JUNE 2008

Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

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Legislative Update 2008

This last legislative session has once again been a successful one for the Wisconsin REALTORS® Association, particularly in the area of land-use legislation. The seemingly eternal struggle with the Wisconsin Department of Natural Resources to develop pier rules protecting most existing piers in the state has finally been resolved with legislation protecting both Wisconsin property owners and the waters of this state. Passage of the Great Lakes Compact will impact water availability and economic development for many years to come.

Legislation concerning the release of information from transfer returns, requirements for carbon monoxide detectors and sprinklers in multi-family housing, drainage districts disclosures, time-share licenses, condominium marinas, impact fees reform, tenancy terminations to prevent imminent personal harm, municipal boundaries, objections to property assessments, fire records, Brownfield clean-up modifications and many other issues was successfully proposed and passed in the Wisconsin Legislature, in no small part due to the efforts of the WRA Public Affairs Department.

This *Legal Update* summarizes this new legislation and explains the impact of these new laws and administrative rules. The *Update* begins, however, with a description of the final pier rules reached.

Pier Protection Act Signed into Law

Amends Wis. Stat. § 30.12, effective April 14, 2008. (AB 297 / SB 169 / 2007 Wis. Act 204: www.legis.state.wi.us/2007/data/acts/07/Act204.pdf)

A pier provides waterfront property owners with access to lakes and rivers for boating, swimming, fishing, and other forms of recreation. However, if a pier is too large, it can also create a safety hazard, interfere with recreational activities and harm important fish habitat.

Accordingly, Wisconsin has recently enacted new laws regulating the size and placement of piers.

After more than four years of confusion and uncertainty about the legal status of existing piers, waterfront property owners can now breathe a sigh of relief because legislation that grandfathers 99 percent of existing piers from future regulations went into effect on April 18, 2008. These statutory revisions, applicable to both new and existing piers, were enacted so that waterfront property owners can know what pier dimensions and features are allowed without a special DNR permit.

The statutory revisions were necessary because some regulators were applying the pier dimensional standards (enacted in 2004 to apply only to new piers) to existing piers. As a result, thousands of existing piers were at risk of being declared illegal and consequently removed or downsized. In addition to regulating pier dimensions and placement, the new law also creates standards for the number of boat slips allowed for multi-family and commercial developments.

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New Piers

Any "new" pier (placed for the first time after February 6, 2004) does not need a permit if it meets the following size requirements:

- Width – no more than 6 feet wide.
- Length – no longer than what is necessary to moor your boat or use a boat lift, or to reach a 3-foot water depth, whichever is greater.
- Number of boats – two boat slips/lifts for the first 50 feet of water frontage (of your property), plus one more boat slip/lift for each additional 50 feet of frontage.
- Platforms – a deck/platform up to 8 feet wide may be located at the end of the pier that projects into the lake (no limits on square footage).

If a waterfront property owner wants to place a pier that exceeds these standards, an individual permit must be obtained from the DNR (see www.dnr.wi.gov/org/water/fhp/water¬way/piers.html#step3).

New Multi-family and Commercial Developments

Piers servicing multi-family dwellings (three or more units) or commercial facilities must meet all the requirements above to be exempt from obtaining a permit. However, these types of developments are eligible for additional boat slips if they are on a lake of 50 acres or more. Specifically, they are eligible for the lesser of:

- Four boat slips for the first 50 feet of shoreline frontage plus no more than two additional boat slips for each additional 50 feet of shoreline frontage; or
- One boat slip for each dwelling unit plus additional boat slips that are open to the public to be used for transient docking (less than 24 hours).

Property owners who want more boat slips than are allowed under the exemption requirements may apply for an individual permit (see www.dnr.wi.gov/org/water/fhp/waterway/piers.html#step3).

Existing Piers

Any pier that was originally placed prior to February 6, 2004, is exempt from obtaining a permit from the DNR if it meets the following standards and registration requirement:

- Width – no more than 8 feet wide.
- Platforms – a deck/platform is allowed as long as it is located at the end of the pier that projects into the lake and has a surface area of 200 square feet or less (may be any width), or between 200 square feet and 300 square feet, if the deck/platform is no wider than 10 feet.
- Neighbors – does not interfere with the riparian rights of other riparian owners. Generally, this means that the pier and boat hoists do not extend beyond the owner's property line.
- Registration – the pier is registered with the DNR no later than April 1, 2011. Registration with the DNR is free of charge. Property owners also may choose to record the registration form with their local register of deeds office.

Existing Piers that Exceed Permit Exemption Standards

An owner of an existing pier that exceeds the above standards must do one of the following:

- Modify the existing pier to bring it into compliance with the standards; or
- Apply for an individual permit from the DNR (see www.dnr.wi.gov/org/water/fhp/waterway/piers.html#step3). No permit fee will be imposed.

The Act provides that any decision of the DNR against a riparian owner who claims an exemption for a grandfathered structure is subject to a trial de novo in which the court

will take new evidence instead of confining itself to a review of the record of the administrative hearing.

Obtaining a Permit

Under the new law, the DNR must approve an application for an individual permit to keep an existing pier unless the DNR can prove that the pier does one or more of the following:

a. Interferes with public rights in navigable waters

b. Interferes with rights of other riparians

c. Extends beyond a locally established pierhead line

d. Violates a local ordinance

e. Does not allow the free movement of water underneath

If a permit has already been obtained for an existing pier, no new permit is necessary as long as the terms and conditions of the permit are followed.

Consideration of Alternatives

The DNR may not order removal of a pier or wharf in an enforcement action and may not deny an individual permit for a pier or wharf unless the DNR considers all alternatives to the location, design, construction or installation of the pier or wharf that is proposed by the DNR and by the riparian owner.

Repair and Maintenance of Piers Meeting Existing Pier Exemption Standards

Owners of existing piers that are exempt from obtaining a permit may repair and maintain the existing pier, but may not replace or enlarge the pier. If the pier must be replaced, the new pier must comply with the new pier requirements. The owner also may relocate or reconfigure the pier, as long as the pier does not interfere with the rights of other riparians.

Solid Piers

The DNR may not enact rules prohibiting the issuance of a permit for private or commercial solid piers on outlying waters (the Great Lakes and certain connected harbors and rivers). The DNR may promulgate rules that limit the issuance of those permits and that establish conditions for the permits.

Local Ordinances

In addition to these new state standards, communities or counties may have local ordinances regulating piers. These local ordinances may establish, among other things, local pierhead lines, which determine how far a pier can extend into the water. Waterfront property owners should contact their communities to determine if any local ordinances apply.

Selling Your Property and Pier

When a waterfront property owner sells his property and the pier is exempt from permitting requirements, the new owner can place the same pier without obtaining a permit. The seller's permit automatically transfers to the buyer. If the buyer wants to install a different pier, it must be designed to meet the exemption standards for new piers, or a permit will have to be obtained from the DNR at www.dnr.wi.gov/org/water/fhp/waterway/piers.html.

The WRA worked with legislative leaders to introduce this legislation that grandfathered 99 percent of all existing piers placed prior to 2004, created a fair permit process for all non-grandfathered piers so that they can remain in the water, and increased the allowable number of boat slips for multi-family development and commercial establishments. The WRA has worked on this issue for the past four years.

New Pier Brochure

To assist REALTORS® in explaining the new law to waterfront property owners, the WRA has created a new brochure that explains the requirements for placing a new pier or maintaining an existing pier without a permit. To obtain this brochure, please visit www.wra.org/pierprotection.

Great Lakes Compact

Amends various statutes relating to the Great Lakes–St. Lawrence River Basin Water Resources Compact, and addresses withdrawals of water from the Great Lakes Basin, water withdrawal and use, water supply planning, water conservation, the granting of rule-making authority and providing a penalty.

(SB 1 / 2007 Wis. Act 227: www.legis.state.wi.us/2007/data/acts/07enSB0001Ap8.pdf). April 2008 Special Session, effective June 11, 2008.

The Great Lakes hold nearly 20 percent of the world's fresh surface water. Though vast, the Great Lakes renew at a low rate and are vulnerable to irreversible damage from water withdrawals. Nevertheless, "thirsty" outside states, countries and corporations have attempted to withdraw water from the Great Lakes to address their own fresh water needs.

A current federal law, commonly known as the Water Resources Development Act (WRDA), provides that no water may be diverted or exported from the Great Lakes, or any tributary of any of the Great Lakes, for use outside the Great Lakes basin unless the diversion or exporting is approved by the governor of each of the eight Great Lakes states: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. WRDA does not contain standards that governors must use in deciding whether to approve a proposal to divert or export water.

The eight states bordering the Great Lakes, along with the Canadian Provinces of Quebec and Ontario,

negotiated an agreement in 2005 that places restrictions on withdrawing water from the Great Lakes. This agreement, known as the Great Lakes Compact, relates to the withdrawal and use of water (both groundwater and surface water) from the watersheds of the Great Lakes and the St. Lawrence River (the Great Lakes basin). Part of northern Wisconsin is in the Lake Superior watershed and part of eastern Wisconsin is in the Lake Michigan watershed. The rest of the state is in the upper Mississippi River basin. Only some communities from the eight Great Lakes states would get to use the water, depending upon whether they were located within the basin of the Great Lakes (determined by whether wastewater from the community drained toward the Great Lakes).

A compact is basically an agreement among states for dealing with a subject of common concern. Unlike some other compacts, a number of the provisions of this Compact are not self-executing. The compact tells states what they must do. Additional state laws or administrative rules are necessary to do the things that the compact requires. The compact gives the states wide choices in how to implement some of its provisions. For example, the compact allows states to determine the threshold size for regulating water withdrawals from the Great Lakes basin. In other cases, the compact specifies regulatory requirements that a state may make more, but not less, restrictive.

Initially there were obstacles to the passage of the Compact in Wisconsin. First was the concern regarding the single-governor veto that could allow another governor to block southeastern Wisconsin cities from drawing needed water from Lake Michigan. There was concern, in particular, over the ability of Illinois and Michigan to veto water withdrawals made by Wisconsin without giving Wisconsin the same authority. Illinois is granted a mammoth exemption to the Compact's diversion regulations because of its reversal of the Chicago River over a century ago, a diversion that was approved by a 1967 U.S. Supreme Court consent decree in ***Wisconsin et al. v. Illinois et al***. Michigan, meanwhile, will never need gubernatorial permission to take water out of the Great Lakes basin because the state lies almost entirely within the basin. That means those two states could say no to a Wisconsin request without having to worry about reciprocation. Because Illinois and Michigan are often in competition with Wisconsin for economic development, there was concern whether each state might consistently reject requests by Wisconsin to use water for communities outside the basin, especially if the use was for economic development purposes.

Second, the Compact creates winners and losers among Wisconsin communities with respect to who may use the waters from the Great Lakes. While any community located within the Great Lakes basin may use water from the Great Lakes, any community located outside the basin is prohibited from using water from the Great Lakes unless they receive unanimous approval from the governors of all eight states. This is true even if a community "straddles" the basin or is located within a county that "straddles" the basin. If one governor from any of the eight Great Lake states votes "no," the city outside the basin does not get to use the water.

Third, there was concern that the Compact could extend the Wisconsin DNR's regulatory authority to groundwater located within the Great Lakes basin, stripping property owners of their rights. Providing the DNR with the authority to regulate groundwater within the basin could allow them to prohibit the creation of additional private or municipal wells, as well as other withdrawals necessary to operate some employers like paper companies, utilities and manufacturers.

The WRA staff worked successfully with legislators and the DNR to address these concerns in legislation that resoundingly passed both the state Senate (32-1) and Assembly (96-1).

The meat of the Compact remains unchanged. A single governor could still block withdrawals outside the basin and in straddling counties, but standards for actions are now in place. Most of the changes amounted to cleaning up legal language that would implement the Compact specifically in Wisconsin. The revisions include a clarification that the Compact does not extend state powers to groundwater, and DNR basin conservation plans will not be mandatory statewide.

The Compact requires any person who makes a withdrawal of water from the Great Lakes basin that averages 100,000 gallons per day (GPD) or more in any 30-day period, or diverts any amount of water, to register with the state and provide information about the withdrawal or diversion. This Compact also offers guidelines for deserving communities in proximity to the Great Lakes basin – particularly those, such as Waukesha County and New Berlin, that straddle the basin – to try for a share of the water if they are able to return their treated wastewater to Lake Michigan.

There are three exceptions to the prohibition on new or increased diversions.

Straddling Communities

A straddling community is a community that is partly within the Great Lakes basin and partly outside of the basin when the compact takes effect, but that is wholly within a county that is partly within the basin. The first exception to the prohibition on

diversions allows a new or increased transfer of water to the part of a straddling community that is outside of the Great Lakes basin. The exception only applies if all of the diverted water is used to supply water to the public and if an amount of water equal to the amount diverted, less an allowance for consumptive use, will be returned to the Great Lakes basin (such as through a sewage system). A consumptive use is a use of water that results in less of the water being returned to surface water or groundwater than was withdrawn (due to evaporation, for example). If the proposed new diversion or increase in an existing diversion would result from a new or increased withdrawal that averages 100,000 GPD or more in any 90-day period, the diversion must meet the exception standard described below.

Intrabasin Transfers

An intrabasin transfer is the transfer of water from the watershed of one of the Great Lakes into the watershed of another of the Great Lakes. In Wisconsin, that would mean a transfer from the Lake Superior watershed to the Lake Michigan watershed, or vice versa. The Compact allows a state to decide whether and how to regulate an intrabasin transfer that averages less than 100,000 GPD in any 90-day period.

Communities in Straddling Counties

The third exception to the prohibition on new or increased diversions is to provide water to a community in a straddling county. A community in a straddling county is a community that lies outside of the Great Lakes basin, but that is wholly within a county that is partly in the Great Lakes basin. A proposal for a diversion to a community in a straddling county is only allowed under the Compact if all of the following apply:

1. All of the water is used to supply water to the public.
2. The community is otherwise without an adequate supply of water that is safe to drink.
3. The diversion satisfies the exception standard.
4. The proposal maximizes the amount of water that originated in the basin that is returned to the basin and minimizes the amount of water that originated outside of the basin that is returned to the basin.
5. There is no reasonable water supply alternative in the basin in which the community is located (in Wisconsin, that would be the upper Mississippi River basin).
6. The proposal is reviewed by the regional body.
7. The proposal is approved by the council with no disapproving votes.

Exception Standard

Some diversions that may be approved under the Compact are subject to what is called the exception standard. A proposal for a new or increased diversion meets the exception standard under the Compact if it satisfies several criteria, including the following:

1. The need for the diversion cannot be avoided through the efficient use and conservation of existing water supplies.
2. The amount of water diverted will be limited to quantities that are reasonable to meet the need.
3. An amount of water equal to the amount diverted, less an allowance for consumptive use, will be returned to the watershed from which it was withdrawn.
4. No water from outside of the source watershed will be returned to the source watershed unless it comes from a wastewater system that combines water from inside and outside of that watershed and is treated to satisfy water quality standards and to prevent the introduction of invasive species.
5. The diversion will not result in adverse impacts to the quantity or quality of the waters of the Great Lakes basin or related natural resources.
6. Environmentally sound and economically feasible water conservation measures will be used to minimize the amount of water withdrawn and the amount of water lost to the Great Lakes basin.

If a diversion request meets the specific standards set forth in the Compact, a jilted community can appeal under a process designed to trump a governor's veto.

Because the Compact allows diversions for cities split by the basin line, provided the treated wastewater is returned, New Berlin should be a slam-dunk for approval under the new rules – its sewer system is already linked to Lake Michigan via the Milwaukee Metropolitan Sewerage District. The nearby city of Waukesha is facing radium problems and also hopes to one day get Lake Michigan water, though, unlike New Berlin, it would have to build a new sewer system to return the water to the lake.

All eight Great Lakes states must approve this Great Lakes Compact and Congress must ratify it before it can take effect. Illinois, Indiana, Minnesota and New York have signed the treaty into law. Quebec and Ontario also have approved it. Michigan, Ohio and Pennsylvania have yet to sign off on the deal. Michigan's Legislature adopted the Compact recently, but lawmakers in that state were still considering contested legislation to regulate large-scale water withdrawals. The real battle to ratify the Compact will come in Washington as "thirsty" southwestern states gain more population and political clout. As Executive Director of the Wisconsin Wildlife Federation George Meyer remarked, "Some really heavy lifting is going to have to take place in Congress."

DOR Release of Real Estate Transfer Return Information; Electronic Filing

Amends Wis. Stat. § 77.22 and repeals and recreates § 77.265, effective April 22, 2008.

(SB 549/ AB 900 / 2007 Wis. Act 219: www.legis.state.wi.us/2007/data/acts/07Act219.pdf)

The Wisconsin Department of Revenue stopped releasing information from real estate transfer returns because they did not believe that they had the statutory authority to do so. This information is critical to REALTORS® and local appraisers who rely upon this information for determining fair market values for property.

The WRA worked with the DOR and legislative leaders to introduce a bill to give the DOR the necessary authority to disseminate this information. This legislation amends the law to specifically provide that those persons or entities making use of real estate transfer returns must maintain the confidentiality of Social Security numbers and telephone numbers from the returns. The DOR can release transfer return information except for Social Security numbers and telephone numbers.

In addition, real estate transfer returns filed on or after July 1, 2009, must be filed electronically unless the DOR secretary waives the requirement. The secretary may determine, based on a written application for a waiver, that the requirement for electronic filing causes an undue hardship.

Installation of Carbon Monoxide Detectors

Creates Wis. Stat. § 101.149 & 254.74(1) and amends § 101.145(2), effective October 1, 2008 (emergency rules to be promulgated immediately. However, residential building owners are not required to install carbon monoxide detectors until April 21, 2010, the delayed installation deadline.)

(SB 289 / 2007 Wis. Act 205: www.legis.state.wi.us/2007/data/acts/07Act205.pdf)

This legislation mandates carbon monoxide detectors in most multifamily buildings. The true impact will not be known until the accompanying administrative rules are drafted.

This legislation generally requires the owner of a residential building to install, by the April 21, 2010, deadline, a carbon monoxide detector that is approved by an independent safety certification organization in the basement of the building, within 15 feet of each sleeping area, and in certain specified hallways and adjacent rooms. "Residential building" means a tourist rooming house, a bed and breakfast establishment or any public building that is used for sleeping or lodging purposes. An apartment building, a rooming house, a hotel, a children's home, a community-based residential facility or a dormitory would all be included. A hospital or a nursing home would not.

The owner must install and reasonably maintain every carbon monoxide detector in the residential building in the manner specified in the instructions for the carbon monoxide detector. An occupant of the building may notify the owner that a carbon monoxide detector is not functional or has been removed by a person other than the occupant.

The owner must repair or replace the nonfunctional or missing carbon monoxide detector within five days of receipt of the notice. The owner of a residential building is not liable for damages for a false alarm if the detector was reasonably maintained by the owner. In addition, an owner is not liable for the failure of a carbon monoxide detector to operate properly if the failure was the result of tampering with, or removal or destruction of, the carbon monoxide detector by a person other than the owner or the result of a faulty detector that was reasonably maintained.

The requirements of the new Wis. Stat. § 101.149 do not apply if:

a. The residential building does not have any fuel-burning appliances.

b. All of the fuel-burning appliances in the residential building have sealed combustion units that are covered by the manufacturer's warranty against defects.

c. All of the fuel-burning appliances in the residential building have sealed combustion units that are inspected as provided in the rules promulgated by the Department of Commerce under sub. § 101.149(6)(b) or in the rules promulgated by the Department of Health and Family Services under § 254.74(1)(am).

Under this legislation, DHFS is to promulgate rules for the regular inspection of sealed combustion units (furnaces or water heaters, for example) in hotels, tourist rooming houses and bed and breakfast establishments. Commerce is charged with promulgating rules for all other residential buildings, including inspections at the request of the owner or occupant. These rules will be promulgated as emergency rules. These inspection rules do not apply to those residential buildings in which the owner has installed proper carbon monoxide detectors or if the owner receives a waiver to not to install carbon monoxide detectors under the procedures to be established under the new rules.

If a violation is discovered upon inspection of a building, the building owner first must be given an opportunity to correct the violation before a penalty is imposed. If the owner does not correct the violation, he or she is subject to a $50 forfeiture for each day of the violation. Tampering with an installed carbon monoxide detector is prohibited and a person convicted of tampering is subject to a fine not to exceed $10,000 or imprisonment for not more than nine months, or both, for a first offense, and is guilty of a Class I felony for a second or subsequent offense.

Sprinkler Rules for Multi-Family Dwellings

Wis. Admin. Code § Comm. 62.0903 (www.legis.state.wi.us/rsb/code/comm/comm062.pdf) and related regulations, effective March 1, 2008.

The Wisconsin Legislature recently approved new administrative rules requiring fire sprinkler systems in new multi-family buildings. These new rules took effect March 1, 2008. Developers and REALTORS® should be aware of the important changes in these rules because they will impact the cost of new multi-family housing and the amount of rent paid by tenants as well as provide improved safety protection for renters and unit owners.

The following new administrative rules adopted by Commerce change the sprinkler requirements in Wisconsin.

- Beginning March 1, 2008, all newly constructed multi-family dwellings with nine units or more will require fire sprinkler systems.
- Beginning January 1, 2011, all newly constructed multi-family dwellings with three units or more will require fire sprinkler systems.
- Less expensive fire sprinkler requirements will apply in areas with insufficient water pressure (NFPA 13 D fire sprinkler systems will be required rather than NFPA 13 R fire sprinkler systems). This will make the sprinkler requirements less expensive in rural areas and other areas not serviced by public water.
- Buildings that have already received approval, but have not yet been constructed will be grandfathered in and will not have to meet the new sprinkler requirements.

Residential condominium units and apartment buildings equipped with fire sprinklers will likely be more expensive than similar units and buildings without fire sprinklers. This may be an important factor for developers and builders who are planning to construct multi-family residential dwellings in the near future. However, fire sprinklers are often an attractive safety feature for prospective buyers and should be highlighted in all applicable marketing materials.

This mandatory sprinkler requirement for small multi-family buildings will increase the cost of housing and prevent many Wisconsin families from being able to afford a home in this state, perhaps without providing a significant improvement in fire safety. The cost of a sprinkler system ranges from $3,000 to $10,000 per unit. The National Association of Home Builders estimates that the cost of mandatory sprinklers will prevent an additional 13,000 to 43,000 Wisconsin families from being able to afford the median rent for a home in Wisconsin.

Further action on this issue may be forthcoming, possibly including a challenge of the department's legal authority to make this change through the rule-making process rather than through legislation.

Drainage Districts

Creates Wis. Stat. §§ 66.1102, 74.09(3)(dm), 88.11(1)(L), 88.16, 88.212, 88.24(4) and 709.03(form)C.24m and amends several related statutes; effective April 4, 2008, except requirements related to real estate condition reports take effect on November 1, 2008.

(AB 118 / 2007 Wis. Act 121: www.legis.state.wi.us/2007/data/acts/07Act121.pdf)

This legislation includes numerous provisions relating to drainage districts. Many changes are designed to make sure property owners and buyers are made aware when a property is in a drainage district. The Act:

1. Requires a local governmental unit to make certain considerations relating to drainage districts when preparing or amending a comprehensive plan.
2. Requires a county, city, village or

town (political subdivision) to notify a drainage district before taking action on a property development that would likely increase the amount of water directed to the main drain of the drainage district.

3. Requires the Department of Agriculture, Trade, and Consumer Protection, in cooperation with the state drainage engineer, to produce an educational pamphlet that describes the function of drainage districts, costs that may be assessed to a person whose property is located in a drainage district and contact information for the state drainage engineer. The pamphlet shall be distributed to anyone who requests the pamphlet and is to be produced once every three years, beginning in 2009.

4. If a drainage board hires an engineer to conduct a study that is related the operation of a drain or the operation of the district, the board is required to notify the county and city, village or town with jurisdiction, including extraterritorial jurisdiction, over the area covered by the engineering study, and provide access to the final report.

5. Requires a drainage board in existence on April 4, 2008, to meet by July 1, 2008, to develop a plan to notify, in writing, every person who owns land that is located within the drainage district that such land is in the district and provide contact information for the district.

6. Requires a drainage board to notify each person who owns land in the drainage district every three years that such land is in the district, beginning in 2009.

7. Requires a drainage board to provide the clerk of each taxation district in which the drainage district is located with a list of the assessments issued by the board each year and requires each property tax bill for parcels in the district to indicate the amount of the assessment issued on that property.

8. Requires that an item C.24m be added to the Wis. Stat. chap. 709 real estate condition report (RECR), effective November 1, 2008, that states, "I am aware that the property is located within a special purpose district, such as a drainage district, that has the authority to impose assessments against the real property located within the district." A property owner who has furnished an RECR to a buyer before November 1, 2008, does not need to amend the RECR to add this disclosure.

The WRA will make changes to the RECR report forms over the next few months to capture the new drainage district disclosure language.

Landlord-Tenant; Termination of Tenancy

Imminent Threat of Serious Physical Harm – creates Wis. Stat. §§ 704.01(3m) 704.16 & 704.44, and amends related statutes, effective April 9, 2008.

(SB 269 / AB 520 / 2007 Wis. Act 184: www.legis.state.wi.us/2007/data/acts/07Act184.pdf)

Current law provides that if leased premises become untenable because of damage by fire, water or other casualty, because of a condition that is hazardous to the tenant's health, or because the tenant's health or safety is materially affected by lack of repairs to the premises, the tenant may leave and is not responsible for rent after the point when the premises became untenable. This legislation provides for a tenant's or landlord's ability to terminate a tenancy when there is an imminent threat of serious physical harm.

Termination of Tenancy by Tenant

This legislation permits a residential tenant to terminate his or her tenancy and leave the premises if both of the following apply:

1. The tenant or a child of the tenant faces an eminent threat of serious physical harm from another person if the tenant remains on the premises.
2. The tenant provides the landlord with legal notice and with a certified copy of any of the following:
   a. A domestic abuse injunction protecting the tenant from the person.
   b. A child abuse restraining order or injunction protecting a child of the tenant from the person.
   c. A harassment restraining order or injunction protecting a tenant or child of the tenant from the person, based on the person's engaging in sexual assault or stalking.
   d. A condition of release from prison ordering the person not to contact the tenant.
   e. A criminal complaint alleging that the person sexually assaulted the tenant or a child of the tenant.
   f. A criminal complaint alleging that the person stalked the tenant or a child of the tenant.
   g. A criminal complaint that was filed against the person as a result of the person being arrested for committing a domestic abuse offense against the tenant.

The tenant is not liable for any rent after the end of the month following the month in which he or she provides the notice or removes from the premises, whichever is later. The tenant's liability for rent is subject to the landlord's duty to mitigate damages.

Termination of Tenancy by Landlord

This legislation allows a landlord to terminate the tenancy of an offending tenant if all of the following apply:

1. The offending tenant commits one or more acts, including verbal threats, that cause another tenant or a child of that other tenant in the same single-family rental unit, multi-unit dwelling or apartment complex to face an eminent threat of serious physical harm from the offending tenant if

the offending tenant remains on the premises.

2. The offending tenant is the named offender in any of the following:

   a. An injunction protecting the other tenant from the offending tenant.

   b. An injunction protecting a child of the other tenant from the offending tenant.

   c. An injunction protecting the other tenant or a child of the other tenant from the offending tenant, based on the offending tenant's engaging in sexual assault or stalking.

   d. A condition of release from prison ordering the offending tenant not to contact the other tenant.

   e. A criminal complaint alleging that the offending tenant sexually assaulted the other tenant or a child of the other tenant.

   f. A criminal complaint alleging that the offending tenant stalked the other tenant or a child of the other tenant.

   g. A criminal complaint that was filed against the offending tenant as a result of the offending tenant being arrested for committing a domestic abuse offense against the other tenant.

The landlord must give the offending tenant written notice that complies with statutory provisions, requiring the offending tenant to vacate on or before a date that is at least five days after the giving of the notice. The notice must state the basis for its issuance and the right of the offending tenant to contest the termination of tenancy in an eviction action. If the offending tenant contests the termination of tenancy, the tenancy may not be terminated unless the landlord can prove, by the greater preponderance of the credible evidence, the allegations against the offending tenant.

Protection of Tenant

This legislation provides that a rental agreement is void and unenforceable if it allows a landlord in a residential tenancy to (1) increase rent, (2) decrease services, (3) bring an action for possession of the premises, (4) refuse to renew a rental agreement; or (5) threaten to take any action regarding any of the above prohibitions because a tenant has contacted an entity for law enforcement, health or safety services.

Wis. Stat.§ 704.01(3m) is created to define "rental agreement" to mean an oral or written agreement between a landlord and tenant for the rental or lease of a specific dwelling unit or premises in which the landlord and tenant agree on the essential terms of the tenancy, such as rent. "Rental agreement" includes a lease, but does not include an agreement to enter into a rental agreement in the future.

No Fees for Assistance Calls

This legislation prohibits a city, village, town or county from enacting an ordinance or enforcing an existing ordinance that imposes a fee on the owner or occupant of property for a call for assistance that is made by the owner or occupant requesting law enforcement services that relate to domestic abuse, sexual assault or stalking.

Time-Share Licenses

Creates Wis. Stat. § 707.02(30) and amends other chapter 707 provisions, effective August 1, 2007.

(SB 11/ AB 502 / 2007 Wis. Act 18: www.legis.state.wi.us/2007/data/acts/07Act18.pdf)

This legislation permits the creation and sale of time-share licenses. A "time-share license" is defined as a right to occupy a unit or any of several units under a license or lease agreement during at least four separated periods over at least four years, including renewal options, not coupled with an interest in property. Other statutory modifications are made because current law requires all time-shares to have a real property interest while this legislation permits the sale of time-share licenses that are not coupled with an interest in real property.

1. Exception for Licenses

A time-share instrument describing a time-share license, like a time-share instrument describing a time-share easement, will not be required to include certain specific property information if the time-share license applies to units in more than one time-share property. This provision exempts time-share easements and licenses from certain disclosures because a description of all properties involved in a time-share easement or license would likely be onerous for both the developer and prospective customers. In addition, several of the time-share instrument requirements under Wis. Stat. § 707.21 refer to items of real property interest, such as specific plat location and the method for allocating real property taxes, that do not generally apply to time-share licenses.

2. Enforcement of Lien

The enforcement of a lien against a time-share license must be pursued under the Uniform Commercial Code (Wis. Stat. chs. 401-411) rather than in the manner of a mortgage foreclosure on real property. The absence of a real property interest in a time-share license renders the statutory requirements regarding the foreclosure of mortgage on real property inapplicable.

3. Purpose of Advertising Material

This legislation deletes the reference to "real" property on advertising disclosures for time shares and substitutes the term "time-share" property.

Real Estate Licensees Selling Time-Share Licenses

A real estate license is required for any person who, for another and for

commission, money or other thing of value, negotiates, offers or attempts to negotiate a sale, exchange, purchase, or rental of, or the granting or acceptance of, an option to sell, exchange, purchase or rent a time share. A time-share license is included within the applicable definition of a time share. Thus, a real estate license is required for anyone selling time-share licenses for a fee.

Under Wis. Stat. § 452.025, time-share salespersons can only use time-share purchase contracts approved by the Department of Regulation and Licensing containing certain elements specified in the statutes. There is no approved form specifically for selling a time-share license. Therefore, time-share salespersons may not be able to sell time-share licenses unless the DRL creates an appropriate form, which would seem unlikely since a time-share license is not real estate.

Brokers and salespersons may be able to try to adapt and modify the WB-26 Timeshare Contract (Sale by Developer) and WB-27 Time Share Contract (Resale by Non-Developer) for the sale of time-share licenses. They may not, however, use forms drafted by a party or an attorney because Wis. Admin. Code § RL 16.04(2) allows this practice only for, "those kinds of real estate or business opportunity transactions for which the department has not approved contractual forms."

See *Legal Update 02.03*, "Time-Share Transactions," online at www.wra.org/LU0203, for further discussion of time shares.

Use-Value Conversion Charge for Converting Agricultural Land

Amends Wis. Stat. § 74.485 and related statutes, effective January 1, 2008.

(AB 470 / 2007 Wis. Act 210: www.legis.state.wi.us/2007/data/acts/07Act210.pdf)

Under the use-value assessment method of assessing Wisconsin agricultural land for property tax purposes, farmland is assessed based upon its agricultural productivity rather than its potential for development or fair market value. If the use of agricultural land assessed under the use-value system is changed to a nonagricultural use, so that the property is no longer classified and valued as agricultural land, the then-current owner must pay a "conversion charge," formerly referred to as a "penalty." In other words, if the buyer of agricultural land assessed under the use-value system changes the use of the land, the buyer may have to pay the conversion charge that captures between 5 percent to 10 percent of the property tax savings that occurred when the land was taxed as agricultural land in the year before the conversion. If it is determined that the use changed before the sale, the seller would be responsible for the conversion charge.

A conversion charge is assessed any time agricultural land is converted to another use, including residential, commercial or any other non-agricultural use that is not specifically exempted by statute. While the statutes do not define when a "change of use" occurs, local assessors are given the authority to make this determination. This creates the greatest challenge of the law.

This new legislation, in addition to changing the term "penalty" to "conversion charge," requires that any written notice informing the property owner of a change in assessed value must also include a notice from the assessor if property that had been taxed as agricultural land no longer qualifies to be taxed as agricultural land. The notice from the assessor must advise that a penalty may be imposed, and be given at least 15 days prior to the convening of the board of review. The form for assessors to use to notify an individual of a changed use may be seen online at www.revenue.wi.gov/forms/govasst/pr-298f.pdf. Assessors of each city, village or town are required to provide the county treasurer all information necessary to compute conversion charges no later than 15 days after the board of review has adjourned.

The DOR is changing over its publications to use the term "conversion charge." See www.revenue.wi.gov/faqs/slf/usevalue.html#use22. The WRA will make changes to condition report forms over the next few months to capture the new language.

This legislation also changes a notice requirement that applies any time a property assessment is changed, regardless of whether it involves agricultural land. Under current law, notice to a property owner is required any time an assessment of property is changed, even if the assessment is changed as a result of a complaint by the property owner. No additional notice of a changed assessment will be required, under the amended Wis. Stat. § 70.365, if the person whose property is assessed waives, in writing on a form prescribed or approved by the DOR, the right to any further notice of the changed assessment.

Marina Condominium Law

Creates Wis. Stat. § 30.1335, effective August 23, 2007.

(SB 40 / 2007 Wis. Act 20, section 717r: www.legis.state.wi.us/2007/data/acts/07Act20.pdf on page 293)

As part of the 2007-09 state biennial budget signed into law on October 26, 2007, Wisconsin adopted new regulations relating to marina condominiums (often referred to as "dockominiums"). These new regulations will hopefully clear up confusion over the legal status of existing marina condominiums as well as the ability to create new marina condominiums in the future.

Background on Marina Condominiums

Soon after Wisconsin adopted laws regulating condominiums in 1984, people began to apply the condominium form of ownership to convert public marinas into marina condominiums. A marina condominium is designed to allow a person to purchase access to a boat slip rather than rent access to a slip. The term "marina condominium" is limited to those arrangements that do not include rights to a residential unit. Thus, a marina condominium does not include a waterfront condominium residential unit that includes access to a pier. It is estimated that there are about two dozen marina condominiums in Wisconsin.

The DNR had two primary concerns with marina condominiums. First, a marina condominium arguably allows persons who are not otherwise riparian owners to own a boat slip. With limited exceptions, only riparian owners are entitled to place piers. Second, the DNR limits the number of piers and slips a riparian owner may place to "reasonable use." The DNR has a formula to determine reasonable use and allows marinas to have more slips if they are available to the public. Converting a marina into a condominium limits public use of those slips.

The Abbey Marina Case

The Abbey Marina in Lake Geneva became the test case for the validity of marina condominiums. The Abbey was designed and permitted as a 407-slip marina over a period of several years. On February 22, 1995, the Abbey converted the marina into a condominium. The conversion did not expand the number of slips or alter the configuration of the piers that were already permitted. The condominium declaration defined the condominium unit as a lock box. Each condominium owner had access to a boat slip on the pier as a limited common element.

The DNR objected to this conversion. In ***ABKA Ltd Partnership v. DNR, 2002 WI 106*** (www.wisbar.org/res/sup/2002/99-2306.htm), the Supreme Court held that the Abbey condominium units did not have "an independent use," and therefore were not valid condominium units under Wisconsin's Condominium Law (Wis. Stat. Chapter 703). The decision left open the question of whether some other kind of marina condominium arrangement would be permissible under Wisconsin law.

New Marina Condominium Law

To address the uncertainty resulting from the Abbey Marina case, a new law regulating marina condominiums was enacted that prohibits the creation of any new marina condominium and grandfathers existing condominiums with some limited restrictions (see Wis. Stat. § 30.1335 at www.legis.state.wi.us/statutes/Stat0030.pdf, Pages 12-13).

Specifically, Wis. Stat § 30.1335:

- Prohibits the creation of new marina condominiums after June 1, 2007. If someone tries to create a marina condominium after this date, any property interest in riparian land will be deemed to create a tenancy in common. In no event can an ownership interest be created in a pier slip.
- Grandfathers marina condominiums created before June 1, 2007. This valid status is not affected by "subsequent activity," which includes amendments to the declaration or a court determination that the declaration is void or voidable.
- Clarifies permit status for all marina condominiums. If there was a permit for the facility before it became a marina condominium, that permit remains in effect. In situations where first received permits after the marina condominium was created, those permits also remain in effect. Pier permits issued before conversion are deemed to satisfy the law, and may not be rescinded or modified "based on the fact that the marina has been converted to a marina condominium."

Impact Fees and Other Development-Related Topics

Amends Wis. Stat. § 66.0617 and related statutes, effective January 19, 2008.

(AB 341 / 2007 Wis. Act 44: www.legis.state.wi.us/2007/data/acts/07Act44.pdf)

This legislation fine-tunes concepts related to impact fees, professional services fees, dedication of storm water facilities and fees in lieu of public park dedications.

Impact Fees

- **Definition of "Public Facility."** With regard to impact fees imposed before June 14, 2006, "public facilities" includes "other recreational facilities" that were substantially completed by June 14, 2006. The provision clarifies that previously imposed impact fees may continue to be collected for other recreational facilities. After that date, public facilities do not include recreational facilities.

- **Needs Assessment.** When a municipality prepares a public facilities needs assessment, a required step before imposing impact fees, the estimate of the capital costs of providing new public facilities or improvements or expansions of such facilities must include an estimate of the cumulative effect of all proposed and existing impact fees on the availability of affordable housing within the municipality.

- **When Payable.** Impact fees are payable upon issuance of a building permit.

Refund of Unused Impact Fees

1. Impact fees collected before January 1, 2003, must be used no later than December 31, 2012.

2. Impact fees collected after December 31, 2002, and before April 11, 2006, must be used no later than the first day of the 120th month beginning after the date on which the fee was collected.

3. Impact fees collected after April 10, 2006, and collected within seven years of the effective date of the ordinance imposing the fee, must be used within 10 years after the effective date of the ordinance. The 10-year limit may be extended for three years if the municipality includes detailed written findings that specify the extenuating circumstances or hardship supporting the extension.

4. Impact fees collected after April 10, 2006, and collected more than seven years after the effective date of the ordinance imposing the fees, must be used within a reasonable period of time after collected.

Any fees not used must be refunded to the current property owner.

Pass-Through of Professional Services Fees

If a political subdivision enters into a contract to purchase engineering, legal or other professional services from another professional service provider, and the political subdivision passes along the cost for the services to another person under separate contract, the rate charged to the other person for the professional services may not exceed the rate customarily paid for similar services by the political subdivision.

Storm Water Facilities

Subdivision Plat Approval. Currently, a city or village, as a condition for accepting the dedication of public or private roads or streets, or placing them on an official map, may require that designated facilities be provided without cost to the city or village or that a portion of the cost of such facilities be paid in advance. These facilities may include storm water management or treatment facilities.

Acceptance of Dedicated Facilities. A dedication of lands within a subdivision plat that is intended to include a facility designed for reducing the quantity or quality impacts of storm water runoff from more than one lot is not accepted by the municipality until:

- The municipality agrees;
- At least 80 percent of the lots in the subdivision have been sold and a registered professional engineer has certified to the municipality that the facility is functioning properly;
- Required plantings are adequate and well established; and
- Any necessary maintenance has been properly performed.

Fees in Lieu of Parkland Dedication and Improvement

Currently, fees for land acquisition and improvements as a condition of subdivision approval are not authorized. This legislation allows such fees to be imposed by cities, villages, and towns for the acquisition or initial improvement of land for public parks. A fee for the acquisition or initial improvement of land for public parks must bear a rational relationship to a need for the acquisition or improvement and must be proportional to the need.

Predatory Lending Practices: "Trigger Leads" Restrictions

Creates Wis. Stat. § 100.55, effective March 27, 2008.

(SB 275/ AB 502 / 2007 Wis. Act 76: www.legis.state.wi.us/2007/data/acts/07Act76.pdf)

When consumers apply for a loan from a lending institution, the lending institution generally requires a consumer credit report from a credit reporting agency. Credit reporting agencies often then notify other lending institutions who make unsolicited offers to consumers, many of which have been deceptive and unfair. These solicitations are referred to as "trigger leads."

The WRA worked with legislators in both houses to introduce legislation that prohibits a lending institution from using "unfair" or "deceptive" practices in soliciting a customer in cases where the

information received by the lending institution comes from a trigger lead.

Unfair or deceptive practices include:

1. Failure to state in the initial phase of the solicitation that the person soliciting is not the lender and is not affiliated with the lender to which the consumer has applied for credit.
2. Failure in the initial solicitation to comply with any applicable requirement under the federal Fair Credit Reporting Act (FCRA).
3. Knowingly or negligently using information regarding consumers who have elected to be excluded from prescreened consumer reports or who have registered their telephone numbers on the federal or state non-solicitation directories.
4. Soliciting consumers with offers of certain rates, terms and costs, with intent to subsequently raise the rates or change the terms to the consumers' detriment.
5. Making false or misleading statements in connection with a credit transaction that is not initiated by the consumer.

With respect to some credit reports that are not regulated under federal law, this legislation prohibits any person from furnishing a trigger lead to a nonaffiliated third party unless there is a reasonable belief that the third party will not use the trigger lead to solicit the consumer.

The new § 100.55 does not apply when information from a credit reporting agency or financial data provider with respect to a person is provided to a lender where the person has a current outstanding loan. In addition, a trigger lead has not occurred if the consumer has authorized a consumer reporting agency or personal financial data provider to provide the information to third parties.

Any person who violates the provisions of § 100.55(2) or (3) may be required to forfeit not less than $100 or more than $1,000 for each violation. In addition, any person who is aggrieved by a violation of these provisions may bring a civil action for damages. In any such action, a violator shall be liable for twice the amount of actual damages caused by the violation or $500, whichever is greater, plus the costs of the action, including reasonable attorneys' fees. A court may also award any equitable relief that the court determines appropriate.

Lead Investigations Replace Lead Inspections

Replaces the term "Lead inspection" with "Lead investigation," repeals Wis. Stat. § 254.11(8r) (11) and amends related statutes, effective March 28, 2008.

(SB 327 / 2007 Wis. Act 91: www.legis.state.wi.us/2007/data/acts/07Act91.pdf)

This legislation eliminates the definition of the term "lead inspection" and replaces that term with the term "lead investigation" in pertinent statutes that currently refer to lead inspections. "Lead inspection" is defined as the inspection of a dwelling or premises for the presence of lead. "Lead investigation" is defined as a measure or set of measures designed to identify the presence of lead or lead hazards. "Lead investigation," as defined in Wis. Stat. § 254.11 (8s), is a broader term that encompasses "lead inspection."

Currently, DHFS must develop and implement a comprehensive statewide lead poisoning or lead exposure prevention and treatment program that, among other things, includes lead inspection requirements that DHFS must promulgate as rules.

DHFS also may promulgate rules that require periodic lead inspections of, or a demonstration that no lead hazard is present at, a foster home, group home, shelter care facility, day care provider, day care center, nursery school, kindergarten or other facility that serves children under 6 years of age. "Lead management activity" is defined as a lead inspection or the design or management of lead hazard reduction. DHFS is authorized to promulgate rules to establish certification requirements for the performance or supervision of the performance of lead hazard reduction or lead management activities. Care coordination and follow-up services, including lead inspections, also are provided for Medical Assistance program recipients who have lead poisoning or lead exposure.

Objecting to Property Tax Assessments

Amends and creates provisions relating to objections to property tax assessments, effective March 28, 2008.

(AB 580 / 2007 Wis. Act 86: www.legis.state.wi.us/2007/data/acts/07Act86.pdf)

Board of Review Hearings on Assessment Objections

This legislation requires the board of review to allow sufficient time at the hearing to permit the taxpayer and assessor to submit their evidence. Upon the objector's request, the board of review must compel the attendance of witnesses for the hearing. A taxation district may enact an ordinance for an extension of time for holding the board of review hearing. If an ordinance is enacted and the taxpayer submits an extension request and a $100 fee, the taxation district must grant a 60-day extension for the hearing.

If a taxation district enacts an ordinance allowing an extension for a board of review hearing, the district must give specific notice concerning the last day on which a taxpayer may submit an objection. Regardless of whether an extension is requested, objecting taxpayers and the assessor must present to the board of review all evidence (as specified in the DOR Assessment Manual) on which they rely to support their respective posi-

tions and any additional evidence they believe is relevant to determining the correct assessment. If the taxpayer receives an extension, at least 10 days before the hearing the taxpayer and assessor must simultaneously exchange all reports, documents and exhibits they will present at the hearing.

Court Review of Board of Review Determinations

This legislation requires a court, in an appeal from a board of review determination, to remand the assessment to the board for further proceedings if the court determines that the board lacked good cause to deny a request for a deposition subpoena. If a person who has been granted an extension for a board of review hearing challenges the board's value determination in court, the court must presume the board's valuation is correct. If that presumption is rebutted, the court must determine the assessment without deference to the board of review and based on the record.

Municipal Boundary Agreements

Amends provisions in chapter 66 of the statutes, effective January 19, 2008.

(AB 254 / 2007 Wis. Act 254: www.legis.state.wi.us/2007/data/acts/07Act43.pdf)

This legislation was developed by the Joint Legislative Council's Special Committee on Municipal Annexation. The Special Committee was directed to review conflicts that arise under current annexation law and practice and the consequences of those conflicts, including costs to taxpayers and other affected parties, to determine if there is consensus on means to reduce annexation disputes and encourage more boundary cooperation between towns, cities and villages.

Boundary Agreements

Boundary Agreements by Cooperative Plan (Wis. Stat. § 66.0307)

1. Current Procedure Simplified

This legislation simplifies the current plan requirements of Wis. Stat. § 66.0307 by substituting a general requirement for consistency with a comprehensive plan for the current detailed planning requirements. "Comprehensive plan" means a comprehensive plan under s. § 66.1001 or, if a municipality has not adopted a comprehensive plan, the municipality's master plan. A public hearing on a proposed cooperative plan may be held 60 days following the last authorizing resolution by a participating municipality.

2. Mediated Agreement Procedure

If a city, village or town declines to participate in the current procedure for developing a cooperative plan to determine common boundaries, an adjacent municipality may petition for development of a cooperative plan through mediation. If a city or village refuses to engage in mediation after being asked to do so, a subsequent annexation may be contested by the petitioning town if the Department of Administration determines the annexation is not in the public interest following an advisory review of the annexation. If a town refuses to engage in mediation, the town may not contest any annexation of its territory to the petitioning city or village that is commenced during the shorter of 270 days after the refusal or the period beginning after the refusal until the town agrees to engage in mediation. If both parties agree to engage in mediation, the mediation period expires after 270 days unless the participating municipalities agree to extend the period.

Boundary Agreements Under General Intergovernmental Cooperation Authority (Wis. Stat. § 66.0301)

This legislation establishes a specific procedure for common municipal boundaries to be determined by agreement. Agreements to share revenues under Wis. Stat. § 66.0305 and other authorized agreements may also be made under this procedure. The maximum term of an agreement is 10 years. Once an agreement expires, all provisions of the agreement expire with the exception of boundary determinations, which remain until subsequently changed.

The § 66.0301 boundary agreement procedure requires a public hearing and provides for a referendum of the electors residing within the territory whose jurisdiction is subject to change as a result of the agreement if a sufficient referendum petition is timely submitted.

Stipulated Boundary Agreements in Contested Boundary Actions (Wis. Stat. § 66.0225)

This legislation limits the application of current § 66.0225 (boundaries fixed by court judgment) to contested annexations and limits the scope of a boundary determination under that procedure to that portion of the boundary "that is the subject of the annexation." Contested consolidations, detachments and incorporations may be settled by entering into an agreement under the new § 66.0301 procedure or under § 66.0307 (boundary agreements by a cooperative plan). Contested annexations may also be so settled.

Alternative Dispute Resolution

The court and the parties to a contested annexation are encouraged to consider the applicability to the contested annexation of the current Wis. Stat. § 802.12 Alternative Dispute Resolution (ADR) provisions that apply generally to court proceedings. The DOA is required to provide a list of persons who have identified themselves as professionals qualified to facilitate ADR of annexation, boundary and land use disputes on the DOA public Web site.

For additional information, see

the Wisconsin Legislative Council Report to the Legislature from the Special Committee on Municipal Annexation dated April 11, 2007, online at www.legis.state.wi.us/lc/publications/rl/rl_2007_10.pdf.

DRL Discipline

Amends Wis. Stat. § 440.01(1)(d), effective April 5, 2008.

(SB 315 / 2007 Wis. Act 143: www.legis.state.wi.us/2007/data/acts/07Act143.pdf)

This legislation clarifies, consistent with current interpretation, that the DRL and its affiliated credentialing boards may, as a disciplinary option against a credential holder, impose conditions and requirements on the credential holder and/or restrict the holder's scope of practice.

Publication of Local Ordinances

Amends various statutes, effective March 26, 2008.

(SB 335 / 2007 Wis. Act 72: www.legis.state.wi.us/2007/data/acts/07Act72.pdf)

Under prior law, a city, village, town, county or town sanitary district generally was required to publish the complete text of an ordinance in a local newspaper. This legislation, as an alternative to publication of a complete ordinance, authorizes a local unit of government to publish a notice of an ordinance that contains at least all of the following information:

1. The number and title of the ordinance.
2. The date of enactment.
3. A summary of the subject matter and main points of the ordinance.
4. Information as to where the full text of the ordinance may be viewed and a Web site, if any, on which the ordinance may be accessed.

Super-Insulation of Electrically Heated Buildings

Creates Wis. Stat. § 101.642 and 101.743 and amends related statutes, effective March 27, 2008.

(SB 381 / 2007 Wis. Act 67: www.legis.state.wi.us/2007/data/acts/07Act67.pdf)

Under prior law, Commerce was required to promulgate rules to require that any one- or two-family dwelling or manufactured building that is heated by electricity must be super-insulated. This legislation repeals this requirement and replaces it with a prohibition on such rules.

Fire Reports and Records

Amends Wis. Stat. § 101.141, effective March 27, 2008.

(SB 436/ AB 756 / 2007 Wis. Act 75: www.legis.state.wi.us/2007/data/acts/07Act75.pdf)

Within 60 days of any fire that involves a building, the fire department of the city, village or town where the fire occurred must file a report with the U.S. Fire Administration for placement in that agency's fire incident reporting system. This legislation specifies information that a fire report must include, and provides that Commerce may review, correct or update any such report.

Property Tax Exemption for Waste Treatment Facilities

Response to the Newark Decision – Amends Wis. Stat. § 70.11 and related statutes, effective August 23, 2007.

(SB 122 / 2007 Wis. Act 19: www.legis.state.wi.us/2007/data/acts/07Act19.pdf)

In 1953, the Wisconsin Legislature passed a law that created a property tax exemption for property used as a facility for the treatment of industrial wastes. Throughout the years, this exemption was applied only to wastewater treatment plants. However, in 1999, the Newark Group, a Milwaukee paperboard recycling company, applied to the DOR for the exemption because the plant reused old cardboard and paper waste that would have otherwise gone to a landfill. The recycling company requested that all of its land, buildings and machinery be exempt from property taxes. The DOR denied the request and the company appealed to the Wisconsin Tax Appeals Commission.

In 2004, the Tax Appeals Commission determined that the company met the statutory definition of a "waste treatment facility" and therefore qualified for the property tax exemption (***The Newark Group, Inc. v. The Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission***, March 22, 2004). As a result of the decision, the entire Wisconsin Paperboard facility in Milwaukee, owned by the Newark Group, Inc., was exempt from property taxes.

After the court's decision, local governments from around the state worried that many industries would seek exemptions from property taxes under what they considered to be a loophole in the law. Over $165 million worth of exemptions were requested by or granted to cheese factories, a chemical plant and a motor oil recycler. Local governments were concerned that any reuse of scrap materials in any manufacturing process could allow the entire facility to become exempt as a waste treatment facility. Up to $8 billion of industrial property could have been removed from local property tax rolls as the result of the ***Newark*** decision. At the current rate of taxation, $2 billion

worth of industrial property generates approximately $40 million in property taxes each year. If that property comes off the tax rolls, other types of property (residential and commercial) would have to make up the difference.

The WRA was actively involved in finding a solution that protects the homeowners and other property owners who would be responsible for making up the loss in property tax revenue created by this loophole – one that is not unfair to Wisconsin industries that are true "waste treatment facilities."

This legislation:

1. Requires that property must be "used exclusively and directly to remove, store, or cause a physical or chemical change in" industrial waste or air contaminants to be eligible for the property tax exemption
2. Defines "industrial waste" as waste resulting from any of various processes that "has no monetary or market value…and that would otherwise be considered superfluous, discarded, or fugitive material."
3. Defines "used exclusively" as used to the exclusion of all other uses except:
   a. For other use not exceeding 5 percent of total use.
   b. To produce heat or steam for a manufacturing process, if the fuel consists of either of the following materials and the material would otherwise be considered superfluous, discarded, or fugitive material:
      i. 95 percent or more industrial waste; or
      ii. 50 percent or more of wood chips, sawdust or other wood residue from the paper and wood products manufacturing process.
4. Deletes the separate reference to the use of wood wastes as fuel in the definition of "industrial waste."
5. Specifies that property tax assessments under the amended property tax exemption statute supersede prior property tax assessments under that statute.
6. Provides that the sales and use tax exemption does not apply to tangible property purchased in fulfillment of a contract to construct, repair or improve a waste treatment facility, if the contract is entered into, or a formal bid is made, prior to August 23, 2007, and the tangible personal property is affixed to and made a structural part of the waste treatment facility.

Funding for Local Government Brownfields Programs

Amends Wis. Stat. § 67.12, effective April 11, 2008.

(AB 706 / 2007 Wis. Act 188: www.legis.state.wi.us/2007/data/acts/07Act188.pdf)

Brownfields are sites that require remediation of environmental contamination in order for the property to be capable of redevelopment or reuse. The DNR may enter into agreements with the U.S. Environmental Protection Agency to administer a brownfields revolving loan program. In this program, the DNR makes loans or grants to cleanup brownfields and administers EPA funding on behalf of other governmental entities. Local units of government (cities, villages, towns or counties) may apply for these funds from the DNR either as a loan or a grant. Local governments are authorized generally to issue municipal obligations (borrowing) in anticipation of receiving the funding for the DNR. This borrowing must be repaid within approximately 18 months.

This legislation expands the authorization for local units of government, including metropolitan sewerage districts and town sanitary districts, to issue municipal obligations in anticipation of receipt of the funding under the brownfields revolving loan program. Those obligations must be repaid within 10 years or, if the obligations are refinanced, within 20 years. Local governmental units are also authorized to issue promissory notes to be repaid within 20 years.

Manufactured Homes Language Modernization

Amends numerous statutes, effective January 1, 2008.

(SB7/2007 Wis. Act 11: www.legis.state.wi.us/2007/data/acts/07Act11.pdf)

This legislation makes numerous changes to Wisconsin law governing mobile homes, manufactured homes, and the mobile and manufactured housing industry. "Mobile home," "manufactured home," "modular home" and "recreational vehicle" are defined and various statutes are amended so as to use these terms consistently throughout. There are also statutory changes relating to the tax classification of the homes and vehicles as personal property, real property or property subject to municipal fees.

Terminology

Under current law, there are several different definitions of the terms "mobile home" and "manufactured home." Also, under current law, "mobile home" is often used as a general term that includes "manufactured home." Because of changes in the mid-1970s in federal laws that define and regulate mobile and manufactured homes, only manufactured homes – as defined under current federal law – are being constructed today. This bill creates a single definition for "mobile home" and a single definition for "manufactured home."

1. **"Mobile home"** generally means a vehicle manufactured or assembled before June 15, 1976, that has an overall length of more than 45 feet, that is designed to be towed as a single unit or in sections on a high-

way by a motor vehicle, that has walls of rigid non-collapsible construction, and that is equipped and used, or intended to be used, primarily for human habitation. "Mobile home" includes the mobile home structure, its plumbing, heating, air conditioning, electrical systems, and all appliances and all other equipment carrying a manufacturer's warranty.

2. **"Manufactured home"** generally means either a mobile home or a structure designed to be used as a dwelling, either with or without a permanent foundation, that complies with the federal standards established for manufactured homes. Under federal law, only manufactured homes are now being constructed.

3. A **"modular home"** is intended for use as a dwelling, and is fabricated or assembled in manufacturing facilities for installation at the building site.

4. **"Recreational vehicle"** means a vehicle that is designed to be towed upon a highway by a motor vehicle and that is equipped and used, or intended to be used, primarily for temporary or recreational human habitation, that has walls of rigid construction, and that does not exceed 45 feet in length. The term "recreational vehicle" is inserted in place of "mobile home" where "mobile home" was used to refer to temporary living quarters.

Monthly Municipal Permit Fees

Each city, town, or village (municipality) in which a mobile home park is located collects a monthly municipal permit fee (previously referred to as the "parking" fee) from each mobile home occupying space in the park. The fee is calculated by multiplying the value of the home by the general property gross tax rate, less certain credits. The total is divided by 12 to represent the monthly municipal permit fee. The municipality may require mobile home park operators to collect the fee from mobile home owners.

Regulation of Manufactured Home Communities

Manufactured home communities and mobile home parks are regulated by Commerce and by the municipality in which the community or park is located. The terms "manufactured home community" and "mobile home park" are used in the statutes to describe similar places. For purposes of regulation by Commerce, a manufactured home community is any plot of ground upon which three or more manufactured homes that are occupied for dwelling or sleeping purposes are located. For purposes of regulation by the local municipality, a mobile home park means any plot of ground upon which two or more units, occupied for dwelling or sleeping purposes, are located. This legislation increases the number of mobile or manufactured homes that must be located on a plot of ground before it is subject to municipal regulation from two to three. The term "park" is replaced with "community" throughout the statutes where the term is used in reference to mobile home or manufactured home parks.

Mortgage Bankers, Mortgage Brokers and Loan Originators

Amends Wis. Stat. §§ 224.71(1g) and 224.75(3)(b), effective April 22, 2008.

(SB 517/ AB 827 / 2007 Wis. Act 211: www.legis.state.wi.us/2007/data/acts/07Act211.pdf)

This legislation modifies the definition of "loan" in the statutes relating to mortgage bankers, mortgage brokers and loan originators. Under prior law, "loan" was defined as a loan secured by a lien or mortgage, or equivalent security interest, on real property. This definition is modified so that it means a loan, "for personal, family, or household purposes," that is so secured and is on real property in Wisconsin. The amended definition further states that a loan secured by real property consisting of one to four dwelling units, including individual condominium units, is a loan for household purposes. However, a loan made by a landlord to a tenant that is secured by leasehold improvements that are fixtures or improvements to real property is not considered a loan for household purposes. Therefore, the laws relating to mortgage bankers, mortgage brokers and loan originators no longer apply to a person who deals only in loans that are not for personal, family or household purposes (e.g. commercial loans).

County Employees who Regulate Private Sewage Systems

Amends Wis. Stat. § 145.12 and creates § 145.20(6), effective November 1, 2008.

(AB 532 / 2007 Wis. Act 197: www.legis.state.wi.us/2007/data/acts/07Act197.pdf)

Counties are required by statute to regulate private sewage systems. These regulatory responsibilities include the review and approval of applications for sanitary permits, inspection of all private sewage systems after construction but before backfilling and investigation of violations of the county private sewage system ordinance.

This legislation restricts county employees who have responsibilities related to private sewage systems. These employees may not conduct any soil testing (other than review of soil tester reports for private sewage system installations); install, maintain or repair sewage systems; sell private sewage systems; or prepare designs for private sewage systems in the county where the employee works or in an adjacent county. These restrictions do not apply to activities performed by a county employee on that employee's own property if the property is located outside of the county for which the individual works.

Private Sewage System Terminology

Amends Wis. Stat. § 145.195 and related statutes, effective April 5, 2008.

(SB 330 / 2007 Wis. Act 147: www.legis.state.wi.us/2007/data/acts/07Act147.pdf)

Under current law, various phrases are used to describe a private sewage system in the provisions administered by Commerce that deal with these systems. Current law defines a "private sewage system" to be a sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same parcel as the structure. This legislation makes changes in current law so that the phrase "private sewage system" is used consistently when referring to these systems.

Tax Incremental District Expenditures

Amends Wis. Stat. § 66.1105 and related statutes, effective March 19, 2008.

(AB 409 / 2007 Wis. Act 57: www.legis.state.wi.us/2007/data/acts/07Act57.pdf)

This legislation authorizes a city or village to approve a tax incremental district project plan or to amend an existing project plan for a tax incremental district to include project expenditures within a one-half mile radius of the tax incremental district boundaries. Expenditures authorized by this legislation may be made only within the boundaries of the city or village that created the tax incremental district.

Petroleum Storage Environmental Cleanup Council Disbanded

Repeals Wis. Stat. §§ 15.157 (11) and 101.143 (8), and amends related statutes, effective April 5, 2008.

(SB 317 / 2007 Wis. Act 145: www.legis.state.wi.us/2007/data/acts/07Act145.pdf)

This legislation repeals the Petroleum Storage Environmental Cleanup Council, which has been inactive for several years. For additional information, see the Legislative Reference Bureau analysis and the Law Revision Committee notes included in the original bill (www.legis.state.wi.us/2007/data/SB-317.pdf).

Continuing Education for Home Builders

Amends Wis. Stat. § 101.654(1m)(b)1, effective June 14, 2007.

(AB 227 / 2007 Wis. Act 14: www.legis.state.wi.us/2007/data/acts/07Act14.pdf)

This legislation makes a minor change to the continuing education requirements for home builders. Under current law, with certain exceptions, a person may not begin construction on a building that is subject to the one- and two-family dwelling code without obtaining a building permit. A person may not obtain a building permit unless they complete at least six hours of approved continuing education each year. This legislation changes the continuing education requirement so that an applicant for a building permit must instead complete at least 12 hours of approved continuing education every two years.

Public Access to Voter Registration Identification Numbers

Amends Wis. Stat. § 6.36(1)(b)1. a., effective February 9, 2008.

(AB 295/ 2007 Wis. Act 52: www.legis.state.wi.us/2007/data/acts/07Act52.pdf)

Under current law, the Government Accountability Board (board) assigns a unique registration identification number to each elector on the official statewide voter registration list. Current law also provides that no person other than an employee of the board, municipal clerk, deputy municipal clerk, executive director of a city board of election commissioners or deputy designated by the executive director may view the date of birth, registration identification number, operator's license number or Social Security account number of an elector; the address of an elector to whom an identification serial number is issued; or any indication of an accommodation to permit voting by an elector.

This legislation removes the registration identification number from the list of confidential information, thus making registration identification numbers accessible to the public. In addition to the persons authorized under current law to view confidential information, the following persons are also authorized to view the information: a county clerk, deputy county clerk, executive director of a county board of election commissioners and deputy designated by the executive director.

Right to Cure Law Update

The "Right to Cure Law" in Wis. Stat. § 895.07 (www.legis.state.wi.us/2005/data/acts/05Act201.pdf) says that consumers, at the time of contracting for construction or remodeling work, must be provided with a brochure describing requirements for making any future claims of construction defects. This brochure is now available online at http://commerce.wi.gov/SBdocs/SB-UdcRightCureBrochureV4.pdf.


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