

Why Trust Anyone Else?

Carbon Monoxide Detectors: Do They Stay or Do They Go?

Recent changes in Wisconsin's carbon monoxide detector law have led to some confusion about the seller's obligations to install and/or leave carbon monoxide detectors in the property. Deliberate inspections and contract drafting can assure the parties have a meeting of the minds about carbon monoxide detectors.

The law states that most property owners of one and two family dwellings, as well as multifamily dwellings, must install functional smoke and carbon monoxide detectors. Properties built, with a building permit issued on or after February 1, 2011 will have alarms that are interconnected and directly wired to the dwelling's electrical system. However, for older properties, the owners may comply by using removable detectors. For information about proper installation of smoke and carbon monoxide alarms, see the Department of Safety and Professional Service Carbon Monoxide and Smoke Detector brochure at dsps.wi.gov/sb/docs/SB-UdcAlarmsFeb11.pdf.

When the property owner installs carbon monoxide units that are battery-powered or not hardwired into the electrical system, they may consider the alarms personal property and may want to take the detectors with them when selling the property. When the listing agent conducts the pre-listing property inspection, the agent should see if the seller has installed carbon monoxide detectors and if they are permanently installed or are the easily-removable plug-in variety. The agent can discuss this with the seller, and agree how to handle it in the listing contract and then in the offer. For example, will the detectors remain on the property, do the required detectors need to be installed, or will the seller not provide detectors? Whatever the scenario, make sure that the buyer is informed. The offer may be drafted to address who will install any missing detectors and whether detectors presently on the property will remain or be removed by the seller.

If a property does not have required smoke and carbon monoxide detectors, a seller can note this on a Real Estate Condition Report as conditions that are not compliant with state law and require correction. For sellers who do not complete a RECR, the definition of Conditions Affecting the Property or Transaction in the offer includes, "dd. Violation of state or local smoke and carbon monoxide detector laws" so that the seller would still have the obligation to disclose if the required smoke and carbon monoxide detectors are not installed on the property.

If either agent knows there are missing detectors, they arguably need to disclose this health risk to property occupants as a material adverse fact under Wis. Admin. Code § REEB 24.07(2), which requires the licensee to timely disclose the fact in writing to all parties to the transaction.

When the offer is negotiated to address the detectors, disputes will be avoided, however sometimes the concern will not be discovered until the home inspection. If a buyer's offer includes a home inspection contingency, **the home inspector is to indicate in the inspection report if the property is not compliant with the carbon monoxide and smoke detector laws.** If the seller did not previously disclose missing detectors, the buyer could give a notice of defects relating to the missing detectors because it is a human safety issue and a building code violation.

A seller may argue that the seller is not required to install detectors because there is no law that specifically requires that detectors be in place as a prerequisite to a real estate conveyance, even though it is a code violation. The seller might observe that the battery-operated or plug-in types of detectors are really personal property and can be taken with the seller when moving out; this would not be an issue in newer homes where the detectors are required to be tied into the home's electrical system. In the end, this is a safety analysis versus a personal property analysis, and there is no clear-cut answer. By addressing the issue in the listing and the offer, any such debate can be avoided.

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