue which needs to be addressed. I believe it is most appropriate to give the Dept. of Agriculture, Trade and Consumer Protection the power to promulgate and enforce rules under a revised AB321 since this bill is a consumer protection measure and home inspection is a consumer protection practice. AB334 proposes that the Dept. of Regulation and Licensing oversee home inspection. It is my sense that the Realtors have more influence in DORL. Putting home inspection here will be like handing the chickens to the fox.

Given the minimal number of complaints against home inspectors by consumers in Wisconsin, I think that AB334 is the equivalent of using a 30.06 rifle to get a mouse! On the other hand, I have seen a few inspection reports of some people who claim to be home inspectors and I have found them to be less than adequate and I have heard tales from some Realtors. Given the number and degree of weaknesses in AB334, what I think would be most beneficial to Wisconsin home buyers is an "enhanced" version of AB321 making it mandatory for everyone who wants to practice as a home inspector to meet defined standards of practice and code of professional conduct fleshed out by merging the standards section of AB334 with AB321. AB321 should also make it mandatory for all practicing home inspectors to carry a minimum level of general and professional liability insurance. AB321 should also be amended to include a subsection on liability incorporating section 440.977 of AB334 as well as permitting some limitation of liability as I suggested above. I do not think the present level of consumer complaints justifies the kind of expenditure of Wisconsin tax money being proposed in the fiscal estimate for AB334. We can filter out the poorer practitioners of the home inspection profession and provide just the right amount of consumer protection for the citizens of Wisconsin. The changes I have suggested for AB321 will accomplish this. It would make sense to look at an enhanced version of AB321 as a first effort. If it proves to be enough by itself, then we do not need to enact more expensive regulation. If after a few years we find it is not sufficient, then we can take additional measures.

I have listened to the discussion on this matter for years now. Some resolution is needed. Would it be feasible to draft compromise legislation and present it to both camps and get them to support it? I would welcome your feed-back on my comments. Maybe we could work together on a bill which will make sense for Wisconsin citizens. I will look forward to hearing from you.

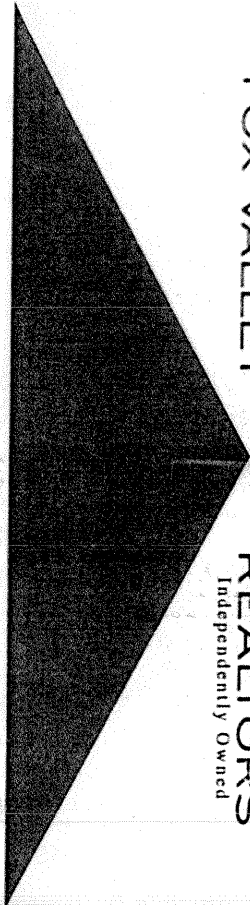
Sincerely,



Jim Malerita

Shorewest

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Fax: (920) 722-5882

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Sharron A. Huss
SALES ASSOCIATE

NOV 24 1997

Rep. Carol Owens:
P.O. Box 8952
Madison, WI 53708

Nov. 17, 1997
not my district
talked 11-25
just need a hearing
I called
11/26/97
9:15

Dear Carol:

FOX VALLEY SALES OFFICE
1486 KENWOOD DRIVE
MENASHA, WISCONSIN 54952
OFFICE: (920) 722-7070
FAX: (920) 722-5882
INTERNET: <http://shorewesthomes.com>

I'm asking for your support of
AB³³⁴ Sh 186, to protect Housing

Shorewest
FOX VALLEY REALTORS
Member of the National Association of Realtors



Consumers by requesting home
Inspectors!

Having had numerous experiences with less
than qualified home inspectors who have "killed
the deal," I feel it is most imperative you
support this legislation.

Sincerely,
Sharon A Huss
92 Spenced Village Court
Appleton, WI 54914

(P.S. I'm a Grand Chute Supervisor)

NOV 17 1997

11-17

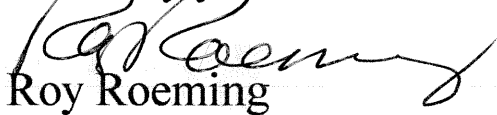
Dear Representative:

Nov.13,1997

I am writing to you today to urge you to support Bills AB 334 and SB 186. After reviewing these two bills I hope you agree they will protect Wisconsin housing consumers.

I am a licensed realtor/broker in the state of Wis. and I believe we need to establish a state registry for home inspectors in DRL. The consumers in the state of Wisconsin represented by you need to be protected during what is the most likely single biggest economic purchase of their lives. Thank you for your time and continued support .

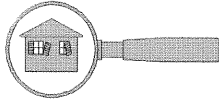
Sincerely yours



Roy Roeming

Roy Roeming
5419 36th Drive
Fremont, WI. 54940

put with bill
11-13



Residential Inspections

7125 Paghams Drive, Madison, WI., 53719 (608) 274-2747

Urgent !

Dear Representatives,

If you vote tomorrow to continue on with AB334 without proper consideration of the liability issues of this bill, you will be putting the entire home inspection industry "out of business". This is a reality and should not be "rushed" through.

Yesterday, at the Senate Hearing, Senator Moore requested that I meet with the Wisconsin Association of Home Inspectors and the Wisconsin Realtors Association, in the presence of Representative Dan Vrakis, to work out the issues of liability. This meeting has not even been scheduled, yet Dan Vrakis is considering forwarding the bill again, still loaded with all of the "sue the inspector" language from the WRA. **This cannot happen!**

I hope that you have read the report I delivered to you on Monday, at least the pages concerning the health and liability issues. There is no way home inspectors will be able to stay in business if you condone this bill. There must be more consideration of what is right and fair for home buyers and the inspection industry regarding liability. The amendments being made on Nov. 12, 1997, have absolutely nothing to do with the detrimental affects of this bill on the industry. The affects that will literally KILL the inspection industry and remove true protection for the consumers.

If you vote for it.

You will be removing the last chance inspectors have to input a "direct" voice in working out a sensible solution to the liability issues. Home inspectors are not so stupid as to let this bill ruin our families. If pushed, the consumer will be the first to suffer because of your action. In addition, there will be organized revolt toward this policy and serious consequences to real estate sales in Wisconsin.

If you vote against it.

Voting against it tomorrow will buy the time needed to remove the obstinacy of the WRA and force them to talk directly about the liability issues in this bill.

Republicans Please I am seriously hoping and trusting that my party has the intelligence to not turn their backs on the home inspection industry and our families and to allow for additional conversation on the liability issues.

Dan Schilling

Residential Inspections

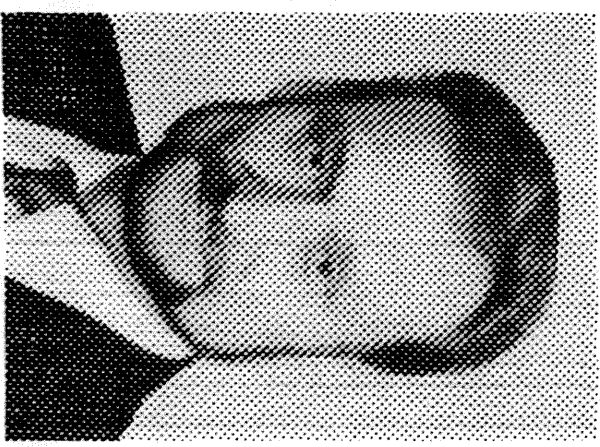
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Dan Schilling / Inspector

Office (608) 274-2747

7125 Pagham Drive, Madison, WI 53719



NOV 10 1997

SAVE

Assembly Bill 334

(SB186)

Why it Will Never Work

If we are going to pass a bill that could potentially ruin the home inspection industry (as it has elsewhere), and thereby hurt the consumer (home buyer), and could inadvertently reduce home sales in Wisconsin, we need to be sure of how it is written "before" it is passed. We do not want to copy the devastating results that have occurred in other states from realtors trying to write the laws which regulate how their own goods are inspected.

If we are to have any regulation at all, it "must" provide fair protection for the practitioner and the consumer (home inspector and buyer). Not give the world to the Realtors at the expense of buyers and inspectors.

Read the following "common sense" information regarding AB 334:

1. Assumptions By the Department (Enlistment, revenues, costs to taxpayers)
2. Language Interpretation Issue / The Educational Issue
3. Two Completely Different Types of Inspections
4. Self-Policing Nature of The Home Inspection Industry
5. Low Standards vs. No Standards (The potential damage)
6. Ramification To All Concerned (The Consumers, WRA, Home Inspectors, Politicians)
7. Examples of Frivolous Claims Against Inspectors
8. The Health Issue
9. The Liability Issue
10. Recognizing The Real Need (Protecting the "buyers", not just the "sellers")
11. Possible Options For Fairness

Assumptions by the Department

(These might be better known as “false” assumptions.)

Assumption #1 Enlistment of Wisconsin Registered Home Inspectors

The department has written in their fiscal estimate that they believe that home inspectors will be signing up to become Wisconsin Registered Home Inspectors by the hundreds with an additional hundred every year.

According to the vote taken at the assembly meeting in October, nothing could be further from the truth. In fact, the vote was nearly unanimous “against” the bill. The only few willing to agree to this legislation were agreeable only with major changes and with crystal clear definition to the meanings of all the terminology used in the bill.

Assumption #2. Created Revenues

The department has assumed an increase in revenue of \$18,450.00 from the newly created “credential” fees. This is inaccurate by default, as no inspector in their right mind would consider enlisting.

Assumption #3 We’ll write “our own” regulation for just \$12,900.

First, it makes no sense to think we are saving money by trying to “reinvent the wheel” by writing standards and tests that are already available from national trade organizations. The department claims to be able to write all of the job analysis, all of the tests, all of the standards, all of the penalties and all of the regulatory laws, for just \$12,900. The price of a used car! Even veteran inspectors, who happens to know the business by the way, would not try to write this *Pandora’s Box* full of legislation for this fee.

Assumption #4. A new wing of government and regulation for only \$39,195.00 a year!

This departmental assumption is completely and utterly erroneous. Just consider for one minute, the cost of the Department of Commerce (old DILHR) energy program. With all of the employees and operational costs, its budget has to be at least a million or more. *And this is only for inspectors checking to see how thick insulation is or if a bead of caulk is needed!* Now we are talking about trying to “regulate” the “opinions” of inspectors concerning every type of building material, methods, components, permits, codes, etc. used over the last hundred and fifty years! Let’s get real about this cost issue. Now. Are we really going to run a regulatory branch of government like this, with all of the variations of “opinions” over every building product, component and method ever used, in every different situation, in every different type of house, with *one* government employee ???! Oh yes, this person is supposed to be able to handle all of the complaints too. Of which there is sure to be many with AB 334 because of poorly written, ambiguous laws that the attorneys will be on like vultures.

AB 334

Bill Language Interpretation Issue

This is a "critical" area to make sure that home inspectors do not have to *spend ten times their annual income* defending themselves against lawyers who want to interject their slants on interpretation of laws.

The law suits in other states where regulation was implemented have skyrocketed with projections of things getting even worse.

Ambulance Chasers? No... Crack Chasers!

In Milwaukee there is a group of lawyers and contractors working in coercion with each other, calling home buyers to solicit claims against inspectors for foundation cracks. Why? Because even though most all foundation cracks are structurally insignificant, they are still a breach in the original construction and can be made to sound "scary" to home buyers and judges. The contractors act as "expert witnesses" with the lawyers. A very profitable racket for the lawyers and the contractors who go back in to do the needless work! These basement operations are becoming popular in other states as well.

If the language in bill 334 is not explicit, these scams will be everywhere and the home inspection industry will not be able to afford to do inspections and protect the consumers. This would surly be a "backfire" of consumer protection.

As was pointed out at the assembly hearing, there are many words in the bill that have no definition. This could be disastrous.

AB 334

Educational Issue

First, let's be clear... Inspectors love education. Inspectors make their living sharing knowledge.

The state has not brought forth evidence to argue that governmental education programs will guarantee better inspections for the consumer. Those of us already holding various state licenses have seen incompetents get the same licenses. The state has also not demonstrated that a government run educational program will be an improvement over the education channels which are currently in place. These include a variety of both public schools such as MATC, private inspection schools and educational training through a number of trade associations.

If we must have state educational requirements, we can avail ourselves to good educational standards without the state having to start something from scratch and in essence, trying to re-invent the wheel. It would be very costly to the tax payer to start from scratch, as well as unnecessary. If the state is going to be "approving" anybody, it would be better for the state to approve those who have already demonstrated their competence in the professional arena or who have completed the educational standards of a renowned home inspection trade association or school.

Two Completely Different Inspections

The "Comprehensive Visual" Inspection

This inspection consists of a minimum, of a visual examination of the structure and major mechanical systems of a home. It represents the "opinions" of the buyer's chosen inspector, both in written report and those verbally reported during the inspection. The buyer is required to read and sign an inspection agreement before the inspection begins. This agreement, or contract, explains what the inspection "does" include and also disclaims liability for those things which are not included. This is the national standard for home inspections. This visual inspection is the national standard for a very simple reason, it is exactly what the consumer wants and is willing to pay for.

The "Technically Exhaustive" Inspection

This inspection assumes a significant amount of liability by all participants. The "technically exhaustive" inspection requires a large team of trade specialists working together with the "Wisconsin Registered Home Inspector" to officially certify in a collective written report, all findings, both informational and listed defects. These inspections would cost a Wisconsin home buyer a minimum of \$3000.00 and could easily go up to as much as \$6,000.00. While many inspection firms offer these inspections across the nation, not many consumers opt for them for two reasons. First, they have no need for this much information and secondly, they do not want to pay the price for this type of inspection. The money saved by not having a technically exhaustive inspection could overwhelmingly offset 99% of any defects that might show up at a later date. Consumers much prefer the comprehensive visual inspection with the liability disclaimers and have no problem understanding the need for the disclaimers.

In addition to the Wisconsin Registered Home Inspector who would be coordinating the technically exhaustive inspection, the following is a partial list of trade specialists who may be called in by the WRHI, to examine various components of the property *intrusively* inspected for the benefit of detailed sub-reports which would be included in the technically exhaustive, written report.

All types of municipal code inspectors
 Asbestos Abatement Contractors
 EPA Certified Lead Inspectors
 EPA Certified Radon Inspectors
 Geologist
 Land Surveyor
 Roofing Contractor
 Structural Engineer
 Environmental Specialist
 Electrical Contractor
 Plumbing Contractor
 Botanist
 Landscaper
 Historian

Masonry Specialist
 Pet Urologist
 Chimney Sweep
 Appliance Service Technician
 Cement Contractor
 Asphalt Contractor
 Allergist
 Professional Exterminator
 Heating, Venting, Air Conditioning Contractor
 Certified Energy Inspector
 Drinking Water Contaminants Specialist
 Painting and Wood Finish Contractor
 Septic and Sewer Line Specialist
 Records Researcher

AB 334 Self-Policing Nature of The Inspection Industry

Following communication with other inspectors on a national basis, the consensus is that legislation for the profession of "non-invasive, visual" home inspection, is not only "not" good, but it is unnecessary.

Home Inspection Industry Is Self-Policing in Three Different Ways:

The home inspection industry is completely "self-policing" by *default*. This is a real plus because it translates into no need for elaborate, governmental regulation.

First, A bad inspector would have his clock cleaned after just a few visits to small claims court. Instead of receiving referrals, he receives lawsuits. This is called self-extinction via lots of outgo with no income. This is an important part built in to the "self-policed" system of home inspection.

Secondly, If an inspector were to make one mistake, two at the most, he can be assured that he will be blackballed by realtors. He will no longer be referred by realtors but his reputation will spread about him at the weekly agent meetings in real estate offices. Bad inspectors *do not get referred* by most buyer's agents because it would be *stupid* for the reputation of a realtor to do so. This is also built in to the "self-policed" system of home inspection.

Thirdly, Inspectors have no desire to make a mistake or create a bad reputation that could hurt their business. Thus, always going beyond the call of duty. Inspectors also have a sincere desire to work things out with buyers if a complaint arises to avoid having an insurance claim; because after three such claims, he would no longer be able to get insurance. The few complaints that do come up, are easily handled directly by the inspector or if needed, in a small claim. All this without the need for another state government institution.

Regulate a Self-Policing Industry With No Complaints?

Because this industry is self-policed so well, the state has been unable to show a compelling need for licensing and regulation. Regulation would be both very costly and completely unneeded overkill.

Low Standards vs. No Standards

Which is more harmful to the consumer (who we are all supposed to be protecting), implementing low state standards or continuing with no state standards? Saying “low” instead of “no”, only sounds good on the surface. When one applies “common sense” thought to the question and considers what has happened in other states, a different conclusion is derived altogether.

Replace “Experience” with “class room test passers”.

We now have a select group of inspectors with experience, construction-type backgrounds, continued education and a sincerity to do a good job of protecting home buyers from unscrupulous agents and sellers. AB 334 will replace them with a mass of classroom “test passers”. By setting the standards low, the field is opened up to anyone who can pass a state test. Those of us who already hold various state licenses know that this is not hard to do. Let’s also not forget that the majority of defects we detect are from the “Wisconsin Registered Contractors”! We have seen incompetents get state licenses.

Many of us *blow off* our state credentials as being meaningless when it comes to a comprehensive inspection of used homes and try to help clients understand the importance of our backgrounds and experience in discovering defects on used houses. If 334 passes, we may next have to tell clients that being “Wisconsin Registered” is misleading and deceptive to the home buyer. This false assurance “credential” will be harmful to the consumer, not helpful.

This is what happened when these types of *low standards* were implemented in Texas. It brought in a massive influx of classroom “test passer” inspectors and tons of law suits. Is this what we want in Wisconsin? With low state standards, the amount of inspectors went from 300 up to 4000. 75% of the quality inspectors dropped out of business. While some realtors may have liked this (having plenty of *sueables* out there to refer), it ruined the home inspection industry and completely removed any worthwhile consumer protection! Passing a thoughtless bill like AB334 could just as easily damage the housing economy in Wisconsin. Unfortunately, because many realtors don’t like to have their “sales goods” marked “defective”, they will be quick to refer these inspectors as “the best” because they know they are *green* and probably won’t discover too much. Is this the kind of inspector you would want to inspect your largest investment?

When 334’s poop hits the fan, with all these new court cases (that do not exist now), these inspectors could also create a very bad name for the entire home inspection industry. This could launch us back into the dark ages of “buyer beware”. If a buyer does not feel he can trust the home inspector, what is he going to do?

Nothing To Keep Us From Going Beyond The Standards?

It is understood that there is nothing to keep us from going beyond these “minimal” standards but we know this difference will never be understood by home buyers who trust in this “official” state credential as meaning something important. Home buyers will no longer be relying on an inspectors good reputation and experience but will be “trusting the state” for their “registered” inspector; thinking that this “credential” will somehow give them complete confidence. They will be thinking that all “registered” inspectors are the same. Good inspectors will no longer be able to earn a professional wage and are already talking about going back in to one of the trades. Meanwhile, the “new breed” inspector will ruin the industry and bring harm to the consumers. Without any standards at all, we already have the best consumer protection possible. Perhaps not perfect, but the “best”.

Ramifications To All Concerned

1. The Consumer

The consumer is the one who is supposed to be protected. Yet, in spite of WRA's pretense of being concerned for the consumer, if AB 334 gets passed, the only one being protected will be the Realtor "seller". The consumer will only be protected if he has to pay \$3-6,000.00 for a technically exhaustive inspection. The home inspector is not going to offer any guarantees for the hundreds of components, on every used home, without being compensated for it. Then, 99% of the consumers are not going to get what they want (an affordable visual inspection) but will rather be forced to pay for a type of inspection they do not want or need.

2. The Wisconsin Realtors Association

The WRA will have a direct benefit from AB 334 because it allows them to keep all of their large commissions while shifting all of their liability on to the inspector. What they have been overlooking is that inspectors are not a stupid breed of people and will not simply accept this liability. If it is forced upon inspectors, they will have to demand a commensurate fee (\$3-6,000.00 per home) for doing technically exhaustive inspections with a team of specialists which will take all day long and require even more time to collect all the data of the inspections "OR" they will be forced to redesign their forms to claim all components as defective or in process of defection and thereby recommend that all of these components be examined by professionals in each of the areas. In either case, it will grind sales to a halt by spreading the inspection process out over a long period of time for thorough analysis and obtaining written reports and bids from every type of "specialist contractor" for every minor defect. Inspectors will not simply lay down for 334 and bare their necks for realtors!

3. The Home Inspection Industry

If AB 334 were passed, forcing all liability on the visual inspector and that inspector did not raise his fees to \$3-6,000.00 to allow him to bring in all the experts to work with him as a team, he would be immediately out of business. Trying to defend himself from hungry lawyers over even the tiniest defect that could occur at anytime after the home was inspected, could easily cost him 10-20 times what he earns on just one inspection. This degree of liability on every inspection is sure to put home inspectors out of business. (Who knows if this was an underlying thought by WRA?) And just imagine what would happen to the influx of fresh, "test passer" inspectors when this is opened up as an easy entry field with low state standards. Would you want an inspection by someone who "just passed a state test"? But, some realtors would be *quick* to recommend them because they will not discover much and the referring realtor surely won't care because this flock of inexperienced inspectors will be the sacrificial lambs, having their pants sued off!

4. The Politicians Who Support 334

If 334 is railroaded through as is, there is sure to be media coverage of public protest by the Home Inspection Industry. This would truly be a Pandora's Box of a bill. Being that this is largely a republican backed bill, even the governor may need a home inspection come election time.

Types Of Frivolous Claims Against Inspectors

Leaking Skylight The inspector point out water stains around a skylight. Says they are most commonly from condensation in the winter months and not a leak. Around the skylight area on the roof, he also reports a number of missing shingles. Two months later, during a heavy rain, there was a leak. In spite of it being written in the report, the buyer sends the inspector a letter saying she wants it repaired for free or he'll contact his lawyer.

Pond Under The House The inspector finds deep water in a crawl space in a lake home. With the access open, he shows the buyer and explains all his options to correct the problem. The buyer follows none of the advice. Even though it was in writing, he has his attorney sends letters to the realtor, the seller and the inspector; demanding \$6,500.00 for a new drainage system stating that his client was never told about the water.

\$1,250.00 Tube Of Caulk There is leakage from a shower enclosure. The seller disclosed it. The inspector explained how to properly caulk it. The buyer was intending on gutting the bathroom to install a tub anyway. There is no structural damage. The buyer later pulls up the vinyl floor covering and discovers that a small, 6"x6" area of sub-flooring material used to install the vinyl has become soft from water (he has been using the shower in the meantime). This wood is above the sound, structural flooring, yet below the vinyl floor covering. Disclaimer says "Cannot be seen = is not covered". His attorney says the disclaimer does not matter and demands \$1,250.00 from the inspector. Who knows how much more was demanded from the seller and realtor. This buyer wants his "free" remodeling job.

Kitchen Floor From Refrigerator Door Buyer is told verbally and in writing that the refrigerator door gasket has a bad spot that could lead to air leaking in and condensate water leaking out. Six months later, the buyer threatens to sue for a new kitchen floor, damaged by the water leaking from the refrigerator.

Cracked Heat Exchanger The inspector indicates in writing that the furnace is good working order and tests the effluent air for carbon monoxide. The inspector mentions the filter is very dirty and is a leading cause for cracked heat exchangers due to overheating from restricted air flow. The buyers CO alarm goes off. During a service call, a technician detects CO and sees a crack in the heat exchanger (or at least says he does). He then sells the buyer a new furnace. The buyer sues the inspector because the furnace defected when the inspector said it was in good condition.

\$750.00 Sink Trap Leak There is a small leak in the kitchen sink trap. Inspector tells buyer that the most expensive plumber in town shouldn't charge more than \$50.00 to replace it. The inspector gets a call from the buyer claiming he now needs \$750.00 worth of plumbing "repairs". The plumber told the buyer that he needed a new ventilation system because he had an older house.

\$3,000 Missing Outlet The buyer purchases a very old house with ungrounded outlets in the bedrooms. These outlets are just fine for lamps, radios, TVs and other bedroom type things. She buys a computer and discovers she now needs a grounded outlet in the bedroom. She calls an electrician. He tells her she needs new wiring in the walls to accommodate a grounded outlet and that there are not enough outlets in the room to meet code. Again, even though this is an upgrade and not a defect, she sues the inspector.

"Sue Me" Laws of AB334

This is only a *small sample* of what inspectors must contend with regarding loss of time and legal fees. Now add the "sue me" laws in AB334 and what do you get? Another Texas or California! We cannot allow this. If we pass a bill, it should provide as much protection for inspectors as it does for buyers.

The Health Issue

Radon Levels of radon gas can fluctuate up and down in a home throughout the year. An inspector takes an air sample for radon and the determined level at the time of the inspection is below EPA standards. The home buyer takes a sample a month later and finds the level above EPA standards. AB 334 allows the buyer to sue the Wisconsin Registered Inspector!

Water Contaminants Levels of contaminants in drinking water can fluctuate daily. An inspector draws a water sample and it is determined to be within safe levels at the time of the inspection. The level changes later and the home buyer becomes ill. AB 334 allows the buyer to sue the Wisconsin Registered Inspector!

Carbon Monoxide (CO) Debris in an exhaust flue for a furnace or a water heater can accumulate and begin restricting the emissions. A crack can occur at any moment in a furnace heat exchanger. The inspector draws air samples at the appliances with a single gas analyzer for carbon monoxide and finds the air to be free of CO at the time of the inspection. During an annual maintenance check-up, a service technician detects CO. He then sells the buyer a new furnace. AB 334 allows the buyer to sue the WR Inspector!

Buried Oil Tank The house has a new gas furnace. The inspector sees no visual evidence of an old oil tank on the property. The buyer later discovers a buried oil tank on the property. AB 334 allows the buyer to sue the Wisconsin Registered Inspector!

Combustible Gas The inspector uses a combustible gas detector to examine all of the gas pipe fittings and valves at the exterior meter, the interior supply pipes and at all interior appliances. No gas leaks were found. Some grease dries out in a hot water heater valve because of age. The buyer can smell gas, calls the utility to verify it. AB 334 allows the buyer to sue the Wisconsin Registered Inspector!

Cat Urine Urine can be smelled at the arrival at the home. The buyer opts for a urine inspection. The inspector scans the carpeting, detects both dry and active urine in the living room only. Over the next month and a half, the seller's cat starts urinating in the bedroom. The buyer discovers it when he takes possession of the house. AB 334 allows the buyer to sue the Wisconsin Registered Inspector!

Asbestos The inspector sees no material resembling asbestos at the time of the inspection. The house was vacant. After the house was occupied, there was enough vibration to shake loose some asbestos which falls out of a hole in a wall cavity to the basement area. AB 334 allows the buyer to sue the WR Inspector!

Lead Paint The buyer requests a cursory inspection for lead. The buyer later finds lead in an area that was not checked. AB 334 allows the buyer to sue the Wisconsin Registered Inspector!

At Menards Building Supply Store, they have a manual, two inches thick, listing every conceivable health hazard related to every building component ingredient, currently in use today. Not counting those which have already been banned. Is the home inspector to be sued over every possible chemical, in every building component that could pose a health hazard? Should he be the sueable scape goat for everything bad in the world?

Common Sense Home inspectors do not purport themselves to be "doctors" or "health specialists" and should not be held to that standard. Inspectors simply use the inspection equipment and methods available to "assist" the buyers in gaining more knowledge about their house. While the inspector has the best intentions for the buyer who has hired him, he cannot guarantee a buyer perfect health in a sterile environment and should never be held liable for the results of requested tests performed on location or in laboratories during the inspection process.

The Liability Issue

There are good inspectors with great reputations and many years of experience at protecting consumers when buying their homes; who are committed to quitting if the government "forces" undue liability on the home inspection industry.

Can you believe it?

For \$375.00 one can get a two year warranty against defects on a \$1,000.00, "brand new" camcorder. Yet, AB 334 expects a "Wisconsin Registered Home Inspector" to warrant an "old", poorly maintained house against defects, worth \$200,000.00, for two years, for \$250.00! And by the way, he is supposed to work at least a half a day to do a home inspection besides!

Commensurate Fees for Liability

Now let's get straight concerning warranting old homes against defects... Not two years, not two months, not two days, unless inspectors are paid a commensurate fee for assuming such extreme liability!

An inspection that would assume such liability is called a "technically exhaustive" inspection that would require a large team of trade specialists working together with the "Wisconsin Registered Home Inspector" to officially certify all findings, in separate written reports, from each trade specialist. These inspections would cost a Wisconsin home buyer a minimum of \$3000.00 and could easily go up to as much as \$6,000.00. While many inspection firms offer these inspections across the nation, not many consumers opt for them for two reasons. First, they have no need for this much information and secondly, they do not want to pay the price for this type of inspection. Consumers much prefer the comprehensive visual inspection with the liability disclaimers and have no problem understanding the need for the disclaimers.

It is ludicrous to expect a home inspector who examines literally "hundreds of components" in a home to assume the same liability as a trade specialist who spends the same amount of time, for the same money, looking at "only one component" in a home! We are helping consumers with comprehensive, visual inspections, not providing guarantees against defects on used houses.

Only One Place To Draw The Line

Where is the state going to draw the *liability line* between what the "experts" are currently saying is "correct" for a home and what the "experts" used to say was correct fifteen years ago? Or correct one hundred years ago? The answer is actually very simple. There is either liability or there is no liability, depending on the type of inspection being done; technically exhaustive or comprehensive visual. This is the only place a line can be drawn. Note: An inspector doing a visual inspection, under current law, can still be sued for an obvious act of negligence. This is the way it should be. There is however a venue for this. It is called small claims court. It works very well for existing claims (the state average of three cases per year) regarding home inspection. For these three claims (one this year) we are considering another entire branch of governmental bureaucracy?!?!

Liability Standards "To Sue For"

If the liability issue is not made crystal clear, then our court rooms will be flooded with attorneys looking to take financial advantage of these new, ambiguous laws by suing inspectors for everything and anything. This has happened in California where law suits are expected to increase again this year, by triple! Attorneys are deliberately contacting home buyers, attempting to solicit law suits against home inspectors! Inspectors get enough nuisance from "frivolous" lawsuits as it is; with out "state forced liability".

Recognizing The Real Need

Regulation to protect the "consumer", not the "seller".

The WRA Inspector Stories

In desperation to pass their liability on to inspectors, WRA could still only find two stories about bad inspectors. First, was the story of the out of state inspector who brought his family along with him. Everyone would agree this was unprofessional. This man has also been out of business for as many years as the WRA had to dig back to find a story! (As mentioned, this is a self policing industry.) Second, was the story of an inspector who was called BAD by the realtors because he reported an infestation of bugs and a potentially damaged lateral sewer line. He was now a BAD inspector because the guys house didn't sell! It seems that WRA wants inspectors who are willing to be sued for anything but will not point out any defects. Absolutely unbelievable!!!

Complaints Against Inspectors vs. Complaints Against Realtors / Sellers

Inspector Complaints

State records show an average of **three complaints** against home inspectors each year. (Only one this year) For the sake of argument, let's say they are all legitimate. Does this represent a proven need for another branch of government?

Realtor / Seller Complaints

In just the last eighteen months, in Dane County alone, there have been over **one thousand complaints** against sellers and seller agents for not properly filling out property condition disclosures.

Would it not make more sense to taxpayers to define and correct the existing laws regarding disclosure, rather than to try to shove all the realtor's mistakes and liability on to another industry, when that industry is not the one causing the complaint problems and jammed courtrooms? Need we all be reminded that if it were not for these kinds of realtors and sellers, there would be no need for the home inspection industry!

Home inspectors are the home buyer's consumer advocate! We are not the ones who are taking advantage of unsuspecting home buyers.

334 The Ulterior Motive

It should now be very clear, even to the simpleton, why WRA took it upon themselves to present legislation that would move all of their liability to home inspectors. It needs to be understood that the WRA has a direct conflict of interest in trying to push 334 through. This is like letting PETA write the rules for the fur industry! Or perhaps letting the major drug companies write the rules for the FDA to protect the consumers! This is called "improper".

\$\$\$\$\$ Now, think of what these thousands of complaints are costing us taxpayers through the legal system! From a simple mind, it would seem to cost a lot less to fix a problem than to start a new branch of totally unneeded government for an industry with no complaints!

Possible Options For Fairness

A. Drop AB 334 altogether or at least until such a time as a need can be demonstrated.

We could drop AB334 like the hot potato that it is because it has no purpose. It simply makes no sense to regulate an industry with no complaints. We would be better off focusing on the incredible amount of complaints regarding improper disclosures of property conditions against sellers and their agents on all of those homes that don't get inspected. **Result:** A serious problem would be corrected to protect consumers by perfecting existing disclosure laws; we would also save incredible amounts of money by not starting a new branch of government that is not even needed.

B. Real estate agents gain knowledge and keep the liability they are being paid for.

All agents should voluntarily take basic home inspection classes (public or private) currently available through MATC and like schools or classes offered from any number of home inspection trade associations. **Result:** The agents would keep their current level of liability along with their full commission checks but would be more "educated" and "careful" when filling out disclosure forms with sellers.

C. Inspector receives commensurate pay for assuming agent's liability.

Pass AB334 but require agents to forfeit 60% of their commissions to the home inspector for assuming all of "their" liability. Agents would keep 40% for showing a house and writing the offer but would have reduced liability. The inspector would then do a "technically exhaustive" inspection with a team of specialists rather than a "visual" inspection, so liability could reasonably be assumed. **Result:** This monetary "shift" would be fair to the inspector without adding undue expense to the consumer. However, agents certainly wouldn't want to give up part of their commissions.

D. Mandatory Inspections with minimum fees for assumption of liability.

Pass AB 334 but make it mandatory for a buyer to have a "technically exhaustive" home inspection. Implement a mandatory inspection fee of 3-5% of the value of a home for a "technically exhaustive" home inspection (rather than a visual) where all liability can reasonably be assumed by the inspector. **Result:** This would be fair to the inspector, however, it is not necessarily what the consumer wants, needs or is at all willing to pay for. Agents would reduce their liability and keep all of their commissions but would be sure to complain that inspections take too long and reveal too much.

E. Inspectors offer the consumer an inspection "choice".

Pass a type of legislation where the inspector could offer the consumer a "choice" between an expensive, "technically exhaustive" inspection in which all the liability is assumed by the inspector, OR, an affordable "visual" inspection, as is the market standard, in which no liability is assumed. This "choice" is a practice which is currently used in many states.

Result:

1. The agents could reduce some of their liability and yet keep all of their commissions.
2. The inspectors will get paid fairly, according to the type of inspection performed.
3. The buyer can get exactly what he wants. ("Visual" or Technically Exhaustive")
4. The State will not have to spend piles of taxpayer dollars to write and enforce unnecessary laws.

(Any of these options would deserve clarification but we must have a **common sense** platform to begin with.)