



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE TOM HEBL
FROM: Don Dyke, Chief of Legal Services
RE: Assembly Amendment __ (LRBa2582/1) to 2003 Assembly Bill 254
DATE: March 4, 2004

This memorandum describes the above-captioned amendment.

1. INCLUSION OF RENTAL REQUIREMENTS OR RESTRICTIONS IN DECLARATION

The Bill

The bill requires the condominium declaration to include: (a) any requirement applicable to or restriction on the rental of residential condominium units; or (b) reference to any such requirement or restriction contained in the bylaws.

The Amendment

The amendment deletes this provision.

2. MANDATORY ARBITRATION

The Bill

The bill expressly allows the declaration to provide for mandatory arbitration under ch. 788, Stats., of disputes involving the interests of the declarant, unit owners, association, or board of directors when the disputes arise out of the declaration, bylaws, or rules.

The Amendment

The amendment deletes this provision.

3. EVICTION ACTION BY ASSOCIATION

The Bill

The bill provides that the condominium declaration may authorize the condominium association, under specified circumstances, to bring an eviction action against a tenant who fails to comply with the declaration, bylaws, or association rules or who commits any act or omission that is grounds for eviction under current law (a "violation"). Specifically, a declaration may provide that a unit owner, as a condition of renting or leasing the owner's residential unit, grants the association power of attorney to bring in an eviction action against a tenant of the unit owner who commits a violation if the unit owner fails to take reasonable action to evict after being requested to do so by the association. (If within 60 days after the eviction request the unit owner gives notice terminating or does not renew the tenant's lease or rental agreement, that constitutes reasonable action to evict a tenant.)

The declaration may specify notice and procedural requirements for the association's exercise of power of attorney and the allocation of responsibility for eviction-related costs between the unit owner and the association. An eviction action brought by an association is subject to relevant eviction provisions of current chs. 704 and 799, Stats.

The bill's provision applies only to leases or rental agreements entered into or renewed after three years after the effective date of the bill.

The Amendment

The amendment deletes this provision.

4. RECORDING DECLARATION AMENDMENT BASED ON ALTERNATE PROCEDURE

The Bill

SECTION 16 of the bill provides an alternative procedure for amending the declaration. Under the procedure, the condominium association has 180 days to secure necessary consents and approvals and may rely on the list of owners of record contained in a title report at the beginning of the 180-day period.

If an amendment under this procedure is successful, the bill requires recording an "affidavit" containing specified information with the register of deeds.

The Amendment

The amendment requires, consistent with current ch. 703 recording requirements, that the "amendment" (not affidavit) be recorded, together with the required information.

5. BYLAWS: SERVICE AS DIRECTOR BY NONOCCUPANT OWNERS

The Bill

The bill expressly provides that the condominium bylaws may provide that a unit owner may not serve as a director of the condominium association unless the unit owner occupies his or her unit or may specify the proportion of nonoccupant unit owners who may serve as directors.

The Amendment

The amendment deletes this provision.

6. DECLARANT LIABILITY FOR ASSESSMENTS ON UNSOLD UNITS

The Bill

The bill provides that, during the period of declarant control, if a unit owned by the declarant is exempt from assessments for common expenses until the unit is sold, the total amount that may be assessed against units that are not exempt from assessments may not exceed the units' projected percentage share of common expenses; the declarant is liable for the balance of the actual expenses.

The Amendment

The amendment provides that the total amount that may be assessed against units that are not exempt from assessments may not exceed those units' "budgeted share" of common expenses (in contrast to those units' "projected share" of common expenses).

7. OPTING OUT OF STATUTORY RESERVE ACCOUNT REQUIREMENT

The Bill

The bill requires a declarant or association to establish a "statutory reserve account" to fully or partially fund repairs and replacements of common elements, other than routine maintenance, unless the declarant or association elects not to establish an account. The reserve account provisions apply to exclusively residential condominiums, other than small condominiums. The association may elect to terminate a statutory reserve account with the written consent of at least 2/3 of the unit votes. Existing condominiums may elect not to establish a statutory reserve account with the written consent of at least 2/3 of the unit votes.

The Amendment

The amendment revises the above 2/3 vote requirements by substituting "a majority" of the unit votes.

8. RECORDING STATUTORY RESERVE ACCOUNT STATEMENTS

The Bill

The bill requires a "statutory reserve account statement" to be recorded with the register of deeds when an account is established or an election is made not to establish or to terminate an account.

The Amendment

The amendment requires the recorded statement to conform to current standard format requirements for recorded documents under s. 59.43 (2m), Stats.

9. FINANCIAL AND OPERATIONAL RECORDS DURING DECLARANT CONTROL

The Bill

The bill requires the creation and maintenance of, and provides means of access to, financial and operational records of the association during the period of declarant control. The declarant is responsible for the creation and maintenance of the records during the period of declarant control and must turn the records over to the board of directors elected after the period of control expires.

Also, during the period of declarant control and one year thereafter, the bill requires the association to arrange for an independent audit of the association's financial records if requested by the lesser of three unit owners or the owners of 10% of the units (not including units owned by the declarant). The frequency of requesting an audit is limited under the bill: no request may be made for an audit within 24 months after completion of a previous audit.

The Amendment

The amendment provides that a financial audit requested under the provision is at the association's expense but the cost of any audit requested within 36 months after completion of a previous audit is to be paid for by the requesting unit owners (the 24-month limitation of the bill is deleted).

10. EXECUTIVE SUMMARY OF DISCLOSURE ITEMS

The Bill

The bill requires an "executive summary" of certain information as the first document in the disclosure materials that are currently furnished by a unit seller to a buyer. The summary is intended to highlight important items in the disclosure package that may be difficult to find in other disclosure materials.

The Amendment

The amendment adds the following to the required information in the executive summary:

- A description of any provisions exempting the declarant or modifying the declarant's obligation to pay assessments on the declarant's unsold units during the period of declarant control, and any other provisions in the declaration, bylaws, or budget addressing the levying and payment of assessments on units during the period of declarant control.
- An indication that a unit purchaser's rights and responsibilities may be altered by an amendment of the declaration or bylaws, and a description of the amendment process and requirements.

11. NUISANCE ACTIONS AGAINST ASSOCIATION

The Bill

The bill allows a city, village, town, or county to proceed directly against a condominium association in an action to abate a nuisance if the municipality or county may bring the abatement action under ch. 823 (nuisances) and the failure of the condominium association to perform its duties to maintain and control the common elements is a reason that the nuisance has not been abated.

The Amendment

Under the amendment, the municipality or a county may proceed under the provision if it has "grounds under ch. 823 to abate a nuisance occurring upon the common elements of a condominium." Under the amendment, the action authorized by the provision is an action for receivership under ch. 823, Stats. Finally, the amendment expressly states that the provision does not authorize the seizure of condominium buildings or units.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

DD:all;wu

Becher, Scott

From: Hoglund, Lindsay
Sent: Thursday, March 04, 2004 1:02 PM
To: Becher, Scott
Subject: FW: LRB 03a2582 Topic: Condominium

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

From: Northrop, Lori
Sent: Thursday, March 04, 2004 11:37 AM
To: Rep.Hebl
Subject: LRB 03a2582 Topic: Condominium

The attached proposal has been jacketed for introduction.

A copy has also been sent to:



2582

WRA MEMORANDUM

To: Legislature

From: Mike Theo and Deb Conrad, Wisconsin REALTORS® Association

Date: March 4, 2004

Re: LRBa2582/1 to AB 254, Condominium Law Revisions

LRB Amendment 2582/1 to AB 254 addresses all the major concerns raised at the Assembly Housing Committee hearing and maintains the balance of interests represented in the Legislative Council's original condominium law revisions bill.

LRB Amendment 2582/1 makes the following major revisions:

1. AB 254 requires that any rental restrictions be stated or referenced in the declaration. LRBa2582/1 removes this provision entirely.
2. AB 254 expressly allows the declaration to provide for mandatory arbitration. LRBa2582/1 removes this provision entirely.
3. AB 254 allows the declaration to provide that the association may act as power of attorney to evict tenants if the unit owner who is the landlord fails to act. LRBa2582/1 removes this provision entirely.
4. AB 254 allows the bylaws to restrict a unit owner from serving on the association board of directors if he or she does not occupy the unit. LRBa2582/1 removes this provision entirely.
5. AB 254 requires a majority vote to establish reserve funds for long-term repairs and improvements and a 2/3 vote to opt out of the reserve fund. LRBa2582/1 sets the vote required for associations to opt in and opt out reserve funds at a simple majority.
6. AB 254 establishes an executive summary index to the disclosure materials given to unit purchasers. The executive summary highlights and references provisions that are important for unit purchasers. LRBa2582/1 adds provisions to the executive summary that:
 - a. Highlight provisions that regulate the fees paid by unit purchasers in new condominiums
 - b. Emphasize to unit purchasers that the condominium documents may be amended by the unit owners



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE STEVE WIECKERT
FROM: Don Dyke, Chief of Legal Services
RE: Assembly Amendment __ (LRBa2568/1) to 2003 Assembly Bill 254 (Condominium Law)
DATE: March 4, 2004

This memorandum describes how the above-captioned amendment differs from Assembly Amendment 1 to 2003 Assembly Bill 254. With the exception of the differences described below, Assembly Amendment __ (LRBa2568/1) is identical to Assembly Amendment 1.

Inclusion of Rental Requirements or Restrictions in Declaration

The Bill

The bill requires the condominium declaration to include: (a) any requirement applicable to or restriction on the rental of residential condominium units; or (b) reference to any such requirement or restriction contained in the bylaws.

Amendment 1

Amendment 1 provides that requirements and restrictions for renting residential units stated in an amendment to the declaration of a condominium established before the effective date of the bill are not binding on leases in effect on the date the amendment is recorded or on unit owners who did not give written consent to the amendment, but are binding on the unit owner once the unit is sold and conveyed to a new unit owner.

Amendment __ (LRBa2568/1)

The amendment deletes the above-described provision of the bill in its entirety (and, consequently does not include the treatment of Assembly Amendment 1).

Eviction Action by Association

The Bill

The bill provides that the condominium declaration may authorize the condominium association, under specified circumstances, to bring an eviction action against a tenant who fails to comply with the declaration, bylaws, or association rules or who commits any act or omission that is grounds for evictions under current law (a "violation"). Specifically, a declaration may provide that a unit owner, as a condition renting or leasing the owner's residential unit, grants the association power of attorney to bring an eviction action against a tenant of the unit owner who commits a violation if the unit owner fails to take reasonable action to evict after being requested to do so by the association. (If within 60 days after the eviction request the unit owner gives notice terminating or does not renew the tenant's lease or rental agreement, that constitutes reasonable action to evict a tenant).

The declaration may specify a notice and procedural requirements for the association's exercise of power of attorney and the allocation of responsibility for eviction-related costs between the unit owner and the association. An eviction action brought by an association is subject to relevant eviction provisions of current chs. 704 and 799, Stats.

The bill's provision applies only to leases or rental agreements entered into or renewed three years after the effective date of the bill.

Amendment 1

Amendment 1 provides that the eviction provision applies to condominiums established before the effective date of the bill only to the extent the declaration is amended with the consent of all unit owners to include any of the provisions.

Amendment __ (LRBa2568/1)

The amendment deletes the above-described eviction provisions of the bill in its entirety (and, consequently, does not include the treatment of Assembly Amendment 1).

BYLAWS: SERVICE AS DIRECTOR BY NONOCCUPANT OWNERS

The Bill

The bill expressly provides that the condominium bylaws may provide that a unit owner may not serve as a director of the condominium association unless the unit owner occupies his or her unit or may specify the proportion of nonoccupant unit owners who may serve as directors.

Assembly Amendment 1

Assembly Amendment 1 deletes the express authority for the bylaws to provide that a unit owner may not serve as a director unless the owner occupies his or her unit. The amendment retains the provision that the bylaws may specify the proportion of nonoccupant unit owners who may serve as directors. See item 5. of the amendment.

Amendment ___ (LRBa2568/1)

The amendment deletes the above-described provision of the bill in its entirety (and, consequently, does not include the treatment of Assembly Amendment 1).

Declarant Liability for Assessments on Unsold Units

The Bill

The bill provides that, during the period of declarant control, if a unit owned by the declarant is exempt from assessments for common expenses until the unit is sold, the total amount that may be assessed against units that are not exempt from assessments may not exceed the unit's projected percentage share of common expenses; the declarant is liable for the balance of the actual expenses.

Amendment 1

Amendment 1 deletes this provision.

Amendment ___ (LRBa2568/1)

The amendment restores the provision of the bill deleted by the amendment and revises that provision by providing that the total amount that may be assessed against units that are not exempt from assessments may not exceed those units' "budgeted share" of common expenses (in contrast to those units' "projected share" of common expenses).

Financial and Operational Records During Declarant Control

The Bill

The bill requires the creation and maintenance of, and provides means of access to, financial and operational records of the association during the period of declarant control. The declarant is responsible for the creation and maintenance of the records during the period of declarant control and must turn the records over to the board of directors elected after the period of control expires.

Also, during the period of declarant control and one year thereafter, the bill requires the association to arrange for an independent audit of the association's financial records if requested by the lesser of three unit owners or the owners of 10% of the units (not including units owned by the declarant). The frequency of requesting an audit is limited under the bill: no request may be made for an audit within 24 months after completion of a previous audit.

Amendment 1

Amendment 1 revises the period during which an independent audit of financial records may be requested. Under the amendment, the request may be made during the period of declarant control and for two years thereafter, but no earlier than two years after the condominium declaration is recorded.

The amendment also expressly provides that a financial audit requested under the provision is at the association's expense but the cost of any audit requested within 36 months after completion of a previous audit is to be paid for by the requesting unit owners.

Amendment __ (LRBa2568/1)

The amendment retains the language of the bill concerning the period during which an audit may be requested: during the period of declarant control and for one year thereafter. The amendment retains those provisions of Assembly Amendment 1 providing that a financial audit requested under the provision is at the association's expense but the cost of any audit requested within 36 months after completion of a previous audit is to be paid for by the requesting unit owners.

Nuisance Actions Against Associations

The Bill

The bill allows a city, village, town, or county to proceed directly against a condominium association in an action to abate a nuisance if the municipality or county may bring the abatement action under ch. 823 (nuisances) and the failure of the condominium association to perform its duties to maintain and control the common elements is a reason that the nuisance has not been abated.

Amendment 1

Amendment 1 deletes this provision

Amendment __ (LRBa2568/1)

The amendment restores this provision of the bill, with revisions. Under the amendment, the municipality or a county may proceed under the provision if it has "grounds under ch. 823 to abate a nuisance occurring upon the common elements of a condominium." Under the amendment, the action authorized by the provision is an action for receivership under ch. 823, Stats. Finally, the amendment expressly states that the provision does not authorize the seizure of condominium buildings or units.

If you have any questions or need additional information, please contact me directly at the Legislative Council staff offices.

DD:wu:tlujal

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WM. PHARIS HORTON
ATTORNEY AT LAW

February 24, 2004

MAILING ADDRESS
P.O. BOX 5621
MADISON, WISCONSIN 53705

Hon. Steve Wieckert, Chairman
Assembly Committee on Housing
P.O. Box 8953
Madison WI 53708

Dear Chairman Wieckert:

Re: Hearing on 2003 Assembly Bill 254

I regret that a previous commitment makes it impossible for me to attend the Committee's hearing on 2003 Assembly Bill 254 on Thursday. I would like to offer my comments, and my strong statement of support, for this bill and my hope that it can be advanced and adopted this session.

The bill is the product of a Legislative Council study committee on which I had the privilege of serving. I was impressed by the quality and depth of the study and the commitment of those on the study committee to work for the improvement of the Wisconsin Condominium Act. There were a lot of ideas discussed and a healthy range of opinions on those ideas. There was significant compromise on controversial issues and a resulting belief by the study committee that the overall package made a number of improvements to the Act.

Following the introduction of the Legislative Council bill in 2002, there was a hearing late in the 2001 session of the Legislature. Some further ideas were raised in that hearing and the interested parties have been working so far this session to iron out some of the remaining points in controversy. This effort is represented by an amendment (LRB 2259). It is a continuation of the process of compromise that characterized the work of the study committee. There are parts of the amendment, just as there are parts of the bill, that I am more or less enthusiastic about, but I remain convinced that even with the adoption of the amendment the overall package will represent a step forward in the Act. Condominium ownership has become an important part of the real estate market, residential and commercial, in Wisconsin. This bill makes condominium ownership available more economically and helps it to be more understandable to the people of Wisconsin. I would urge its adoption with the amendment.

I understand other amendments may be offered. A recent communication from the newly-formed Community Associations Institute, Wisconsin Chapter, addresses various points in the bill and the amendment. The Community Associations Institute (CAI) nationally has been a useful and positive clearing house for information regarding condominiums and other community groups for many years. The comments by the Wisconsin Chapter, unfortunately, appear to miss the mark as regards this proposal.

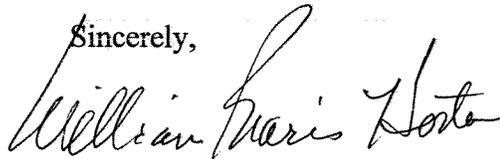
Hon. Steve Wieckert
February 24, 2004
Page Two

A major point in the CAI-Wisconsin Chapter's memorandum of February 18, its item I, results from an apparent inability to interpret legislative drafting. Provisions that the memo claims have been deleted are merely renumbered: for example, §703.16(4) of the current Statutes is not removed but is renumbered and retained as §703.165(3). Similarly, what is now §703.16(6) dealing with the priority of condominium liens becomes §703.165(5) and, while its introductory language is reworded to be more easily understood, the priority of the condominium lien is not changed by this amendment. Contrary to the conclusion of the Wisconsin Chapter, the changes that it interprets into Sections 31 and 34 of the bill strengthen rather than weaken the position of an association in dealing with its finances.

A second major point in the Wisconsin Chapter memo, its item VII, deals with the approval mechanism for certain changes within a condominium. The memo calls for approval by the association board (which is required in the bill on page 14, lines 6-7), assurance that it will not interfere with the use of other units or the common elements (required in the bill on page 14, lines 1-3), and will not impair the structural integrity of the condominium (required in the bill on page 14, lines 4-5). Apparently the Wisconsin Chapter analysis missed what was already in the bill in making these comments.

The balance of the points in the memo refer to issues in the bill and amendment that were the subject of debate and compromise either in the study committee or in the process leading up to the drafting of the amendment. I am not unsympathetic to several of the points raised, but none of them are of such importance that they should sidetrack the bill. This bill and its amendment are a very positive step forward. They are not the last amendment that will be made to the Condominium Act; further fine-tuning to meet problems and new developments is inevitable. These issues, if they remain, can be addressed then. In the meantime, I believe the bill as amended deserves to be acted on favorably by your Committee and the Legislature.

Sincerely,



Wm Pharis Horton



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE STEVE WIECKERT, CHAIR, ASSEMBLY COMMITTEE ON HOUSING

FROM: Don Dyke, Chief of Legal Services

RE: Concerns Expressed Regarding Lien Enforcement and Limited Common Element Improvement Provisions of 2003 Assembly Bill 254 (Condominiums)

DATE: February 25, 2004

This is in response to your request for a memorandum responding to concerns raised by the Community Association Institute-Wisconsin Chapter regarding the provisions of 2003 Assembly Bill 254 that: (a) treat current statutory provisions relating to liens on condominium units for common expense assessments; and (b) create a procedure allowing a unit owner to improve limited common elements under certain circumstances. These concerns are included (together with additional concerns) in a February 18, 2004 memorandum to Members of the Assembly Committee on Housing from the Community Association Institute-Wisconsin Chapter (Legislative Committee).

LIEN ENFORCEMENT

PERTINENT PROVISIONS OF BILL

SECTIONS 31 and 34 of the bill create new s. 703.165, Stats., relating to liens for unpaid common expenses, unpaid damages, and unpaid penalties. The new statutory section consists of current s. 703.16 (3) to (9), as renumbered and revised, and a new, expanded definition of "assessments" for purposes of the new section.

The current provisions of s. 703.16 (3) to (9) apply to failure to pay assessments for common expenses. The new definition of "assessments" in the bill expands the meaning of assessments to also include failure to pay charges, fines, or assessments for damages to the condominium and for violations of the declaration, bylaws, or association rules.

Those provisions of current s. 703.16 (3) to (9) that are amended by the bill are amended primarily: to reflect the revised definition of "assessments"; for editorial purposes; and to reflect the renumbering of those provisions. Those provisions of current s. 703.16 (3) to (9) that are renumbered

but not amended by the bill are carried over, as renumbered, in their entirety even though they are not replicated in the bill. These provisions include: current s. 703.16 (4) (renumbered s. 703.165 (3)); current s. 703.16 (6) (a) to (e) (renumbered s. 703.165 (5) (a) to (e)); current s. 703.16 (7) (renumbered s. 703.165 (6)); and current s. 703.16 (8) (renumbered s. 703.165 (7)).

THE CONCERNS RAISED

Failure to Retain Current Section 703.16 (4), Stats.

Concern

The memorandum from the Community Association Institute-Wisconsin Chapter states:

Current law, section 703.16 (4), Stats., provides that an assessment constitutes a lien, provided that a statement of lien is filed within two years after the date the assessment becomes due. That language appears to be deleted in section 31. Under section 31, condominium homeowners must run to the courthouse to file association liens. That is much worse than the current law.

Response

This concern appears to assume the deletion of current s. 703.16 (4), Stats., by the bill. That assumption is mistaken. That provision is renumbered by the bill and carried forward in its entirety; it is not replicated in the bill because it is only renumbered and not otherwise amended.

Lien Priority

Concern

The Community Association Institute-Wisconsin Chapter memorandum states:

The effect of the new section 703.165 (5) [section 31 of the bill, page 20, line 6] is that second mortgages will have priority over condominium liens. A lien no longer can be unrecorded. Thus, the lien has priority only if written and filed. The current law, section 703.16 (6), Stats., is that *first* mortgage liens have priority. That is fine. But if someone wants to borrow money to buy a refrigerator or new car, that should not take priority over the ability of the association to fund itself through assessments.

Response

The concern raised appears to assume that current pars. (a) to (e) of s. 703.16 (6), which follow the (intro.) clause of that subsection, are not carried over in the bill. That assumption is mistaken. All those paragraphs will remain in law, as renumbered. Thus, for example, the current provision stating that assessment liens take priority over all liens except "All sums unpaid on a first mortgage recorded

prior to the making of the assessment” is not changed by the bill and would apply to all assessments covered by the revised lien provision.

Other Concerns

Concern

The Community Association Institute-Wisconsin Chapter memorandum indicates that its Legislative Committee “was unable to determine what portions of the current 703.16, Stats., are in the new section 703.165. For example, can an association still collect attorney fees in an action to collect assessments? Are all other costs of collection recoverable”?

Response

As indicated previously, all provisions of current s. 703.16 (3) to (9) are carried over by the bill; some of the provisions are not replicated in the bill simply because they are only renumbered and not otherwise revised. Thus, the enforcement provisions of current s. 703.16 (8), including recovery of attorney fees and other costs of collection, remain unchanged.

IMPROVEMENT OF LIMITED COMMON ELEMENTS

Pertinent Provisions of Bill

SECTION 21 of the bill allows a unit owner, at the owner’s expense, to improve limited common elements appurtenant exclusively to that owner’s unit if permitted by the condominium instruments and if specified conditions are met. (Limited common elements are a subclass of common elements that are limited to the use of less than all of the unit owners; e.g., garages, parking spaces, patios, basement storage and similar areas.) Under the bill, a unit owner wishing to improve a limited common element may do so if the following are met:

- (1) A statement describing the improvement, with specified information, is submitted to the association’s board of directors;
- (2) The improvement will not interfere with the use and enjoyment of other units or the common elements or limited common elements of the condominium;
- (3) The improvement will not impair the structural integrity of the condominium; and
- (4) Any change to the exterior appearance of the condominium is approved by the directors.

Further, the ability of the unit owner to make the improvement is subject to: (1) authorization by the condominium instruments; and (2) any restrictions or limitations specified in those instruments.

All costs and expenses of an improvement and any increased cost of maintenance and repair of the limited common elements resulting from the improvement are the obligation of the unit owner. Further, the unit owner must protect the association and other unit owners from liens on property of the association or of other unit owners that otherwise might result from the improvement.

The Concern Raised

The Community Association Institute-Wisconsin Chapter memorandum states:

Bill section 21 should be supplemented. This section creates section 703.15 (5m) which allows a homeowner to improve limited common elements. For example, a patio could become a sunroom. CAI-Wisconsin suggests first, that the homeowner secure the approval of the Architectural Control Committee or the Board that the improvement will not interfere with the use and enjoyment of units of other unit owners or the limited common elements of the condominium, and that the improvement will not impair the structural integrity of the condominium. Moreover, our Committee suggests that the approval by the Board or ACC and the promises and indemnifications of the owner be recorded and run with the land so that future homeowners are similarly required to maintain the new structure.

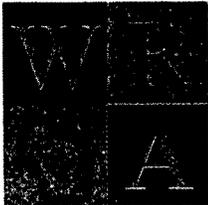
Response

It is noted that the improvement procedure in the bill is contingent on authorization in the condominium instruments and is subject to any restrictions or limitations specified in those instruments. Thus, the suggestions offered could be included in the condominium instruments themselves.

Further, the provisions of the bill draft presumably permit the association to seek to prevent the improvement if the association concludes the unit owner does not meet the requirements that the improvement will not interfere with the use and enjoyment of other units owners or the common elements or limited common elements of the condominium and that the improvement will not impair the structural integrity of the condominium.

If you have any questions or need any additional information, please contact me directly at the Legislative Council staff offices.

DD:rv:wu;tlu



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Walter Hellyer, CRB, CRS, GRI, Chairman
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William Malkasian, CAE, President
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To: All Legislators

From: Michael Theo, Vice President of Public Affairs
Debbi Conrad, Director of Legal Services

Date: February 23, 2004

RE: Support AB 254 – Condominium Law Revisions

The Wisconsin REALTORS® Association (WRA) strongly supports AB 254 – legislation revising and updating Wisconsin's condominium laws. This legislation represents substantial work and compromises by the Legislative Council's Condominium Law Special Study Committee which worked from September 2000 through October 2001.

SB 254 addresses a wide range of condominium issues including:

- Provisions to encourage the establishment of reserve funds to pay for the repair and replacement of common elements such as roofs, etc.
- Provisions to aid condominium associations to enforce condominium rules.
- Provisions to help unit purchasers understand what they are buying,
- Provisions to make condominiums easier to work with – for consumers, developers, real estate agents, and attorneys.

AB 254 Highlights:

1. Statutory Reserve Accounts Encourage Planning for Long-Range Maintenance

Under AB 254, new and existing condominiums will be forced to consider whether or not they should have mandatory reserve accounts. These reserve accounts can be used in a flexible manner – they need not be fully funded to pay the full amount of all future common element repairs. Rather, reserves can be designed to only partially pay for future common element repairs and replacements. Condominiums will be able to opt in and out of these reserve accounts if circumstances change. Under AB 354, condo associations also must adopt and distribute an annual budget that shows any reserve funds to all unit owners.

2. Condominium Addendum Adds Important Condominium Information to the Real Estate Condition Report (RECR)

AB 254 creates a condominium addendum to supplement the real estate condition report (RECR). The RECR is given to all buyers regarding the property they are considering to purchase. The seller must list the unit address/description, contact information for the seller or the seller's agent, association management information, and information about the condominium budget and fees.

3. Executive Summary Enhances Disclosure for Buyers

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4. Obtaining Disclosure Materials Addressed

Under existing law, condo buyers have a five-day right to rescind an offer to purchase but the time does not begin to run until the buyer has received all of the required disclosure documents. If even one document is missing, the rescission period is not triggered and the buyer can wait until the day of closing to decide to back out of the transaction. Under AB 254, when the buyer requests missing documents, the seller has five days to produce the documents and the buyer has five additional days in which to decide whether or not to rescind. A buyer can no longer wait until the last minute to cancel the transaction.

5. Associations Given Tools to Address Rental Issues

Under AB 254, any rental restrictions in a condominium must be stated in the condo declaration. The bill specifies that a tenant is liable for all fines if the tenant violates the condo law, declaration, bylaws or association rules. The unit owner becomes liable if tenant does not pay a fine within 30 days. All tenants must receive a copy of the condominium declaration, bylaws and rules and a tenant's failure to comply with these documents is automatically considered a breach of the tenant's rental agreement or lease. The condo declaration may provide that an owner who rents his/her unit can appoint the association the power of attorney to evict a tenant who violates the condominium declaration, bylaws or rules or if there are grounds for eviction under landlord/tenant law. These provisions help the association deal with tenants when the unit owner is not local.

6. Owners Given Means to Monitor Declarant Financial Records

AB 254 provides that the declarant must keep financial and operation records for the association and turn these records over to the board of directors once the declarant control ends. Unit owners are given rights to request audits during the declarant control period.

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AB 254 provides numerous technical changes that will delight associations, condominium developers and attorneys. These include improved condominium conversion procedures, allowing condo liens to be created fines and penalties not just assessments, declaration amendment procedures, assignment of declarant rights, simplification of unit plans for plats, procedures for unit owner improvements to the limited common elements, and improved procedures for merging two units.

We strongly encourage your support for AB 254. For more information and additional details, see the Legislative Council's report on AB 254 at http://www.legis.state.wi.us/lc/jlc03/r12003_10.pdf

State of Wisconsin
JOINT LEGISLATIVE COUNCIL

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Representative, State Assembly



LEGISLATIVE COUNCIL STAFF
Terry C. Anderson
Director
Laura D. Rose
Deputy Director

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON HOUSING
FROM: Terry C. Anderson, Director *TCA*
RE: Hearing on 2003 Assembly Bill 254
DATE: February 20, 2004

Enclosed, for your information, is a copy of Wisconsin Legislative Council Report to the Legislature, RL 2003-10, dated April 24, 2003. This report describes the recommendation of the Joint Legislative Council's Special Committee on Condominium Law Review.

The following recommendation of the Special Committee has been referred to your committee:

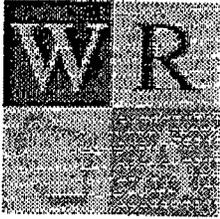
2003 Assembly Bill 254, relating to revisions and additions to condominium law.

Assembly Bill 254 is scheduled to be considered by your committee at its hearing which will be held on **Thursday, February 26, 2004, beginning at 1:00 p.m., in Room 400 Northeast, State Capitol.**

If you have any questions relating to the above report or bill, please feel free to contact Don Dyke, Chief of Legal Services, at 266-0292.

TCA:wu;ksm

Enclosure



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FAX COVER SHEET

Please deliver the following page(s):

Pages including cover: 2

TO: Scott Beecher

FROM: Mike Theo

Company: _____

Company: Wisconsin REALTORS® Association

Phone: _____

Phone: _____

Fax: _____

Fax: _____

Date: 2/20/04

E-Mail: _____

Comments:

Pharis Horton is Mr. Condo in WI. - here's his comments on the memo criticizing AB254.

Enjoy
Mike

If you do not receive all of the pages, or have other problems with this fax, please call us at the phone number listed above.

For Your Information

Date	Calendar Event	Place	Date	Calendar Event	Place
Dec. 3	CE 2 & 1	Brookfield	Dec. 11	Appraisal CE - Analyze & Value	Brookfield
Dec. 4	CE 2 & 1	Madison		Commercial Investment RE	
Dec. 4	CE 3 & 4B	Green Bay	Jan. 5-8; 12-15	Sales Prelicense	Madison
Dec. 8	Appraisal CE - Analyze & Value	Madison	Jan. 7	REALTOR & Government Day	Madison
	Commercial Investment RE		Jan. 6-9	Broker Prelicense	Milwaukee
Dec. 9	Appraisal CE - USPAP	Wis. Dells	Jan. 19-21	Winter Convention	Lac du Flambeau
Dec. 11	Appraisal CE - USPAP	Appleton	Jan. 19-20	ABR at Winter Convention	Lac du Flambeau
Dec. 11	Management Conference	Pewaukee	Jan. 19-20	RRS at Winter Convention	Lac du Flambeau

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HORTON LAW OFFICE, S.C.

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WM. PHARIS HORTON
ATTORNEY AT LAW

MAILING ADDRESS
P.O. BOX 5621
MADISON, WISCONSIN 53705

FAX CLAMANTIS IN DESERTO

TO: Deb Conrad, Esq.

FROM: Pharis Horton

Date: 02-20-04 Total number of pages (including cover) 1

** If you do not receive all pages clearly, please call (608) 231-3220 **

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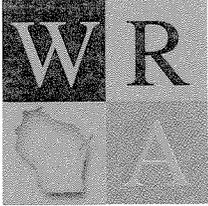
SUBJECT: CAI-Wis

MESSAGE:

These folks:

- 1) Don't understand legislative drafting - 703.16(4) is retained, not deleted. Association authority is expanded, not diminished (now damages and penalties can be liened, before it was questionable).
 - 2) Don't know the background of compromises worked to get the Builders aboard.
 - 3) Don't read; what they ask for in Sec. 21 of the bill is already there.
 - 4) Have no clue what was discussed in the Leg Council Committee.
- Aside from that, their comments are brilliant.

Copies to: _____



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Walter Hellyer, CRB, CRS, GRI, Chairman
E-mail: corky@propertydoor.com

William Malkasian, CAE, President
E-mail: wem@wra.org

To: All Legislators

From: Michael Theo, Vice President of Public Affairs
Debbi Conrad, Director of Legal Services

Date: February 23, 2004

RE: Support AB 254 – Condominium Law Revisions

The Wisconsin REALTORS® Association (WRA) strongly supports AB 254 – legislation revising and updating Wisconsin's condominium laws. This legislation represents substantial work and compromises by the Legislative Council's Condominium Law Special Study Committee which worked from September 2000 through October 2001.

SB 254 addresses a wide range of condominium issues including:

- Provisions to encourage the establishment of reserve funds to pay for the repair and replacement of common elements such as roofs, etc.
- Provisions to aid condominium associations to enforce condominium rules.
- Provisions to help unit purchasers understand what they are buying,
- Provisions to make condominiums easier to work with – for consumers, developers, real estate agents, and attorneys.

AB 254 Highlights:

1. Statutory Reserve Accounts Encourage Planning for Long-Range Maintenance

Under AB 254, new and existing condominiums will be forced to consider whether or not they should have mandatory reserve accounts. These reserve accounts can be used in a flexible manner – they need not be fully funded to pay the full amount of all future common element repairs. Rather, reserves can be designed to only partially pay for future common element repairs and replacements. Condominiums will be able to opt in and out of these reserve accounts if circumstances change. Under AB 354, condo associations also must adopt and distribute an annual budget that shows any reserve funds to all unit owners.

2. Condominium Addendum Adds Important Condominium Information to the Real Estate Condition Report (RECR)

AB 254 creates a condominium addendum to supplement the real estate condition report (RECR). The RECR is given to all buyers regarding the property they are considering to purchase. The seller must list the unit address/description, contact information for the seller or the seller's agent, association management information, and information about the condominium budget and fees.

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6. Owners Given Means to Monitor Developers Financial Records

AB 254 provides that the developer (or "declarant") must keep financial and operation records for the association and turn these records over to the board of directors once the developer control ends. Unit owners are given rights to request audits during the developer control period.

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