



2017 SENATE BILL 730

January 26, 2018 - Introduced by Senator OLSEN, cosponsored by Representatives BALLWEG, BORN, KREMER, KUGLITSCH and TUSLER. Referred to Committee on Insurance, Financial Services, Constitution and Federalism.

1 **AN ACT** *to renumber* 703.28 (1); *to renumber and amend* 703.165 (2) and
2 703.28 (2); *to amend* 703.09 (1) (c), 703.09 (2), 703.095, 703.115 (1) (b), 703.12,
3 703.13 (6) (e), 703.13 (7) (c), 703.13 (8) (c), 703.15 (4) (d) 1., 703.165 (5) (intro.),
4 703.165 (5) (c), 703.18 (2) (a) and (b) and 703.22 (title), (2) and (3); and *to create*
5 703.09 (2m), 703.15 (4) (dm), 703.165 (2) (b), 703.167, 703.18 (2) (c), 703.28 (1m)
6 (intro.), 703.28 (3) (intro.) and 703.28 (4) of the statutes; **relating to:** various
7 changes to condominium law and rights related to first mortgage security
8 interests in condominium units.

Analysis by the Legislative Reference Bureau

This bill makes various changes to condominium law and rights related to first mortgage security interests in condominium units.

Association procedure for raising funds and requiring first mortgagees to release liens or accept title to units

The bill creates a procedure that a condominium association may use to raise funds that it intends to use for the repair or replacement of common elements of a condominium building that are affected by a defect. The association may use the procedure only if, among other things, 1) the defect is related to the initial construction of the building or work performed by or for a declarant during the period

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of declarant control of the association; and 2) the cost to repair or replace the defective common elements is 20 percent or more of the value of the affected building.

Under the procedure, the association must estimate the total cost required to repair or replace the defective common elements and must levy assessments against the unit owners to raise those funds. Under the procedure, the association must notify the unit owners that the association is using the procedure and inform the unit owners of the approximate cost that may be assessed against each unit owner and the date or dates that the association anticipates that it may levy those assessments. The association is not required to levy assessments against all unit owners at the same time or to levy the entire amount a particular unit owner may be assessed all at once. Rather, the association may choose to levy the assessments in one or more increments and on one or more dates determined by the association.

After the association levies an assessment against a unit owner, if the unit owner fails or refuses to pay the assessment, the association may foreclose the assessment lien on the unit owner's unit or accept a deed in lieu of foreclosure with respect to the unit. If the association acquires title to a unit using the procedure and the unit is subject to a first mortgage lien that was executed after the effective date of the bill, the association may require the first mortgagee to do one of the following within 60 days after the association notifies the first mortgagee of its options: 1) release the first mortgagee's security interest in the unit; or 2) accept a quit claim deed from the association with respect to the unit.

Liability of first mortgagee for condominium assessments

The bill provides that, if a mortgagee becomes the owner of a unit following foreclosure of a first mortgage, the mortgagee is jointly and severally liable with the former unit owner for any unpaid assessments coming due during the 12 months immediately preceding the date on which the foreclosure sale is confirmed.

Approval of first mortgagee to amendment of condominium declaration

Under current law, a condominium declaration may be amended with the written consent of at least two-thirds of the total number of votes that may be voted at meetings of the association of unit owners, or a greater percentage if provided in the declaration. Also under current law, a unit owner's written consent is not effective unless it is approved in writing by the first mortgagee of the unit, if any.

The bill creates a procedure under which a unit owner, or the condominium association on behalf of the unit owner (requester), may obtain that first mortgagee approval. Under the bill, the requester may deliver written notice of the amendment by certified or registered mail or first class mail to the last-known address of the first mortgagee. If the first mortgagee fails to disapprove the amendment in writing within 60 days after the requester mails the notice, the first mortgagee is considered to have given its approval.

Certification of plats and plans showing altered unit boundaries

Under current law, if a condominium's documents allow it, unit owners in the condominium may make any of the following changes to the boundaries of their units:

1. Unit owners of adjoining units may relocate the mutual boundaries between those units.

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2. A unit owner may separate a unit into two or more units.
3. Unit owners of adjoining units may merge two or more adjoining units into one unit.

Currently, if unit owners make any of those changes, the condominium documents must be amended to reflect the altered boundaries, and plats and plans showing the altered boundaries and unit dimensions must be prepared and certified as to their accuracy by a civil engineer, architect, or professional land surveyor.

The bill provides that only a professional land surveyor, and not a civil engineer or architect, may certify the accuracy of those plats and plans.

Right of unit owners to vote at association meetings

Under current law, a unit owner generally is entitled to vote at all meetings of the condominium association unless 1) the unit owner has failed to furnish the association with the unit owner's name and current mailing address; or 2) the association has filed a statement of condominium lien against the unit owner's unit with respect to unpaid condominium assessments. The bill provides that, for a condominium created after the effective date of the bill, after the period of declarant control of the association has expired, no unit owner may vote at a meeting of the association if, at the time of the meeting, the unit is partially or fully exempt from any condominium assessments.

Percentage of votes required for removal

The bill provides that, for a condominium created after the effective date of the bill, if the unit owners of units to which at least 80 percent of the votes are allocated consent in writing, the condominium property may be removed from the provisions of the condominium law. In other words, ownership of the property would change from the condominium form of ownership to ownership in common. The bill also provides that, if all of the units in a condominium are nonresidential, the declaration for the condominium may specify a smaller percentage of votes that are required for removal, except that the percentage may not be less than the percentage of votes required to amend the condominium's declaration. Under current law, unanimous consent of all unit owners is required to change the property from the condominium form of ownership.

Determining ownership interests after removal

Under current law, after condominium property is removed from the provisions of the condominium law, the unit owners own the property in common with each former unit owner owning an undivided interest in the property that is equal to the percentage of undivided interest previously owned by the unit owner in the common elements of the condominium.

The bill provides that, for a condominium created after the effective date of the bill, the declaration of the condominium may provide for the use of an alternative procedure for determining former unit owners' respective ownership interests in the property after removal. If the declaration provides for use of the alternative procedure, upon removal of the condominium property, an appraiser must determine the fair market value of each unit, and each unit owner's undivided ownership interest in the property after removal will be a percentage calculated by dividing the

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fair market value of the unit owner's unit by the fair market value of all units in the condominium.

Division of proceeds after partition

Under current law, if the common elements of a condominium are damaged to an extent more than available insurance proceeds, the unit owners may choose to partition the condominium property, rather than repair or reconstruct the damaged common elements. Currently, if the condominium property is partitioned, the proceeds of sale and available insurance proceeds are divided among the unit owners in proportion to their percentage interest in the common elements.

The bill provides that, for a condominium created after the effective date of the bill, the declaration of the condominium may provide for the use of an alternative procedure for determining the unit owners' respective shares of the proceeds after partition. If the declaration provides for use of the alternative procedure, upon partition of the condominium property, an appraiser must determine the fair market value of each unit as the unit existed immediately prior to the damage, and each unit owner's share of the proceeds after partition will be a percentage calculated by dividing the fair market value of the unit owner's unit by the fair market value of all units in the condominium as they existed immediately prior to the damage.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 703.09 (1) (c) of the statutes is amended to read:

2 703.09 (1) (c) A general description of each unit, including its perimeters,
3 location, and any other data sufficient to identify it the unit with reasonable
4 certainty.

5 **SECTION 2.** 703.09 (2) of the statutes is amended to read:

6 703.09 (2) Except as provided in sub. (4) and ss. 703.093, 703.13 (6) (c) and (d)
7 and (8) (b), and 703.26, a condominium declaration may be amended with the written
8 consent of at least two-thirds of the aggregate of the votes established under sub. (1)
9 (f) or a greater percentage if provided in the declaration. An amendment becomes
10 effective when it is recorded in the same manner as the declaration. The document
11 submitting the amendment for recording shall state that the required consents and
12 approvals for the amendment were received. ~~A~~ Except as provided in sub. (2m), a

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1 unit owner's written consent is not effective unless it is approved in writing by the
2 first mortgagee of the unit, or the holder of an equivalent security interest, if any.
3 Approval from the first mortgage lender or equivalent security interest holder, or the
4 person servicing the first mortgage loan or its equivalent on a unit, constitutes
5 approval of the first mortgagee or equivalent security interest holder under this
6 subsection.

7 **SECTION 3.** 703.09 (2m) of the statutes is created to read:

8 703.09 (2m) (a) In this subsection, "first mortgagee" means the first mortgagee
9 of a unit or the holder of an equivalent security interest, the first mortgage lender
10 on a unit or the equivalent security interest holder, or the person servicing the first
11 mortgage loan or its equivalent on a unit.

12 (b) A unit owner, or the association on behalf of a unit owner, may obtain the
13 approval required under sub. (2) by providing written notice of the amendment to the
14 first mortgagee that includes all of the following:

- 15 1. A copy of the amendment.
- 16 2. A request for approval or disapproval of the amendment.
- 17 3. A form upon which the first mortgagee may indicate its approval or
18 disapproval of the amendment.
- 19 4. A statement that, if the first mortgagee fails to complete and return the form
20 described under subd. 3. or otherwise disapprove the amendment in writing within
21 60 days from the date of mailing of the notice, the first mortgagee is considered to
22 have given its approval of the amendment.

23 (c) The unit owner or association shall deliver the notice under par. (b) by
24 certified or registered mail or by 1st class mail to the last-known address of the first
25 mortgagee. If no other address is known to the unit owner or association, the unit

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1 owner or association may deliver the notice to the address of the first mortgagee as
2 the address appears on the mortgage or equivalent security instrument and to the
3 address to which the unit owner sends any periodic payments on the first mortgage
4 loan or its equivalent.

5 (d) If the first mortgagee fails to complete and return the form described under
6 par. (b) 3. or otherwise disapprove the amendment in writing within 60 days after
7 the unit owner or association mails the notice under par. (c), the first mortgagee is
8 considered to have given its approval of the amendment as required under sub. (2).

9 **SECTION 4.** 703.095 of the statutes is amended to read:

10 **703.095 Modification and correction of recorded condominium**
11 **instruments, amendments, and addenda.** A recorded condominium instrument,
12 amendment, or addendum may only be modified by recording an amendment,
13 addendum, or correction instrument, or by removal from the provisions of this
14 chapter under s. 703.28 (1). The register of deeds may not record ~~a~~ an amendment,
15 addendum, or correction instrument if it does not refer to the condominium
16 instrument, amendment, or addendum being modified or corrected, including the
17 document number, and may not record ~~amendments and addenda~~ an amendment or
18 addendum unless they are it is numbered consecutively and bear or states that it is
19 an amendment and restatement of the condominium instrument being modified or
20 corrected, bears the name of the condominium as it appears in the declaration, and
21 identifies all units in the condominium.

22 **SECTION 5.** 703.115 (1) (b) of the statutes is amended to read:

23 703.115 (1) (b) Provides that a condominium instrument may be rejected only
24 if it fails to comply with the applicable requirements of ss. 703.095, 703.11 (2) (a), (c),

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1 and (d) and (3), 703.275 (5), and 703.28 (~~1m~~) or if the professional land surveyor's
2 certificate under s. 703.11 (4) is not attached to or included in the condominium plat.

3 **SECTION 6.** 703.12 of the statutes is amended to read:

4 **703.12 Description of units.** A description in any deed or other instrument
5 affecting title to any unit ~~which, including a conveyance, as defined in s. 706.01 (4),~~
6 that makes reference to the letter or number or other appropriate designation of the
7 unit on the condominium plat together with a reference to the condominium
8 instruments and the name of the condominium as it appears in the declaration shall
9 be a good and sufficient description for all purposes.

10 **SECTION 7.** 703.13 (6) (e) of the statutes is amended to read:

11 703.13 (6) (e) Plats and plans showing the altered boundaries and the
12 dimensions thereof between adjoining units, and their identifying numbers or
13 letters, shall be prepared. The plats and plans shall be certified as to their accuracy
14 in compliance with this subsection by a ~~civil engineer, architect, or~~ professional land
15 surveyor.

16 **SECTION 8.** 703.13 (7) (c) of the statutes is amended to read:

17 703.13 (7) (c) Plats and plans showing the boundaries and dimensions
18 separating the new units together with their other boundaries and their new
19 identifying numbers or letters shall be prepared. The plats and plans shall be
20 certified as to their accuracy and compliance with this subsection by a ~~civil engineer,~~
21 ~~architect, or~~ professional land surveyor.

22 **SECTION 9.** 703.13 (8) (c) of the statutes is amended to read:

23 703.13 (8) (c) Plats and plans showing the boundaries and dimensions of the
24 new unit together with the new identifying number or letter shall be prepared. The

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1 plats and plans shall be certified as to their accuracy and compliance with this
2 subsection by a ~~civil engineer, architect, or~~ professional land surveyor.

3 **SECTION 10.** 703.15 (4) (d) 1. of the statutes is amended to read:

4 703.15 (4) (d) 1. At Except as provided in par. (dm), at meetings of the
5 association, every unit owner is entitled to cast the number of votes appurtenant to
6 ~~his or her~~ the unit owner's unit, as established in the declaration under s. 703.09 (1)
7 (f). Unit owners may vote by proxy, but, the proxy is effective only for a maximum
8 period of 180 days following its issuance, unless granted to a mortgagee or lessee.
9 If only one of multiple owners of a unit is present at a meeting of the association, the
10 owner that is present is entitled to cast the votes allocated to that unit.

11 **SECTION 11.** 703.15 (4) (dm) of the statutes is created to read:

12 703.15 (4) (dm) For a condominium created on or after the effective date of this
13 paragraph [LRB inserts date], after the expiration of any period of declarant
14 control of the association under sub. (2) (c), no unit owner may vote any votes
15 appurtenant to a unit at a meeting of the association if, at the time of the meeting,
16 the unit is partially or fully exempt from any assessments.

17 **SECTION 12.** 703.165 (2) of the statutes is renumbered 703.165 (2) (intro.) and
18 amended to read:

19 703.165 (2) LIABILITY FOR ASSESSMENTS. (intro.) A unit owner shall be liable for
20 all assessments, or installments ~~thereof~~ of assessments, coming due while owning
21 a unit, including any assessments coming due during the pendency of any claim by
22 the unit owner against the association or during any period in which the unit is not
23 occupied by the unit owner or is leased or rented to any other person. Liability for
24 assessments may not be avoided by waiver of the use or enjoyment of any common
25 element or by abandonment of the unit for which the assessments are made. Except

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1 as provided in sub. (4), a grantee of a unit is liable for assessments against a grantor
2 under any of the following circumstances:

3 (a) In a voluntary grant, the grantee shall be jointly and severally liable with
4 the grantor for all unpaid assessments against the grantor for his or her the grantor's
5 share of the common expenses up to the time of the voluntary grant for which a
6 statement of condominium lien is recorded, without prejudice to the rights of the
7 grantee to recover from the grantor the amounts paid by the grantee for such
8 assessments. ~~Liability for assessments may not be avoided by waiver of the use or~~
9 ~~enjoyment of any common element or by abandonment of the unit for which the~~
10 ~~assessments are made.~~

11 **SECTION 13.** 703.165 (2) (b) of the statutes is created to read:

12 703.165 (2) (b) If a first mortgage on a unit was executed on or after the effective
13 date of this paragraph [LRB inserts date], a mortgagee that becomes the owner
14 of the unit following foreclosure of the first mortgage is jointly and severally liable
15 with the mortgagor for unpaid assessments against the mortgagor for the
16 mortgagor's share of common expenses coming due during the 12 months
17 immediately preceding the date on which the foreclosure sale is confirmed under s.
18 846.165. Liability of the mortgagee under this paragraph shall not prejudice the
19 rights of the mortgagee to recover from the mortgagor any amounts paid by the
20 mortgagee for the assessments.

21 **SECTION 14.** 703.165 (5) (intro.) of the statutes is amended to read:

22 703.165 (5) PRIORITY OF LIEN. (intro.) A lien under this section is prior to all
23 other liens except the following:

24 **SECTION 15.** 703.165 (5) (c) of the statutes is amended to read:

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1 703.165 (5) (c) Meehanie's Construction liens filed prior to the making of the
2 assessment.

3 **SECTION 16.** 703.167 of the statutes is created to read:

4 **703.167 Repair or replacement of defective common elements;**
5 **assessments, foreclosures, deeds in lieu, and options of first mortgagees to**
6 **release lien or take title. (1) DEFINITIONS.** In this section:

7 (a) "Defective common elements" means common elements of a building in a
8 condominium that are affected by a defect described under sub. (2) (a).

9 (b) "First mortgage" means a first mortgage described under s. 703.165 (5) (b).

10 (c) "First mortgagee" means the mortgagee under a first mortgage on a unit,
11 or the holder of an equivalent security interest.

12 **(2) APPLICABILITY.** (a) Subject to par. (b), if a defect is discovered in the common
13 elements of a building in a condominium that is related to the initial construction of
14 the building or work performed by or for a declarant during any period of declarant
15 control of the association under s. 703.15 (2) (c), the association may use the
16 procedure under this section to raise the funds necessary to undertake the repair or
17 replacement of the defective common elements.

18 (b) The association may use the procedure under this section only if all of the
19 following apply:

20 1. Any period of declarant control of the association under s. 703.15 (2) (c) has
21 expired.

22 2. The association has attempted in good faith to determine the persons that
23 may liable for the repair or replacement of the defective common elements, including
24 insurers, and for each person the association determines may be liable, either the
25 person has refused or is financially unable to undertake or pay for the repair or

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1 replacement, or the association is unable to locate that person. The association is not
2 required to bring any action in circuit court against any person that may be liable
3 in order to use the procedure under this section.

4 3. The association has determined that property insurance obtained by the
5 association under s. 703.17 does not cover the repair or replacement of the defective
6 common elements, or the association's insurer has denied the association's claim for
7 coverage under the property insurance policy.

8 4. The cost to repair or replace the defective common elements is 20 percent or
9 more of the value of the building that is affected by the defect described under par.
10 (a).

11 5. Any reserves maintained by the association for repair and replacement of
12 common elements beyond routine maintenance are insufficient to cover the cost to
13 repair or replace the defective common elements.

14 6. The association intends to repair or replace the defective common elements,
15 and the cost for that repair or replacement is a common expense.

16 **(3) LEVYING OF ASSESSMENTS; FORECLOSURE FOR UNPAID ASSESSMENTS.** (a) *Levying*
17 *of assessments; notice to unit owners.* The association shall estimate the total cost
18 required to repair or replace the defective common elements and shall levy
19 assessments against the unit owners as provided under s. 703.16 (2) (a) to raise the
20 funds required to undertake the repair or replacement. The association shall give
21 written notice to the unit owners that the association is raising funds under this
22 section to repair or replace the defective common elements. The association shall
23 include all of the following information in the notice:

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1 1. A description of the defect described under sub. (2) (a), an explanation of how
2 the defect affects the common elements of the building, and a summary of the work
3 necessary to repair or replace the defective common elements.

4 2. A statement of the estimated total cost required to repair or replace the
5 defective common elements.

6 3. A breakdown of the approximate cost under subd. 2. that may be assessed
7 against each unit owner in one or more increments.

8 4. The date or dates on which the association anticipates levying the
9 assessments under subd. 3.

10 (b) *Refusal by unit owners to pay assessments; foreclosure of condominium*
11 *liens.* If a unit owner does not pay an assessment levied under par. (a) or if the unit
12 owner notifies the association that the unit owner does not intend to pay the
13 assessment, the association may file a statement of condominium lien under s.
14 703.165 (3) with respect to the unit owner's unit. The association may foreclose that
15 condominium lien as provided under s. 703.165 (7) or accept a deed in lieu of
16 foreclosure from the unit owner.

17 (4) **OPTIONS OF FIRST MORTGAGEES.** (a) Notwithstanding s. 703.165 (5) and
18 subject to pars. (b) and (h), if the association acquires title to a unit at foreclosure sale
19 or by deed in lieu of foreclosure under sub. (3) (b), the association may use the
20 procedure under this subsection to require a first mortgagee of the unit to either
21 release its first mortgage on the unit or take title to the unit.

22 (b) The association may use the procedure under this subsection only if all of
23 the following apply:

24 1. There are no liens on the unit other than liens described under s. 703.165
25 (5) (a) to (e).

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1 2. The first mortgage on the unit was executed on or after the effective date of
2 this subdivision [LRB inserts date].

3 (c) No later than 2 years after the date of delivery of the notice to unit owners
4 under sub. (3) (a), the association may give written notice by certified mail and 1st
5 class mail to a first mortgagee of a unit described under par. (a), along with a copy
6 of the notice to unit owners, that includes all of the following information:

7 1. A statement that the association is raising funds under this section to repair
8 or replace the defective common elements.

9 2. A statement that the association is the owner of the unit and that the first
10 mortgagee has a first mortgage on the unit.

11 3. An explanation of the options available to the first mortgagee under par. (d)
12 and a deadline that is at least 60 days from the date on which the notice is sent by
13 which the first mortgagee must select one of those options.

14 (d) No later than the deadline specified in the notice under par. (c), a first
15 mortgagee shall do one of the following:

16 1. Notify the association that the first mortgagee will accept a quit claim deed
17 for the unit from the association.

18 2. Record a release of the first mortgage in the office of the register of deeds and
19 notify the association that the lien of the first mortgage has been released.

20 (e) If a first mortgagee takes the action described under par. (d) 1., all of the
21 following apply:

22 1. The association shall promptly deliver a quit claim deed for the unit to the
23 first mortgagee.

24 2. The first mortgagee shall credit the fair value of the unit toward the first
25 mortgage debt, interest, and costs. If any deficiency remains, the first mortgagee

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1 may apply to the circuit court for a judgment of deficiency. If there is any surplus,
2 the first mortgagee shall pay the surplus into the circuit court, and the circuit court
3 shall dispose of the surplus as provided under s. 846.162.

4 (f) If a first mortgagee takes the action described under par. (d) 2., the first
5 mortgagee may petition the circuit court for a judgment related to the debt previously
6 secured by the first mortgage.

7 (g) If a first mortgagee fails to take any of the actions described under par. (d)
8 by the deadline specified in the notice under par. (c), the first mortgage is considered
9 released, and the association may commence an action to quiet title to the unit.

10 (h) If the association acquires title to a unit at foreclosure sale or by deed in lieu
11 of foreclosure under sub. (3) (b) and the unit is encumbered by a construction lien
12 described under s. 703.165 (5) (c) that is prior to a first mortgage on the unit, the
13 association may use the procedure under pars. (c) to (g) to require the holder of the
14 construction lien to either release the construction lien on the unit or take title to the
15 unit. The association may not use the procedure under this subsection to require a
16 first mortgagee of the unit to either release its first mortgage lien on the unit or take
17 title to the unit unless the construction lien holder releases the construction lien.

18 **SECTION 17.** 703.18 (2) (a) and (b) of the statutes are amended to read:

19 703.18 (2) (a) Unless otherwise provided in the declaration and except as
20 provided in par. (b), in the event of damage to or destruction of common elements of
21 a condominium, the association shall promptly undertake to repair or reconstruct it
22 the common elements to a condition compatible with the remainder of the
23 condominium. All cost of the repair or reconstruction in excess of available insurance
24 proceeds shall be a common expense.

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1 (b) ~~However, if~~ If a condominium is damaged to an extent more than the
2 available insurance proceeds, the condominium shall be subject to an action for
3 partition upon obtaining the written consent of the unit owners having 75 percent
4 or more of the votes. ~~In~~ Except as provided in par. (c), in the case of partition, the net
5 proceeds of sale together with any net proceeds of insurance shall be considered as
6 one fund and shall be divided among all unit owners in proportion to their percentage
7 interests in the common elements, and shall be distributed in accordance with the
8 priority of interests in each unit.

9 **SECTION 18.** 703.18 (2) (c) of the statutes is created to read:

10 703.18 (2) (c) If the condominium was created on or after the effective date of
11 this paragraph [LRB inserts date], a declaration may provide that the net
12 proceeds under par. (b) shall be divided according to the unit owners' percentage of
13 total fair market value as determined by following the procedure set forth in s. 703.28
14 (4) (d), except that the appraiser shall determine the fair market value of each unit,
15 including the unit's percentage interest in the common elements, as the unit and
16 common elements existed immediately prior to the damage described under par. (b).

17 **SECTION 19.** 703.22 (title), (2) and (3) of the statutes are amended to read:

18 **703.22** (title) **Mechanics' Construction and suppliers' liens.**

19 (2) Any ~~mechanics'~~ construction lien or suppliers' lien under subch. I of ch. 779
20 arising as a result of repairs to or improvements of a unit by a unit owner shall be
21 a lien only against the unit.

22 (3) Any ~~mechanics'~~ construction lien or suppliers' lien under subch. I of ch. 779
23 arising as a result of repairs to or improvements of the common elements, if
24 authorized in writing by the association, shall be paid by the association as a common
25 expense and until paid shall be a lien against each unit in proportion to ~~its~~ the unit's

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1 percentage interest in the common elements. On payment of the proportionate
2 amount by any unit owner to the lienor or on the filing of a written undertaking in
3 the manner specified by s. 779.08, the unit owner shall be entitled to a release of ~~his~~
4 ~~or her~~ the unit owner's unit from the lien, and the association shall not be entitled
5 to assess ~~his or her~~ the unit owner's unit for payment of the remaining amount due
6 for the repairs or improvements.

7 **SECTION 20.** 703.28 (1) of the statutes is renumbered 703.28 (3) (a).

8 **SECTION 21.** 703.28 (1m) (intro.) of the statutes is created to read:

9 703.28 (1m) ALL CONDOMINIUMS. (intro.) The following provisions apply to all
10 condominiums:

11 **SECTION 22.** 703.28 (2) of the statutes is renumbered 703.28 (3) (b) and
12 amended to read:

13 703.28 (3) (b) Upon removal under this subsection of any condominium
14 property from the provisions of this chapter, the property ~~shall be deemed to be is~~
15 owned in common by the unit owners. The undivided interest in the property owned
16 in common ~~which~~ that appertains to each unit owner ~~shall be is~~ the percentage of
17 undivided interest previously owned by the unit owner in the common elements.

18 **SECTION 23.** 703.28 (3) (intro.) of the statutes is created to read:

19 703.28 (3) EXISTING CONDOMINIUMS. (intro.) The following provisions apply to
20 a condominium created before the effective date of this subsection (intro.) [LRB
21 inserts date]:

22 **SECTION 24.** 703.28 (4) of the statutes is created to read:

23 703.28 (4) NEW CONDOMINIUMS. The following provisions apply to a
24 condominium created on or after the effective date of this subsection (intro.) [LRB
25 inserts date]:

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1 (a) All or any part of condominium property may be removed from the
2 provisions of this chapter if the unit owners of units to which at least 80 percent of
3 the votes are allocated, or a greater percentage if required by the declaration, consent
4 to removal in writing, the holders of all liens affecting any of the units consent to
5 removal in writing, and a removal instrument is duly recorded. If all of the units in
6 a condominium are restricted exclusively to nonresidential uses, the declaration for
7 the condominium may specify a smaller percentage of the votes that are required for
8 removal, except that the percentage may not be less than the percentage required to
9 amend the condominium declaration under s. 703.09 (2).

10 (b) The removal instrument under par. (a) shall be signed by the required
11 number of consenting unit owners in the same manner as required in conveyances
12 of real property. The removal instrument is effective when recorded in the office of
13 the register of deeds of the county where the property is located and shall be recorded
14 in every county in which any portion of the condominium is located. The removal
15 instrument shall specify a date after which the removal instrument is void unless
16 recorded on or before that date.

17 (c) Upon removal under this subsection of condominium property from the
18 provisions of this chapter, the property is owned in common by the unit owners.
19 Unless the declaration provides for the use of the procedure under par. (d), upon
20 removal, the undivided interest in the property owned in common that appertains
21 to each unit owner is the percentage of undivided interest previously owned by the
22 unit owner in the common elements. Upon removal, a lien against a unit is
23 considered a lien against the percentage of the undivided interest in the property of
24 the unit owner.

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1 (d) A declaration may provide that, upon removal under this subsection of
2 condominium property from this chapter, each unit owner's undivided interest in the
3 property after removal shall be determined under this paragraph, rather than under
4 par. (c). The association shall select an appraiser who shall determine the fair
5 market value of each unit in the condominium, including the unit's percentage
6 interest in the common elements. The association shall deliver a copy of the
7 appraiser's determination to each unit owner along with a notice that the unit owner
8 may object to the determination within 30 days after the date of the notice. Unless
9 the unit owners of units to which at least 30 percent of the votes are allocated timely
10 object to the determination, the determination shall be final, and each unit owner's
11 undivided interest in the property after removal shall be a percentage calculated by
12 dividing the appraised fair market value of the unit, including the unit's percentage
13 interest in the common elements, by the sum of the appraised fair market values of
14 all units, including their percentage interests in the common elements.

SECTION 25. Initial applicability.

15
16 (1) APPROVAL OF FIRST MORTGAGEE FOR AMENDING DECLARATION. The treatment of
17 section 703.09 (2) and (2m) of the statutes first applies to an amendment to which
18 the required number of unit owners consented on the effective date of this subsection.

19 (2) MODIFICATION AND CORRECTION OF RECORDED CONDOMINIUM INSTRUMENTS,
20 AMENDMENTS, AND ADDENDA. The treatment of section 703.095 of the statutes first
21 applies to an amendment, addendum, or correction instrument recorded on the
22 effective date of this subsection.

23 (3) DESCRIPTION OF UNITS. The treatment of section 703.12 of the statutes first
24 applies to a deed or other instrument affecting title to a unit executed on the effective
25 date of this subsection.

