# Wisconsin Lawmakers Codify Homeowners' Right to Challenge Tax Assessments Without Interior Inspections

Jan 04 2018

Posted By: Joseph J. Rolling

Practice Area: Property Tax Assessment

In November 2017, lawmakers made a slew of changes to Wisconsin's property tax assessment laws. The subject of one of these changes was a law that had been used previously to require landowners to permit assessors to view the inside of their homes before challenging their property tax assessment. The new law codified a July 2017 Wisconsin Supreme Court decision rejecting that requirement and set forth new duties for assessors.

**Prior Law**
Under the old system, a person who had "refused a reasonable written request by certified mail of the assessor to view such property," was barred from challenging their assessment. Wis. Stat. § 70.47(7)(aa) (2015-16); *see also* Wis. Stat. § 74.74(4)(a) (2015-16) (requiring compliance with requirements in Wis. Stat. § 70.47(7)(aa) before bringing an excessive assessment claim in circuit court). One interpretation was that an assessor's "view" of the property included the interior of the home.

**Wisconsin Supreme Court Rejects the Interior View Requirement**
In July 2017, the Wisconsin Supreme Court rejected this rule requiring the interior home inspection. *Milewski v. Town of Dover*, 2017 WI 79, 377 Wis. 2d 38, 899 N.W.2d 303.

In *Milewski*, homeowners allowed an assessor to do an exterior inspection but denied the assessor's request to view the interior of the home. The homeowners' subsequent attempts to challenge the 12% increase in the property's assessed value were rejected. Their lawsuit claiming excessive assessment and challenging the application of Wis. Stat. §§ 70.05 and 70.47 made its way to the Wisconsin Supreme Court. The Court of Appeals affirmed the trial court's dismissal of the homeowners' claims.

In a split decision, the Wisconsin Supreme Court reversed the Court of Appeals and remanded the case to the circuit court to allow the homeowners to challenge their assessment.

The Supreme Court reasoned that the assessor's entry was a search implicating the Fourth Amendment and the homeowners' ability to challenge their assessment and thus violated their constitutional rights. Recognizing the constitutional right of an individual to refuse entry into their home, the Court reasoned the old statutes forced the homeowners to choose between permitting an assessor entry into their home and their right to challenge their assessment and thus, were unconstitutional.

**2017 Wisconsin Act 68**
In November 2017, the Wisconsin Legislature passed 2017 Wisconsin Act 68. Act 68 explicitly permits landowners who deny assessors entry to still challenge the assessment.

Specifically, the Act amends Wis. Stat. § 70.47(7)(aa) to remove the phrase "view such property" and replaces it with "enter onto property to conduct an exterior view of the real or personal property being assessed."

Homeowners may give advance notice of their refusal, and an assessor cannot use that refusal as the sole basis for increasing a property's valuation.

Finally, the newly-created Wis. Stat. § 70.05(4n) requires assessors to give landowners a form Notice of their right to refuse an interior inspection.

**Conclusion**
Coming only a few months apart, the *Milewski* decision and Act 68 can be confusing for landowners and municipalities. Because these recent changes have a significant impact and each property is unique, municipalities and landowners should discuss the impacts of the decision and the Act with an attorney.