

WRA Proposals for Condominium Law legislation

Would like to have the ability to deliver the § 703.33 condominium disclosure documents via e-mail, but the current Wis. Stat. § 703.33 and Wis. Stat. § 137.16 present obstacles. Section 137.16 says that if another law requires a document or disclosure to be posted or displayed in a certain manner; be sent, communicated or transmitted by a specified method; or contain information that is formatted in a certain manner, then the requirements of that law must be complied with. The other law [here § 703.33(2)] must be followed unless the other law allows you to vary that requirement by agreement. Unfortunately the other law here [§ 703.33(2)] says rights of purchasers cannot be waived in the contract, and that could be interpreted to mean that you cannot change the fact that condo buyers must receive disclosure docs as paper copies.

Wis. Stat. s. 137.16 Provision of information in writing; presentation of records.

(2) If a law other than this subchapter requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, then:

(a) The record shall be posted or displayed in the manner specified in the other law.

(b) Except as otherwise provided in sub. (4) (b), the record shall be sent, communicated, or transmitted by the method specified in the other law.

(c) The record shall contain the information formatted in the manner specified in the other law.

(4) The requirements of this section may not be varied by agreement, but:

(a) To the extent a law other than this subchapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under sub. (1) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) A requirement under a law other than this subchapter to send, communicate, or transmit a record by 1st-class or regular mail or with postage prepaid may be varied by agreement to the extent permitted by the other law.

Because of the language in Wis. Stat. s. 703.33(2) regarding "cover sheet," etc., there is a concern that if the disclosure materials are delivered electronically to a condo buyer (even if he properly consented electronically to receive transaction documents via e-mail per 15 U.S.C. § 7001(c)), an attorney trying to get the buyer out of the deal might try to argue that the delivery was invalid -- that you must deliver hard copy paper documents to the purchaser because of s. 137.16(2). "Sheet" suggests a piece of paper -- look in the dictionary -- so there may not be a good way to try to argue around this.

The 703.33 requirements cannot be waived in the offer because Wis. Stat. s. 703.33(6) says, "WAIVER OF PURCHASER'S RIGHT. Rights of purchasers under this section may not be waived in the contract of sale and any attempt to waiver is void."

THE FIX: Add a provision to § 703.33 indicating that the materials described in Wis. Stat. § 703.33(1)-(2) may be furnished to the purchaser electronically provided any purchaser who is a consumer has complied with § 137.12(2p) [which requires that consumers comply with 15 U.S.C. § 7001(c)].

We can try to make a better language suggestion but also are interested in any input or suggestions.

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RPN/MDK

Our other issue actually comes from Wis. Stat. § 709.02(2):

(2) In regard to a transfer of a condominium unit, as defined in s. 703.02 (15), the owner shall furnish, in addition to and at the same time as the information required under sub. (1), all the following information as an addendum to the real estate condition report under s. 709.03:

(a) The name of the condominium and the date the condominium was created by recording condominium instruments with the register of deeds under s. 703.07; the unit number of the property offered for sale; and the name, address, and telephone number of the seller or the seller's agent.

(b) The name and address of the condominium association; a statement specifying whether the association is self-managed or has hired or retained management; and the name, address, and telephone number of the individual who may be contacted as a representative of the association regarding the sale, in particular, or the condominium, in general.

(c) The amount of current condominium assessments, fees, special assessments, or other charges for which a unit owner is responsible and whether the current charges for the unit have been paid.

(d) A copy of the executive summary required under s. 703.33 (1) (h).

One issue is whether a seller must provide a condominium addendum to the Real Estate Condition Report (RECR) if no RECR is required. For example, as illustrated by some of the WRA Hotline FAQs:

In new construction of condominiums, never occupied, do you have to provide a Real Estate Condition Report (RECR) to a buyer? Do you have to provide a condominium addendum to the RECR?

Wis. Stat. § 709.01 provides, "Requirements for transfer. (1) Except as provided in sub. (2), all persons who transfer real property located in this state, including a condominium unit, as defined in s. 703.02 (15), and time-share property, as defined in s. 707.02 (32), but excluding property that has not been inhabited, that includes 1 to 4 dwelling units, as defined in s. 101.61 (1), by sale, exchange or land contract, unless the transfer is exempt from the real estate transfer fee under s. 77.25, shall comply with ss. 709.02 to 709.04 and 709.06." There arguably is no need to provide a RECR or a condominium addendum when the property has never been occupied.

THE FIX: Amend § 709.02 in some manner such as:

(2) In regard to a transfer of a condominium unit, as defined in s. 703.02 (15), if compliance is required under s. 709.01, the owner shall furnish, in addition to and at the same time as the information required under sub. (1), all the following information as an addendum to the real estate condition report under s. 709.03:

Another issue is whether an Executive Summary must be attached to the condominium addendum to the RECR if an Executive Summary is not otherwise required because it is a small condominium using abbreviated disclosure documents.

The developer of an eight-unit condominium development does not want to fill out the executive summary. The developer said that when they planned the project, the attorney said they would not have to complete an executive summary because an executive summary is not required as part of the disclosure materials for a small condominium of up to 12 units, depending on the elections made in the declaration. What specific elections must be made in the declaration?

According to Wis. Stat. § 703.365 (1) and (8), an executive summary, as well as other documents, may not be required as part of the disclosure materials for a small condominium provided that the declaration was drafted or amended to state that the abbreviated disclosure requirements described in § 703.365(8) apply to the project. If an executive summary is not required for the disclosure materials, it logically is not

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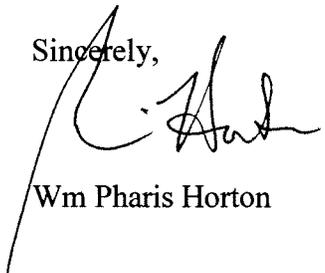
Pamela J. Kahler
Senior Legislative Attorney
Legislative Reference Bureau
1 East Main Street
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Dear Ms. Kahler:

Enclosed is a rough draft of the presentation materials I have prepared for the forthcoming State Bar CLE program that includes a section on new condominium laws. You will note some blanks, most of which will be filled by reference to the section numbers of the LRB draft. I anticipate the proposals as a bill will not be introduced by the time the outline is due, so the LRB draft wording will be what I lecture from, but I think the bill itself will be introduced by the October 9 session so it can be available as a handout then.

My comments gloss over a lot of items pretty quickly, probably not at the level that your analysis will require, but if the outline (and the earlier drafting directions) is any help, feel free to use it. ✖

Sincerely,



Wm Pharis Horton

cc: Hon. Gary Hebl

PROPOSED AMENDMENTS TO
WISCONSIN CONDOMINIUM LAW

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Prepared for State Bar
Real Estate Update
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PROPOSED AMENDMENTS TO WISCONSIN CONDOMINIUM LAW

I. BACKGROUND OF WISCONSIN CONDOMINIUM LAW

A. HISTORY OF CONDOMINIUM

1. Each year Beloit College amuses the public with its list of words, phrases and things that its incoming freshman class knows as permanent parts of the American scene.

2. Similarly, many lawyers entering practice in Wisconsin today assume the condominium form of ownership has always been an integral part of real estate law and practice in the State.

3. In fact, the condominium form of ownership is a product of statute, not a development of common law. Wisconsin's first "Unit Ownership Act" was adopted in 1963 as Chap. 703, Stats. Prior to its enactment there were no condominiums in Wisconsin.

4. From its American introduction in Puerto Rico in 1961, the condominium ownership concept spread quickly with condominium laws in all 50 states by 1969.

B. DEVELOPMENT OF THE WISCONSIN CONDOMINIUM LAW

1. The original Unit Ownership Act was essentially an enabling law, that is it allowed for the separate ownership of units (those portions of the condominium intended for individual use) as a parcel of real estate, although the unit may be no more than a cubicle of air. This was the aspect that required statutory intervention. The Act also set the procedures for creating this new creature.

2. From that point until 1978 there were few amendments to the Act and there was a lot of exploration of what the law had enabled. Some imaginative uses of the law were tried; some questionable practices arose.

3. Chapter 407 of the Laws of 1977 (effective August 1, 1978) created the "Condominium Ownership Act" which was a repeal and recreation of Chap. 703. A myriad of problems and opportunities recognized during the "enabling law" period were addressed. Since condominium is a product of statutory law, its progress is more tied to a code development than to common law development.

4. The 1978 law is the basis, with numerous changes, of our current condominium law. It added concepts, procedures and limitations in a variety of areas: it provided for conversion of existing property to condominium ownership and the expansion of condominiums (both of which developers had been doing but without any statutory basis); it provided for disclosures to unit purchasers; it clarified that condominium was a form of real estate ownership not a form of land use; it dealt with modifications (separation and consolidation and internal changes) of units; and it gave better clarification of the role and responsibilities of the condominium association.

5. The adoption of the 1978 law has provided the State with a very serviceable and flexible law that has allowed for effective use of this ownership option.

6. Since that time, up to the enactment of 2003 Wis. Act 283 (effective generally November 1, 2004), there were scattered amendments to the Act, some laws and local actions having collateral affects on condominiums, and a smattering of appellate court decisions that have changed aspects of the Act and condominiums generally.

7. Among the most notable changes were: amendments to simplify the creation of small condominiums (sec. 703.365, Stats), to permit master associations for shared amenities (sec. 703.155, Stats), outlawing rules prohibiting the display of American flags and political signs (sec. 703.105, Stats), and allowing limited municipal review of condominium documents before recording (sec. 703.115, Stats); cases dealing with reserving the right to expand, Rock Lake Estates Unit Owners Association v. Town of Lake Mills, 195 Wis.2d 348 (Ct. App., 1995), with a *de minimis* requirement for a unit, ABKA Limited Partnership v. DNR, 2002 WI 106, and with the fact a unit exists when it is declared even if not yet constructed, Aluminum Industries v. Camelot Trails, 194 Wis.2d 575 (Ct. App., 1995; and non-condominium laws relating to fair housing (familial status and senior housing), proposed restrictions on conversions of properties to condominium to preserve rental housing stock, and the various and oft changing regulations controlling the secondary mortgage market.

8. At the request of Milwaukee Assemblyman John La Fave (now Milwaukee County Register of Deeds), the Legislature's Legislative Council authorized the creation of a committee to study the Act in May of 2000. Its impetus was a deteriorating condominium situation in Rep. La Fave's district. Over the course of the next year and a half the committee met expanding its original focus to a general review of the Act. A proposal was framed that became a bill before the Legislature which was adopted and signed into law in April 2004 with most of its provisions effective November 1 of that year.

9. The changes created by the Legislative Council committee's study were spread throughout the entire Act. Reports on these changes from a variety of sources are available and quite comprehensive. Some are listed as an appendix to this outline.

C. THE NEXT ROUND

1. A number of condominium issues and ideas either were not included in the 2004 comprehensive amendment or have arisen since. These have been reduced to lists and have been the subject of contacts among various groups and individuals interested in condominiums generally.

2. Through private contacts and open exposure on the internet, ideas for changes were solicited and evaluated and a number of proposed amendments have been drafted for legislative consideration.

3. As with the Legislative Council committee, the ideas considered have no central theme. They deal with minor details of the Act, significant policy changes, and even the application of laws outside of the Act but bearing on condominium practice.

4. Since condominiums are so closely tied to statute to give them legal standing and to recognize their scope and limitations, this will not be the last amendment to the condominium law. New lists have already been started. New ideas, including some which may modify or delete provisions in these proposed amendments, will come along. This is fine because the purpose of the new amendments and the amendments that will be proposed in future years is to make the condominium form of ownership ever more responsive to the needs of those who provide and enjoy this setting for living and working.

II. DETAILS OF PENDING PROPOSAL

A. STATUS

1. As the old recipe for making rabbit stew says, first you catch the rabbit. The rabbit in this case is putting the ideas you propose into proper legislative shape.

2. The challenge then is finding a legislator to introduce it, interest others in it, and help guide it through the sometimes Byzantine process of the Legislature. In getting to its present status, the proposal has had the good fortune to attract the interest of Sun Prairie Assemblyman/lawyer Gary Hebl who has extensive private practice experience with condominiums.

3. The proposal is now identified as 2009 LRB 1733 pending its introduction as a bill, after which it enters the round of hearings, amendments, calendaring and voting that will, if all goes well, result its enactment into law.

4. The Act itself is not divided into very logical segments and the amendments contained in the proposal are similarly disjointed. In the following analysis I have attempted to bring the separate pieces of the proposal together in three general categories: development and marketing, association operations, and unit/owner rights. Many of the specific amendments cross these artificial category lines but the grouping helps give them some context. Amendments will be identified by the statutory section they affect and by their section number in the LRB draft.

B. DEVELOPMENT/MARKETING

1. 703.02(15) [Sec. ___]: The ABKA case, supra, held that a condominium whose units were no more than small lockboxes (similar in size to post office boxes) was invalid because the unit could not accommodate an "independent" use. The amendment makes it clear a unit may be of any size or any use to restore the original understanding of a "unit." The purpose of applying a *de minimis* rule to the size and use of a unit was met by adoption of a "dockominium" law, sec. _____, Stats.

2. 703.26 [Secs. _____]: These clarify the right of expansion which a declarant may reserve to expand a condominium. It may include adding more land and units or adding units to the land already submitted to condominium ownership. They also require the reservation to be in the original declaration and contain certain details requested by the State Property Listers Association.

3. 703.02(6), .08 [Secs. _____]: Properties being converted (that is, improved property whose ownership is being changed from traditional to condominium ownership) are more clearly defined and the statutory protection of tenants of these properties is limited solely to residential tenants.

4. 703.10(2)(d), .15 [Secs. _____]: Each condominium is served by an association which, in theory, has a life co-extensive with the condominium it serves. This is often a detail which attracts little attention from the declarant of the condominium. These amendments provide for the automatic creation of the association if the declarant neglects to do so and establish the duty (and the fiduciary function) of the declarant until control of the association is turned over to the unit owners.

5. 703.15(6) [Sec. ____]: Declarants frequently provide a short period of limitations for construction warranty claims. This amendment tolls the period of limitations on the common elements until control of the association has been turned over to the unit owners. Prior to that time, the declarant, being in control of the association, could choose not to enforce its potential rights against itself.

6. 703.33, 709.02, .12(2)(d) [Secs. _____]: These allow disclosures to be made electronically and affect the disclosures in the real estate condition report in condominium sales.

7. 703.115 [Secs. _____]: Municipalities may elect to conduct a limited review of condominium documents before they may be recorded. These amendments deal with certain technical aspects of the review.

8. 703.10(2)(f) [Sec. ____] Currently the law requires the association bylaws to include a provision on borrowing money and acquiring and conveying property. Many condominiums do not engage in either borrowing or property transfers so this requirement is limited to those situations in which the association will have these powers.

B. CONDOMINIUM ASSOCIATION OPERATIONS

1. 703.15(2) [Secs. _____]: A critical point in the life of a condominium is when control of the association passes from the declarant to the unit owners. These amendments clarify the outer time limit of declarant control in an expandable condominium and deal with unit owner representation on the board of directors prior to turnover, timing of the election of a unit owner board of directors, and the obligation of declarant to surrender the association records when the unit owners take control.

2. 703.13(2), .15(3) and (4), .16(1), .161(3) .20(1) [Secs. _____]: General and conditional powers of the association are broadly interpreted, and specific powers (amending budgets, employing agents, suing for unit owners, and collection of tenant names and addresses) are expressly stated (probably merely confirming that the powers exist), the right to apply common surpluses rather than just disbursing them, the right to use special voting procedures (such as voting by ballot), and recognizing the records belong to the association are included

3. 703.10(1), .14(1), .24(2) [Secs. ____]: Emphasize that the bylaws and rules of the condominium and the association apply to everyone using the condominium.

4. 703.10(2)(d) [Sec. ____]: Current law calls for the election of at least one-third of the board each year. There are cases in which this does not work easily (e.g., a five person board with three-year terms). The amendment limits board terms to three years, but does not impose term limits.

5. 703.17(1), .18(2)(b) [Secs. ____]: By law, the association is to insure the "property" which is defined to include land and improvements at full replacement value and act as the trustee for disbursement of proceeds. The implementation of this causes a lot of confusion and frequent situations where the law is simply ignored. The amendments allow the association to insure the property or ensure that it is covered. It may obtain coverage with a deductible and determine how to allocate the deductible amount. Also, in a number of situations the declaration establishes a ratio for sharing insurance proceeds different from the percentage interests in the common elements and this is permitted in the amendments.

6. 703.16(2)(b), .161(2) and (3), .165 [Secs. ____]: These amendments deal with financing the operations of the association. They clarify declarant's obligations when it has exempted units it owns from regular assessments, allow the budget to be amended mid-term, extend the duration of the liens by which assessments may be enforced and clarifies the priority of the lien in the event of lender foreclosure, gives association foreclosure the same benefits as a mortgage, and provides for information to the unit owners regarding the budget.

7. 703.155, .275(4m) [Secs. ____]: These make technical changes for delegation to master associations and the plat for merged condominiums.

8. 703.365 [Sec. ____]: This amends the procedures by which decisions which are challenged can be finalized in the small condominium situation. The application of the small condominium section to a condominium is optional when the condominium is declared.

9. 703.09(3)(a), .12 [Secs. _____]: If an amendment to a declaration changes the use value of common elements, those benefited must reimburse those who lose use value. For an example see Newport Condominium Association v. Concord-Wisconsin, 205 Wis.2d 577 (Ct. App., 1996). This sets a limit on how long the clamant has to raise a claim. And it allows for the use of the original parcel identification number of the property submitted to condominium where an amendment would otherwise require listing the parcel identification numbers of every unit.

10. 703.06, .13(5-8) [Secs. _____]: The Act establishes the procedures by which units may be split or merged, or otherwise altered and how limited common elements may be improved. The amendments address the function of the association in the procedures for these changes. They also establish wording to protect against interference with the condominium's mechanical systems during these changes.

11. 703.02(12), .03, .09(1c), 13(4), .13(6)(c), .28, .34(4) [Secs. _____]: Various actions by the association require approval by some or all of the lenders holding security interests in the units of the condominium. The amendments define first mortgagees to include holders of equivalent security interests (land contract vendors). Problems have been encountered by associations in making contact with lenders and getting responses from them. A procedure if no contact/response is received is established.

12. 703.02(14g), .28 [Secs. _____]: Part or all of a condominium may be removed from condominium ownership status. The amendments establish procedures to be followed when the condominium or part of it is removed with variations depending on what property is being removed.

13. 703.13(4) [Sec. ____]: While the undivided percentage interests in the common elements held by the unit owners of the condominium are intended to be permanent in nature, circumstances arise in which the shares as established in the declaration must be changed. Generally, this requires unanimous consent of the unit owners and approval of the first mortgagees. The amendments create procedures for changing the percentage interests, and having them properly recorded, where there is destruction of units, removal of a part of the condominium from condominium ownership status, or final construction results in fewer units than declared.

C. UNITS/OWNERS

1. 703.13 [Secs. _____]: The Act gives latitude to unit owners to make various kinds of modifications affecting their units. The association's involvement in this is covered in Associations sec. 10, supra. The major change in this area is allowing the unit to become a parcel of real estate available for a second level of development. While units under current law may be separated within the condominium structure, further statutory support for second level development seems advisable. This already exists in the case of time shares, where the ownership of the unit is divided into time segments. The amendments establish procedures under which a new condominium regime could be developed on an existing condominium unit with the new condominium remaining a part of the existing one but also having an additional condominium structure on top of it. Similar techniques could be used for coops or other entity ownerships.

2. 703.15(4)(d) [Sec. ____]: To assure transparency of the electoral process, the amendments give the unit owner the right to review voting lists and ballots.

3. 703.02(16), .12 [Secs. ____]: At the request of land records offices, the nature of unit designations is amended.

4. 703.10(6), .165(5)(c), .22, .25(3)(b) [Secs. ____]: The amendments protect unit titles from being held unmerchantable due to the existence of the condominium and association documents, provides that the filing of an action for a money judgment against the association does not permit filing a *lis pendens* against all of the units in the condominium [reversing that portion of Interlaken Services Corporation v. Interlaken Condominium Association, 222 Wis.2d 299 (Ct. App. 1998)], and correcting "mechanics'" liens to "construction" liens, reflecting a change in terminology dating from 1973.

5. 703.105 [Secs. ____]: The law prevents a declarant or an association from prohibiting the display of the American flag or political signs. The amendments make it clear that this right may be limited to those areas of the condominium over which the owner has exclusive right of use.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1733/11 → P2

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Draft
(by 9-16)

regenerate ↓

1 **AN ACT to repeal** 703.28 (1m), 703.28 (2) and 703.29; **to renumber and amend**
2 703.25 (3) and 703.365 (7); **to amend** 703.02 (5), 703.02 (6), 703.02 (6m), 703.02
3 (12), 703.02 (14g), 703.02 (15), 703.02 (16), 703.03, 703.04, 703.05, 703.06,
4 703.07 (2), 703.08 (1) (intro.), 703.08 (2) (intro.), 703.08 (3), 703.09 (1c), 703.09
5 (2), 703.10 (1), 703.10 (2) (d), 703.10 (2) (f), 703.10 (6), 703.105 (1m), 703.105 (2),
6 703.115 (1) (a), 703.115 (1) (b), 703.12, 703.13 (2), 703.13 (4), 703.13 (5) (a),
7 703.13 (5) (b), 703.13 (5m) (a) 3., 703.13 (5m) (b), 703.13 (6) (b), 703.13 (6) (c),
8 703.13 (6) (e), 703.13 (7) (a), 703.13 (7) (b), 703.13 (7) (c), 703.13 (8) (b), 703.13
9 (8) (c), 703.14 (1), 703.15 (2) (a), 703.15 (2) (b), 703.15 (2) (c) 2., 703.15 (2) (d),
10 703.15 (2) (f), 703.15 (3) (a) (intro.), 703.15 (3) (a) 1., 703.15 (3) (a) 2., 703.15 (3)
11 (a) 3., 703.15 (3) (b) (intro.), 703.15 (4) (b), 703.15 (4) (d) 1., 703.15 (4) (e), 703.155
12 (1), 703.155 (2), 703.16 (1), 703.16 (2) (b), 703.161 (2) (intro.), 703.165 (2),
13 703.165 (3), 703.165 (5) (c), 703.17 (1), 703.18 (2) (b), 703.19 (3) (intro.), 703.19
14 (3) (b), 703.19 (3) (c), 703.20 (1), 703.22 (title), 703.22 (2), 703.22 (3), 703.24 (2),
15 703.26 (1), 703.26 (2) (a), 703.26 (3) (a), 703.28 (1), 703.33 (1) (intro.), 703.34

1 (title), 703.365 (6) (b) and 703.365 (6) (d); and **to create** 703.13 (9), 703.15 (2)
2 (c) 3., 703.161 (2) (g), 703.161 (3), 703.25 (3) (b), 703.275 (4m), 703.28 (2m),
3 703.28 (3), 703.28 (4), 703.28 (5), 703.34 (4), 703.365 (6) (a) 3., 703.365 (10),
4 703.365 (11) and 703.365 (12) of the statutes; **relating to:** miscellaneous
5 modifications to the condominium laws.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

6 **SECTION 1.** 703.02 (5) of the statutes is amended to read:

7 703.02 (5) "Condominium instruments" mean the declaration, plats, and plans
8 of a condominium, as amended from time to time, together with any attached
9 exhibits or schedules.

10 **SECTION 2.** 703.02 (6) of the statutes is amended to read:

11 703.02 (6) "Conversion condominium" means property that includes a
12 structure ~~which~~ that, before the recording of a condominium declaration, was wholly
13 or partially occupied by persons other than those who have contracted for the
14 purchase of condominium units and those who occupy with the consent of the
15 purchasers.

16 **SECTION 3.** 703.02 (6m) of the statutes is amended to read:

17 703.02 (6m) "Correction instrument" means an instrument drafted by a
18 licensed land surveyor that complies with the requirements of s. 59.43 (2m) and that,
19 upon recording, corrects an error in a condominium plat or updates a condominium

Insert 3-2

1 plat for changes that do not require an addendum. "Correction instrument" does not
2 include an instrument of conveyance.

3 SECTION 4. 703.02 (12) of the statutes is amended to read:

4 703.02 (12) "Mortgagee" means the holder of any recorded mortgage
5 encumbering one or more units ~~or~~, a land contract vendor, or for purposes of receiving
6 notices or giving approvals the party servicing the mortgage or land contract.

7 SECTION 5. 703.02 (14g) of the statutes is amended to read:

8 703.02 (14g) "Removal instrument" means an instrument that complies with
9 the requirements of s. 59.43 (2m) and that removes property, either all or a portion
10 of a condominium, from the provisions of this chapter upon recording. "Removal
11 instrument" does not include an instrument of conveyance.

12 SECTION 6. 703.02 (15) of the statutes is amended to read:

13 703.02 (15) "Unit" means a part of a condominium intended for any type of
14 independent use, including one or more cubicles of air at one or more levels of space
15 or one or more rooms or enclosed spaces located on one or more floors, or parts thereof,
16 in a building. A unit may be of any size, may be for any use, and may include 2 or
17 more noncontiguous areas.

18 SECTION 7. 703.02 (16) of the statutes is amended to read:

19 703.02 (16) "Unit number" means the number ~~identifying~~ designating a unit
20 in a declaration.

21 SECTION 8. 703.03 of the statutes is amended to read:

22 **703.03 Application of chapter.** This chapter applies only to property, a sole
23 owner or all of the owners, and any ^{first} mortgagee or holder of an equivalent security
24 interest, of which submit the property to the provisions of this chapter by duly
25 executing and recording a declaration and plat as provided in this chapter.

****NOTE: Do you want this limited to first mortgagees?

SECTION 9. 703.04 of the statutes is amended to read:

703.04 Status of the units. A unit, together with its undivided interest in the common elements and its other appurtenant interests, for all purposes constitutes real property.

SECTION 10. 703.05 of the statutes is amended to read:

703.05 Ownership of units. A unit owner is entitled to the exclusive ownership and possession of and to the exercise of the rights appurtenant to his or her unit. *it*

****NOTE: Did you intend that "exclusive" also apply to "the exercise of the rights appurtenant to"?

SECTION 11. 703.06 of the statutes is amended to read:

703.06 Alterations prohibited. Except as otherwise provided in this chapter, ^{inset 4-11} no unit owner may make any alteration that would jeopardize the soundness or safety of the property, interfere with the condition or operation of the mechanical systems, ^{inset 4-13} reduce the value thereof of the property, impair any easement or hereditament, or change the exterior appearance of a unit or any other portion of the condominium not part of the unit. *or addendum*

SECTION 12. 703.07 (2) of the statutes is amended to read:

703.07 (2) A condominium instrument, ~~and all amendments, addenda and certifications of an amendment to a condominium instrument, and any certification or statement relating to the condominium that must be recorded~~ shall be recorded in every county in which any portion of the condominium is located, and shall be indexed in the name of the declarant and the name of the condominium. Subsequent instruments affecting the title to a unit ~~which~~ that is physically located entirely within a single county shall be recorded only in that county, notwithstanding the fact

1 that the common elements are not physically located entirely within that county.
2 Subsequent amendments and addenda shall be indexed under the name of the
3 condominium.

4 SECTION 13. 703.08 (1) (intro.) of the statutes is amended to read:

5 703.08 (1) (intro.) Residential real property may not be converted to a
6 condominium unless the owner of the residential real property gives prior written
7 notice of the conversion to each of the residential tenants of the ~~building or buildings~~
8 ~~scheduled for conversion~~ structure or structures that are part of the property being
9 converted. During the 60-day period immediately following the date of delivery of
10 the notice a residential tenant has the first right to purchase the unit in which the
11 tenant resides, if the unit is offered for sale at any time during that period, for any
12 of the following:

13 SECTION 14. 703.08 (2) (intro.) of the statutes is amended to read:

14 703.08 (2) (intro.) A residential tenant may not be required to vacate the
15 property during the 120-day period immediately following the date of delivery of the
16 notice required under sub. (1) except for:

17 SECTION 15. 703.08 (3) of the statutes is amended to read:

18 703.08 (3) A residential tenant may waive in writing his or her first right of
19 purchase under sub. (1), his or her right to remain on the property under sub. (2), or
20 both.

21 SECTION 16. 703.09 (1c) of the statutes is amended to read:

22 703.09 (1c) A condominium declaration shall be signed by the owners of the
23 property and by or on behalf of any first mortgagee of the property ~~or the holder of~~
24 ~~an equivalent security interest in the property~~ in the same manner as required in
25 conveyances of real property.

new striking

1 SECTION 17. 703.09 (2) of the statutes is amended to read:

2 703.09 (2) Except as otherwise provided in sub. (4) and ss. 703.093, 703.13 (6)

3 ~~(e) and (d) and (8) (b), and 703.26~~ this chapter, a condominium declaration may be

4 amended with the written consent of at least two-thirds of the aggregate of the votes

5 established under sub. (1) (f) or a greater percentage if provided in the declaration.

6 An amendment becomes effective when it is recorded in the same manner as the

7 declaration. The document submitting the amendment for recording shall state that

8 the required consents and approvals for the amendment were received. A unit

9 owner's written consent is not effective unless it is approved in writing by the first

10 mortgagee of the unit, ~~or the holder of an equivalent security interest~~, if any.

11 Approval from the first mortgage lender ~~or equivalent security interest holder~~, or the

12 person servicing the first mortgage loan ~~or its equivalent~~ on a unit, constitutes

13 approval of the first mortgagee ~~or equivalent security interest holder~~ under this

14 subsection.

← new
statutes
←

****NOTE: Is the way in which I amended this provision okay?

Sub 6-14

15 SECTION 18. 703.10 (1) of the statutes is amended to read:

16 703.10 (1) BYLAWS TO GOVERN ADMINISTRATION. The administration of every

17 condominium shall be governed by bylaws. Every unit owner and occupant shall

18 comply strictly with the bylaws and with the rules adopted under the bylaws, as the

19 bylaws or rules are amended from time to time, and with the covenants, conditions,

20 and restrictions set forth in the declaration or in the deed to the unit. Failure to

21 comply with any of the bylaws, rules, covenants, conditions, or restrictions is grounds

22 for action to recover sums due, for damages or injunctive relief or both, maintainable

23 by the association or, in a proper case, by an aggrieved unit owner, or for enforcement

24 under s. 703.24.

****NOTE: Is the intention to authorize a civil action or in-house enforcement under s. 703.24?

1 SECTION 19. 703.10 (2) (d) of the statutes is amended to read:

2 703.10 (2) (d) The election by the unit owners of a board of directors of whom,
3 except during the period of declarant control, not more than one is a nonunit owner;,
4 the number of persons constituting the same board of directors and that the terms
5 of ~~at least one-third of the elected directors shall expire annually,~~ not exceed 3 years;
6 the powers and duties of the board; the compensation, if any, of the directors; the
7 method of removal from office of directors; and whether or not the board may engage
8 the services of a manager or managing agent.

9 SECTION 20. 703.10 (2) (f) of the statutes is amended to read:

10 703.10 (2) (f) The manner of borrowing money and acquiring and conveying
11 property, if the association is to have these powers.

12 SECTION 21. 703.10 (6) of the statutes is amended to read:

13 703.10 (6) TITLE TO CONDOMINIUM UNITS UNAFFECTED BY BYLAWS. Title to a
14 condominium unit is not rendered unmarketable ~~or otherwise affected by any~~
15 ~~provision of the bylaws,~~ except for liens filed under the authority of the bylaws, or
16 by reason of any failure of the bylaws to comply with the provisions of this chapter.

17 SECTION 22. 703.105 (1m) of the statutes is amended to read:

Insert 7-15

18 703.105 (1m) No bylaw or rule may be adopted or provision included in a
19 declaration or deed that prohibits a unit owner from displaying in his or her
20 condominium unit a sign that supports or opposes a candidate for public office or a
21 referendum question.

22 SECTION 23. 703.105 (2) of the statutes is amended to read:

CONDOMINIUM INSTRUMENTS OR

1 703.105 (2) Notwithstanding subs. (1) and (1m), bylaws or rules may be
2 adopted that regulate the size and location of signs, flags, and flagpoles, including
3 limiting their display to those parts of the condominium that the unit owner has the
4 exclusive right to use.

5 **SECTION 24.** 703.115 (1) (a) of the statutes is amended to read:

6 703.115 (1) (a) Requires the review to be completed within 10 working days
7 after submission of the condominium instrument and provides that, if the review is
8 not completed within this period, the condominium instrument is approved for
9 recording without certification of review or approval or the signature of the reviewer.

***NOTE: In addition to without certification of approval, I added without
certification of review. Okay?

10 **SECTION 25.** 703.115 (1) (b) of the statutes is amended to read:

11 703.115 (1) (b) Provides that a condominium instrument may be rejected only
12 if it fails to comply with the applicable requirements of ss. 703.095, 703.11 (2) (a), (c),
13 and (d) and (3), and 703.275 (5) and 703.28 (1m) or if the surveyor's certificate under
14 s. 703.11 (4) is not attached to or included in the condominium plat.

***NOTE: This draft repeals s. 703.28 (1m). Do you want to substitute another
section in its place in this paragraph?

15 **SECTION 26.** 703.12 of the statutes is amended to read:

16 **703.12 Description of units.** A description in any deed or other instrument
17 affecting title to any unit ~~which~~ that makes reference to the ~~letter or number or other~~
18 ~~appropriate~~ unit designation on the condominium plat together with a reference to
19 the condominium instruments shall be a good and sufficient description for all
20 purposes. Whenever a parcel identification number is required for any purpose, the
21 designation of all units in the condominium may be shown by the parcel number or
22 numbers of the property submitted to this chapter to create the condominium.

1 SECTION 27. 703.13 (2) of the statutes is amended to read:

2 703.13 (2) RIGHTS TO COMMON SURPLUSES. Common surpluses shall be disbursed
3 used or allocated as provided under s. 703.16 (1).

4 SECTION 28. 703.13 (4) of the statutes is amended to read:

5 703.13 (4) CHANGE IN PERCENTAGE INTEREST. The percentage interests shall have
6 a permanent character and, except as specifically provided by this chapter, may not
7 be changed without the written consent of all of the unit owners and their the consent
8 by or on behalf of all of the first mortgagees or holders of equivalent security
9 interests. Any change shall be evidenced by an amendment to the declaration and
10 recorded among the appropriate land records. The percentage interests may not be
11 separated from the unit to which they appertain. Any instrument, matter,
12 circumstance, action, occurrence, or proceeding in any manner affecting a unit also
13 shall affect, in like manner, the percentage interests appurtenant to the unit. In the
14 event that a condominium structure is not fully constructed as declared or one or
15 more units are destroyed and not rebuilt or are removed from the condominium, the
16 percentage interests in the common elements shall be adjusted to maintain the same
17 ratio among the units, unless otherwise changed as permitted under this chapter.

****NOTE: Have I interpreted the proposed language properly? Should this say that the destroyed units are removed from the condominium *plat*? (If they are destroyed and not rebuilt, they would seem to be automatically removed from the condominium.)

Insert 9-17

18 SECTION 29. 703.13 (5) (a) of the statutes is amended to read:

19 703.13 (5) (a) A unit owner may make any improvements or alterations within
20 his or her unit that do not impair the structural integrity or lessen the support of any
21 portion of the condominium or interfere with the condition or operation of the
22 mechanical systems and that do not create a nuisance substantially affecting the use
23 and enjoyment of other units or the common elements. A unit owner may not change

→ Insert 4-13

1 the exterior appearance of a unit or of any other portion of the condominium without
2 permission of the board of directors of the association. A unit owner making
3 alterations within his or her unit that involve changing the configuration of rooms
4 within the unit shall file plans with the association showing the reconfiguration.

5 SECTION 30. 703.13 (5) (b) of the statutes is amended to read:

6 703.13 (5) (b) Except to the extent prohibited by the condominium instruments,
7 and subject to any restrictions and limitation specified therein, a unit owner
8 acquiring an adjoining or adjoining part of an adjoining unit, may remove all or any
9 part of any intervening partition or create doorways or other apertures therein, even
10 if the partition may in whole or in part be a common element, if those acts do not
11 impair the structural integrity or lessen the support of any portion of the
12 condominium or interfere with the condition or operation of the mechanical systems.

Insert 4-13

13 The creation of doorways or other apertures is not deemed an alteration of
14 boundaries.

****NOTE: Although not requested, I added the treatment of this provision for consistency. Okay?

15 SECTION 31. 703.13 (5m) (a) 3. of the statutes is amended to read:

16 703.13 (5m) (a) 3. The improvement will not impair the structural integrity of
17 the condominium or interfere with the condition or operation of the mechanical
18 systems.

Insert 4-13

19 SECTION 32. 703.13 (5m) (b) of the statutes is amended to read:

20 703.13 (5m) (b) All costs and expenses of an improvement under this
21 subsection and any increased costs of maintenance and repair of the limited common
22 elements resulting from the improvement, as determined by the association, are the
23 obligation of the unit owner. The unit owner shall protect the association and other

1 unit owners from liens on property of the association or of other unit owners that
2 otherwise might result from the improvement.

3 SECTION 33. 703.13 (6) (b) of the statutes is amended to read:

4 703.13 (6) (b) If any unit owners of adjoining units whose mutual boundaries
5 may be relocated desire to relocate those boundaries, the ~~principal officer of the unit~~
6 ~~owners~~ association, upon written application from those unit owners, and after
7 determining that the relocation does not violate the condominium instruments and
8 providing 30 days' written notice to all other unit owners, shall prepare and execute
9 appropriate instruments.

****NOTE: Who must provide the notice? As drafted, the principal officer of the unit owners association must. Okay?

10 SECTION 34. 703.13 (6) (c) of the statutes is amended to read:

11 703.13 (6) (c) An amendment to a declaration shall identify the units involved
12 and shall state that the boundaries between those units are being relocated by
13 agreement of the unit owners ~~thereof~~ of those units. The amendment shall contain
14 words of conveyance between those unit owners, and when recorded shall also be
15 indexed in the name of the grantor and grantee. If the adjoining unit owners have
16 specified in their written application the reallocation between their units of the
17 aggregate undivided interest in the common elements appertaining to those units,
18 the amendment to the declaration shall reflect that reallocation. An amendment to
19 a declaration under this paragraph shall be adopted, at the option of the adjoining
20 unit owners, either under s. 703.09 (2) or by the written consent of the owners of the
21 adjoining units involved and the written consent by or on behalf of the mortgagees
22 of the adjoining units, which amendment shall constitute a conveyance between the
23 unit owners of the affected part or parts of the unit or units.

first

****NOTE: I added "consent by or on behalf of the mortgagees." Is this okay? If so, do you want to limit the consent to first mortgagees and add holders of equivalent security interests?

1 SECTION 35. 703.13 (6) (e) of the statutes is amended to read:

2 703.13 (6) (e) Plats and plans showing the altered boundaries and the
3 dimensions thereof between adjoining units, and their identifying numbers or letters
4 designations, shall be prepared. The plats and plans shall be certified as to their
5 accuracy in compliance with this subsection by a civil engineer, architect, or licensed
6 land surveyor authorized to practice his or her profession in the state.

7 SECTION 36. 703.13 (7) (a) of the statutes is amended to read:

8 703.13 (7) (a) If any condominium instruments expressly permit the separation
9 of a unit into 2 or more units, a separation shall be made in accordance with this
10 section, or sub. (9) if the separation involves the creation of more than 2 units, and
11 any restrictions and limitations which the condominium instruments may specify.

****NOTE: Since sub. (9) is part of "this section," it is unnecessary to add the proposed language. Would you prefer to amend the paragraph to say, "a separation shall be made in accordance with this subsection [meaning sub. (7)], or sub. (9) if the separation involves the creation of more than 2 units"? Additionally, sub. (9) appears to divide the ownership interest of a unit, not the unit itself.

12 SECTION 37. 703.13 (7) (b) of the statutes is amended to read:

13 703.13 (7) (b) The principal officer of the association, upon written application
14 of a person proposing the separation of a unit (separator), and after determining that
15 the separation does not violate the condominium instruments and providing 30 days'
16 written notice to all other unit owners, shall promptly prepare and execute
17 appropriate instruments under this subsection. An amendment to the condominium
18 instruments shall assign a new identifying number designation to each new unit
19 created by the separation of a unit, except that one of the new units may retain the
20 original designation of the separated unit. The amendment shall allocate to those

1 new units, on a reasonable basis acceptable to the separator and the executive board,
 2 all of the undivided interest in the common ~~element~~ elements and rights to use the
 3 limited common elements and the votes in the association formerly appertaining to
 4 the separated unit. The amendment shall reflect a proportionate allocation to the
 5 new units of the liability for common expenses and rights to common surpluses
 6 formerly appertaining to the subdivided unit.

7 **SECTION 38.** 703.13 (7) (c) of the statutes is amended to read:

8 703.13 (7) (c) Plats and plans showing the boundaries and dimensions
 9 ~~separating of the new units together with their other boundaries and their new~~
 10 ~~identifying numbers or letters, including the boundary separating them, together~~
 11 ~~with their new designations~~, shall be prepared. The plats and plans shall be certified
 12 as to their accuracy and compliance with this subsection by a civil engineer, architect,
 13 or licensed land surveyor authorized to practice his or her profession in the state.

14 **SECTION 39.** 703.13 (8) (b) of the statutes is amended to read:

15 703.13 (8) (b) If the unit owners of adjoining units that may be merged desire
 16 to merge the units and the association determines that the merger does not violate
 17 the condominium instruments, the unit owners, after providing 30 days' written
 18 notice to all other unit owners, shall prepare and execute appropriate instruments
 19 under this subsection. An amendment to the condominium instruments shall assign
 20 a new identifying number designation to the new unit created by the merger of the
 21 units, which designation may be the original designation of one of the merged units,
 22 and shall allocate to the new unit all of the undivided interest in the common
 23 elements and rights to use the limited common elements and the votes in the
 24 association formerly appertaining to the separate units. The amendment shall
 25 reflect an allocation to the new unit of the liability for common expenses and rights

Sheet 13-13

1 to common surpluses formerly appertaining to the separate units. An amendment
 2 to a declaration under this paragraph shall be adopted either under s. 703.09 (2) or
 3 by the written consent of the owners of the units to be merged, the written consent
 4 by or on behalf of the ^{first} mortgagees of those units, if any, and the written consent of the
 5 board of directors of the association.

****NOTE: I added "by or on behalf of" before mortgagees. Okay? Do you want these mortgagees limited to first mortgagees, and do you want to add "holders of an equivalent security interest"?

6 **SECTION 40.** 703.13 (8) (c) of the statutes is amended to read:

7 703.13 (8) (c) Plats and plans showing the boundaries and dimensions of the
 8 new unit, together with the new ~~identifying number or letter~~ designation, shall be
 9 prepared. The plats and plans shall be certified as to their accuracy and compliance
 10 with this subsection by a civil engineer, architect, or licensed land surveyor
 11 authorized to practice in this state.

12 **SECTION 41.** 703.13 (9) of the statutes is created to read:

13 ~~703.13 (9) DIVISION OF UNITS. (a) If permitted in the declaration, a~~
 14 ~~condominium unit may be divided into multiple separate ownership interests. This~~
 15 ~~paragraph does not apply if the record ownership of the unit is not subdivided.~~

****NOTE: I don't understand this provision. It sounds like what you are saying is that a unit may be divided into separate ownership interests, but only if the ownership is already subdivided. What is the difference between being subdivided and being multiple separate interests?

16 ~~(b) 1. Except as provided in subd. 2., the separate interests shall be created by~~
 17 ~~condominium, subdivision, or certified survey map, as appropriate, and must be~~
 18 ~~further shown by amendment and addendum.~~

****NOTE: What do you mean that the interests shall be created "by condominium"? That phrase does not work with the definition of "condominium" in s. 703.02(4). Do you mean that the unit must be subjected to the provisions of this chapter to create a condominium form of ownership? What do you mean that the interests shall be created "by subdivision"? I assume you are not referring to the technical requirements for subdividing property under ch. 236.

1 2. If the separate interests are based on a division of rights in the ownership
2 of the unit on the basis of time periods, the division shall be controlled by ch. 707, if
3 applicable.

****NOTE: I added "if applicable" here because a division of interests on the basis of time periods might not be consistent with the definition of "time share" under ch. 707.

4 (c) Subdivision of a unit under this subsection does not require removal of the
5 condominium from the provisions of this chapter.

****NOTE: Once again, I assume you are not referring to subdivision under ch. 236. When you use "condominium" in this statement, do you mean the larger condominium of which the unit is a part? Should this paragraph say "subdivision of the ownership interest of a unit"? Should the entire subsection be entitled "Division of ownership interests" instead of "Division of units"? "Division of units" sounds like a physical division of the unit.

6 SECTION 42. 703.14 (1) of the statutes is amended to read:

7 703.14 (1) The common elements may be used only for the purposes for which
8 they were intended and, except as provided in the condominium instruments or
9 association bylaws or rules, the common elements are subject to mutual rights of
10 support, access, use, and enjoyment by all unit owners. However, any portion of the
11 common elements designated as limited common elements may be used only by the
12 unit owner of the unit to which their use is limited in the condominium instruments
13 and association bylaws and rules.

14 SECTION 43. 703.15 (2) (a) of the statutes is amended to read:

15 703.15 (2) (a) *Establishment*. ~~Every declarant shall establish an association~~
16 ~~to govern the condominium not later than~~ As of the date of the first conveyance of a
17 unit to a purchaser, an association shall immediately exist to govern the affairs of the
18 condominium. The declarant shall organize and operate the association until control
19 of the association is transferred to the unit owners. The association shall be
20 ~~organized as a profit or nonprofit corporation or~~ as an unincorporated association.

1 After it is organized, the membership of the association shall at all times consist
2 exclusively of all of the unit owners.

****NOTE: I provided that the association would exist immediately, as provided in s. 703.365 (5). It is not clear, however, when the declarant must organize the association. Is that before or after it immediately exists?

3 SECTION 44. 703.15 (2) (b) of the statutes is amended to read:

4 703.15 (2) (b) *Power and responsibility prior to establishment.* Until an
5 association is established, a declarant has the power and responsibility to act in all
6 instances where this chapter, any other provision of the law, or the declaration
7 require action by the association or its officers.

****NOTE: Should the paragraph above be amended to say "until an association exists under sub. (1)," or is the intention that the declarant will act, even though an association exists, until the declarant actually organizes one under sub. (1) (in which case, should "established" be changed to "organized"), or until the declarant transfers control of the association?

Insert 16-7

8 SECTION 45. 703.15 (2) (c) 2. of the statutes is amended to read:

9 703.15 (2) (c) 2. The period of declarant control begins on the date that the first
10 condominium unit is conveyed by a declarant to any person other than the declarant.
11 If there is any other unit owner other than a declarant, a declaration may not be
12 amended to increase the scope or the period of the declarant control. The declarant
13 may transfer control of the association before the expiration of the period of declarant
14 control. *mandatory*

****NOTE: Doesn't declarant control end when control of the association is transferred?

15 SECTION 46. 703.15 (2) (c) 3. of the statutes is created to read:

16 703.15 (2) (c) 3. Upon the termination of declarant control, the declarant shall
17 turn over all association records and accounts to the directors elected under par. (f).

18 SECTION 47. 703.15 (2) (d) of the statutes is amended to read:

1 703.15 (2) (d) *Meeting to elect directors.* ~~Prior to~~ Within 30 days after the
 2 conveyance of ~~25%~~ 25 percent of the common element interest to purchasers, an
 3 association shall hold a meeting and the unit owners other than the declarant shall
 4 elect at least ~~25%~~ 25 percent of the directors of the executive board. ~~Prior to~~ Within
 5 30 days after the conveyance of ~~50%~~ 50 percent of the common element interest to
 6 purchasers, an association shall hold a meeting and the unit owners other than the
 7 declarant shall elect at least ~~33 1/3%~~ 33 1/3 percent of the directors of the executive
 8 board.

Insert 17-8

9 **SECTION 48.** 703.15 (2) (f) of the statutes is amended to read:

10 703.15 (2) (f) *Elections after expiration of declarant control.* Not later than 45
 11 days after ~~the expiration of any period of declarant control ends,~~ an association shall
 12 hold a meeting and the unit owners shall elect an executive board of at least 3
 13 directors and officers of the association. The directors and officers shall take office
 14 upon election.

15 **SECTION 49.** 703.15 (3) (a) (intro.) of the statutes is amended to read:

16 703.15 (3) (a) *Powers.* (intro.) ~~An~~ In addition to any other powers vested in it
 17 by law, an association has the power to do all of the following:

18 **SECTION 50.** 703.15 (3) (a) 1. of the statutes is amended to read:

19 703.15 (3) (a) 1. Adopt and amend budgets for revenues, expenditures, and
 20 reserves and levy and collect assessments for common expenses from unit owners;

21 **SECTION 51.** 703.15 (3) (a) 2. of the statutes is amended to read:

22 703.15 (3) (a) 2. Employ and dismiss employees and agents;

23 **SECTION 52.** 703.15 (3) (a) 3. of the statutes is amended to read:

24 703.15 (3) (a) 3. Sue on behalf of all unit owners; and

25 **SECTION 53.** 703.15 (3) (b) (intro.) of the statutes is amended to read:

1 703.15 (3) (b) *Conditional powers.* (intro.) Subject to any restrictions and
2 limitations specified by the declaration, an association may do any of the following:

3 **SECTION 54.** 703.15 (4) (b) of the statutes is amended to read:

4 703.15 (4) (b) Every unit owner shall furnish the association with ~~his or her~~ the
5 name and current mailing address of every owner of the unit and, if the unit is leased,
6 of every tenant of the unit. No unit owner may vote at meetings of the association
7 until this information is furnished.

8 **SECTION 55.** 703.15 (4) (d) 1. of the statutes is amended to read:

9 703.15 (4) (d) 1. At meetings of the association every unit owner is entitled to
10 cast the number of votes appurtenant to his or her unit, as established in the
11 declaration under s. 703.09 (1) (f). Unit owners may vote by proxy, but, the proxy is
12 effective only for a maximum period of 180 days following its issuance, unless
13 granted to a mortgagee or lessee. If only one of multiple owners of a unit is present
14 at a meeting of the association, the owner who is present is entitled to cast the votes
15 allocated to that unit. Voting records, including official rosters and ballots cast, shall
16 be open to review by any unit owner.

****NOTE: I added "who is present" for clarity. Okay?

17 **SECTION 56.** 703.15 (4) (e) of the statutes is amended to read:

18 703.15 (4) (e) Unless otherwise provided in this chapter, and subject to
19 provisions in the bylaws requiring a different majority or manner of voting, decisions
20 of an association shall be made on a majority of votes of the unit owners present and
21 voting at a meeting at which a quorum is present.

22 **SECTION 57.** 703.155 (1) of the statutes is amended to read:

23 703.155 (1) DEFINITION. In this section, "master association" means a profit or
24 nonprofit corporation or unincorporated association which that exercises the powers

12-81
insert

1 under s. 703.15 (3) on behalf of one or more condominiums or for the benefit of the
2 unit owners of one or more condominiums.

3 SECTION 58. 703.155 (2) of the statutes is amended to read:

4 703.155 (2) DELEGATION. If a declaration provides that any of the powers
5 described in s. 703.15 (3) of an association are to be exercised by or may be delegated
6 to a master association, all provisions of this chapter applicable to an association
7 apply to the master association, except as modified by this section or the declaration.

8 SECTION 59. 703.16 (1) of the statutes is amended to read:

9 703.16 (1) DISPOSITION OF COMMON SURPLUSES. All common surpluses of the
10 association shall be credited to the unit owners' assessments for common expenses
11 may be used by the association in the manner determined by the association. If
12 surpluses are credited or distributed to the unit owners, they shall be allocated
13 among the unit owners as provided in the declaration or, if there is no applicable
14 provision in the declaration, in proportion to their percentage interests in the
15 common elements or as otherwise provided in the declaration or shall be used for any
16 other purpose as the association decides.

17 SECTION 60. 703.16 (2) (b) of the statutes is amended to read:

18 703.16 (2) (b) During the period of declarant control of the association under
19 s. 703.15 (2) (c), if any period in which any unit owned by the declarant is exempt from
20 assessments for common expenses until the unit is sold, the total amount assessed
21 against units that are not exempt from assessments may not exceed the amount that
22 equals nonexempt units' budgeted share of common expenses, based on the
23 anticipated common expenses set forth in the annual budget under s. 703.161 (2) (a).

24 The declarant is liable for the balance of the actual common expenses. *Insert 19-24*

25 SECTION 61. 703.161 (2) (intro.) of the statutes is amended to read:

1 703.161 (2) REQUIREMENT. (intro.) An association annually shall adopt and
2 distribute to ~~all unit owners~~ each unit owner an annual budget setting forth all of the
3 following:

4 **SECTION 62.** 703.161 (2) (g) of the statutes is created to read:

5 703.161 (2) (g) The amount assessed to the owner's unit.

6 **SECTION 63.** 703.161 (3) of the statutes is created to read:

7 703.161 (3) AMENDMENT. An association may adopt amendments to its budget
8 during the course of its fiscal year, and shall use the same procedures and actions as
9 are required for adoption of the original budget.

10 **SECTION 64.** 703.165 (2) of the statutes is amended to read:

11 703.165 (2) LIABILITY FOR ASSESSMENTS. A unit owner shall be liable for all
12 assessments, or installments thereof, coming due while owning a unit, including any
13 assessments coming due during the pendency of any claim by the unit owner against
14 the association or during any period in which the unit is not occupied by the unit
15 owner or is leased or rented to any other person. In ~~a voluntary~~ any grant, other than
16 one resulting from the foreclosure of a first mortgage or an equivalent security
17 interest in the unit, the grantee shall be jointly and severally liable with the grantor
18 for all unpaid assessments against the grantor for his or her share of the common
19 expenses up to the time of the ~~voluntary~~ grant for which a statement of condominium
20 lien is recorded, without prejudice to the rights of the grantee to recover from the
21 grantor the amounts paid by the grantee for such assessments. Liability for
22 assessments may not be avoided by waiver of the use or enjoyment of any common
23 element or by abandonment of the unit for which the assessments are made.

24 **SECTION 65.** 703.165 (3) of the statutes is amended to read:

1 703.165 (3) ASSESSMENTS CONSTITUTE LIEN. All assessments, until paid,
 2 together with interest on them and actual costs of collection, constitute a lien on the
 3 units on which they are assessed, if a statement of lien is filed within ^{strike} ~~2~~ ³ years after
 4 the date the last installment of the assessment becomes due. The lien is effective
 5 against a unit at the time the last installment of the assessment became due
 6 regardless of when within the ^{strike} ~~2-year~~ ^{3-year} period it is filed. A statement of condominium
 7 lien is filed in the land records of the clerk of circuit court of the county where the unit
 8 is located, stating the description of the unit, the name of the record owner, the
 9 amount due, and the period for which the assessment was due. The clerk of circuit
 10 court shall index the statement of condominium lien under the name of the record
 11 owner in the judgment and lien docket. The statement of condominium lien shall be
 12 signed and verified by an officer or agent of the association as specified in the bylaws
 13 and then may be filed. On full payment of the amount of the assessment for which
 14 the lien is claimed, the unit owner shall be entitled to a satisfaction of the lien that
 15 may be filed with the clerk of circuit court.

****NOTE: Should "the last installment" also be added before "assessment" in the second sentence, as I have done?

Insert 21-18

16 **SECTION 66.** 703.165 (5) (c) of the statutes is amended to read:
 17 703.165 (5) (c) Mechanic's Construction liens filed prior to the making of the
 18 assessment.

19 **SECTION 67.** 703.17 (1) of the statutes is amended to read:
 20 703.17 (1) Any association shall obtain insurance or ensure that insurance is
 21 obtained, for the property against loss or damage by fire and such other hazards for
 22 not less than full replacement value of the property insured and a liability policy
 23 covering all claims commonly insured against. Insurance coverage shall be written

Unless otherwise provided in the declaration, an

1 on the property in the name of the association as trustee for each of the unit owners
2 in the percentages established in the declaration. The declaration may establish an
3 allocation of insurance proceeds that differs from the percentage interest in the
4 common elements established under s. 703.13 (1). Premiums shall be common
5 expenses. The insurance may include reasonable deductibles, and, if it does, the
6 association shall determine by bylaw or rule whether a deductible shall be paid as
7 a common expense or, if not, how it will be allocated. Provisions for such insurance
8 shall be without prejudice to the right of each unit owner to insure his or her own unit
9 for personal benefit.

10 **SECTION 68.** 703.18 (2) (b) of the statutes is amended to read:

11 703.18 (2) (b) However, if a condominium is damaged to an extent more than
12 the available insurance proceeds, the condominium shall be subject to an action for
13 partition upon obtaining the written consent of the unit owners having ~~75%~~ 75
14 percent or more of the votes. In the case of partition, the net proceeds of sale together
15 with any net proceeds of insurance shall be considered as one fund and shall be
16 divided among all unit owners in proportion to their percentage interests in the
17 common elements as established under s. 703.13 (1) or, if the declaration so provides,
18 in an allocation that differs from the percentage interests in the common elements,
19 and shall be distributed in accordance with the priority of interests in each unit.

20 **SECTION 69.** 703.19 (3) (intro.) of the statutes is amended to read:

21 703.19 (3) ALLOCATION OF AWARD; IN ABSENCE OF PROVISIONS IN DECLARATION OR
22 BYLAWS. (intro.) Unless otherwise provided for in a declaration or bylaws, any
23 damages for a taking of all or part of a condominium shall, subject to sub. (6), be
24 awarded as follows:

25 **SECTION 70.** 703.19 (3) (b) of the statutes is amended to read:

1 703.19 (3) (b) Any award for the taking of limited common elements shall be
2 allocated to the unit owners of the units to which the use of those limited common
3 elements is restricted in proportion to their respective percentage interests in the
4 common elements as established under s. 703.13 (1) or, if the declaration so provides,
5 in an allocation that differs from the percentage interests in the common elements.

6 **SECTION 71.** 703.19 (3) (c) of the statutes is amended to read:

7 703.19 (3) (c) In the event no reconstruction is undertaken, any award for the
8 taking of common elements shall be allocated to all unit owners in proportion to their
9 respective percentage interests in the common elements as established under s.
10 703.13 (1) or, if the declaration so provides, in an allocation that differs from the
11 percentage interests in the common elements.

12 **SECTION 72.** 703.20 (1) of the statutes is amended to read:

13 703.20 (1) RECORD KEEPING; AVAILABILITY FOR EXAMINATION. An association shall
14 keep detailed, accurate records using standard bookkeeping procedures of the
15 receipts and expenditures affecting the common elements, specifying and itemizing
16 the maintenance and repair expenses of the common elements and any other
17 expenses incurred. The records, wherever maintained, are the property of the
18 association. The records and the vouchers authorizing the payments shall be
19 available for examination by the unit owners at convenient hours.

20 **SECTION 73.** 703.22 (title) of the statutes is amended to read:

21 **703.22 (title) ~~Mechanics'~~ Construction and suppliers' liens.**

22 **SECTION 74.** 703.22 (2) of the statutes is amended to read:

23 703.22 (2) Any ~~meehanics'~~ construction lien or suppliers' lien under subch. I
24 of ch. 779 arising as a result of repairs to or improvements of a unit by a unit owner
25 shall be a lien only against the unit.

1 **SECTION 75.** 703.22 (3) of the statutes is amended to read:

2 703.22 (3) Any ~~mechanics'~~ construction or suppliers' lien under subch. I of ch.
3 779 arising as a result of repairs to or improvements of the common elements, if
4 authorized in writing by the association, shall be paid by the association as a common
5 expense and until paid shall be a lien against each unit in proportion to its percentage
6 interest in the common elements. On payment of the proportionate amount by any
7 unit owner to the lienor or on the filing of a written undertaking in the manner
8 specified by s. 779.08, the unit owner shall be entitled to a release of his or her unit
9 from the lien and the association shall not be entitled to assess his or her unit for
10 payment of the remaining amount due for the repairs or improvements.

11 **SECTION 76.** 703.24 (2) of the statutes is amended to read:

12 703.24 (2) **LIABILITY FOR UNIT OWNER VIOLATION.** A unit owner who commits a
13 violation is liable for any charges, fines, or assessments imposed by the association
14 pursuant to the declaration or the association's bylaws or ~~association~~ rules as a result
15 of the violation and may be subject to a temporary or permanent injunction.

16 **SECTION 77.** 703.25 (3) of the statutes is renumbered 703.25 (3) (a) and
17 amended to read:

18 703.25 (3) (a) A judgment for money or a blanket lien under s. 703.22 against
19 an association shall be a lien against any property owned by the association, and
20 against each of the condominium units in proportion to the liability of each unit
21 owner for common expenses as established under the declaration in an amount not
22 exceeding the market value of the unit, but not against any other property of any unit
23 owner.

24 **SECTION 78.** 703.25 (3) (b) of the statutes is created to read:

1 703.25 (3) (b) An action for a money judgment against an association shall not
2 be the basis for filing a lis pendens against the units of the condominium.

3 **SECTION 79.** 703.26 (1) of the statutes is amended to read:

4 703.26 (1) DECLARANT MAY RESERVE RIGHT TO EXPAND. A declarant may reserve
5 the right to expand a condominium in the original condominium declaration by
6 subjecting additional real property and units to the condominium declaration or
7 adding one or more units on real property already subject to the declaration in such
8 a manner that as ~~each additional parcel of real property or unit~~ is subjected to the
9 condominium declaration, the percentage of ~~undivided~~ interests in the common
10 elements of the ~~preceding and new property, including any new property,~~ shall be
11 reallocated between the unit owners on the basis of the aggregate undivided interest
12 in the common elements appertaining to the property.

****NOTE: By "including any new property" do you mean the real property or units
that are being added?

Insert 25-12

13 **SECTION 80.** 703.26 (2) (a) of the statutes is amended to read:

14 703.26 (2) (a) A declaration establishing a condominium shall describe each
15 parcel of property which, along with its square footage, that may be added to the
16 condominium.

17 **SECTION 81.** 703.26 (3) (a) of the statutes is amended to read:

18 703.26 (3) (a) If the conditions of sub. (2) are complied with, property may be
19 added to a condominium if the declarant records an amendment to the declaration,
20 showing the designation of the units being added, the new percentage interests of the
21 unit owners, and the votes which that each unit owner may cast in the condominium
22 as expanded, and records an addendum to the condominium plat that includes the

1 detail and information concerning the new property as required in the original
2 condominium plat.

3 **SECTION 82.** 703.275 (4m) of the statutes is created to read:

4 703.275 (4m) PLAT. The plat of the resultant condominium shall be titled as
5 an addendum to the plat of the resultant condominium, shall identify the plat of
6 every condominium that is merged into the resultant condominium by name and
7 recording data, and shall identify units both by their designations in the resultant
8 condominium and by their designations in the merged condominiums. Any changes
9 in the common elements, including the reservation of parts of them as limited
10 common elements, shall be identified on the plat of the resultant condominium.

11 **SECTION 83.** 703.28 (1) of the statutes is amended to read:

12 703.28 (1) ~~All of the unit owners may remove all or any part of the property may~~
13 ~~be removed from the provisions of this chapter by a removal instrument, duly~~
14 ~~recorded, provided that the holders of all liens affecting any of the units consent~~
15 ~~thereto or agree, in either case by instruments duly recorded, that their liens be~~
16 ~~transferred to the percentage of the undivided interest of the unit owner in the~~
17 ~~property as an amendment to the declaration, as provided in this section, and as an~~
18 ~~addendum to the plat.~~

19 **SECTION 84.** 703.28 (1m) of the statutes is repealed.

20 **SECTION 85.** 703.28 (2) of the statutes is repealed.

21 **SECTION 86.** 703.28 (2m) of the statutes is created to read:

22 703.28 (2m) If all of the property is being removed, the removal instrument
23 must be approved by all of the unit owners and consented to by the holders of all liens
24 affecting the condominium or any unit. The removal instrument shall provide that
25 any lien against a unit is transferred to the percentage interest of the owner of the

1 unit that is encumbered by the lien and that any lien against the condominium as
2 a whole is allocated among the units in accordance with s. 703.25 (3). Upon removal
3 of the property from the provisions of this chapter, the property shall be owned in
4 common by the unit owners in their relative interests under s. 703.18 (2) (b)

Insert 27-4

****NOTE: Is s. 703.18 (2) (b) the correct cross-reference here? That paragraph relates to a division of insurance proceeds in proportion to the unit owners' interests in the common elements.

5 SECTION 87. 703.28 (3) of the statutes is created to read:

Insert 27-6

6 703.28 (3) (a) If less than all of the property is being removed, the removal
7 instrument must specify all of the following:

Insert 27-9

8 a. The part of the property that is being removed.

9 b. Who will own the part of the property that is being removed after its removal.

10 c. The consideration that is being given to the remaining condominium for the
11 removal. *if any,* *association*

12 4. How the finances, including expenses, surpluses, assets, liabilities, and
13 reserves, will be allocated between the part of the property that is being removed and
14 the remaining condominium.

15 (b) A removal instrument under this subsection must be approved by 80
16 percent of the unit owners, including all of the owners of any units that are being
17 removed, and consented to by the holders of all liens affecting the condominium or
18 any unit. If the part of the property that is being removed will be owned by the
19 declarant or an affiliate of the declarant, the removal instrument must be approved
20 by all of the unit owners who are not the declarant and all of the holders of any liens
21 affecting their units. To the extent that the removal affects the value of any unit
22 owner's interest in the common elements, the removal instrument shall comply with
23 s. 703.09 (3). The removal instrument shall provide that any lien against a unit is

1 transferred to the percentage interest of the owner of the unit that is encumbered by
 2 the lien and that any lien against the condominium as a whole is allocated among
 3 the units in accordance with s. 703.25 (3).

****NOTE: Is it the removal instrument or the owner of the part being removed that
 must comply with s. 703.09 (3)? That subsection seems to require compensation to a unit
 owner if the value of their interest in the common elements is reduced.

4 (c) Any part of the property that is removed under this subsection must result,
 5 after the removal, in a legal parcel for its intended purpose.

6 SECTION 88. 703.28 (4) of the statutes is created to read:

7 703.28 (4) The approvals and consents required under this section shall be
 8 attested to in the instruments recorded with the removal instrument.

9 SECTION 89. 703.28 (5) of the statutes is created to read:

10 703.28 (5) A removal under this section does not bar the property or the part
 11 of the property that is removed from subsequent resubmission to the provisions of
 12 this chapter.

13 SECTION 90. 703.29 of the statutes is repealed.

14 SECTION 91. 703.33 (1) (intro.) of the statutes is amended to read:

15 703.33 (1) MATERIAL TO BE FURNISHED BY SELLER TO PURCHASER BEFORE CLOSING.

16 (intro.) Not later than 15 days prior to the closing of the sale of a residential unit to
 17 a member of the public, the seller shall furnish to the purchaser the following:

18 SECTION 92. 703.34 (title) of the statutes is amended to read:

19 703.34 (title) **Blanket mortgages and other blanket liens affecting a**
 20 **unit at time of first conveyance; mortgage approvals.**

21 SECTION 93. 703.34 (4) of the statutes is created to read:

22 703.34 (4) In those situations in which mortgagee consent or approval is
 23 required, if a mortgagee cannot be contacted with the use of reasonable diligence or

Insert 28-12

Insert 28-17

Handwritten flourish

Handwritten flourish

1 if a mortgagee does not acknowledge receipt of the request for consent or approval
2 or respond to the request within a reasonable time, the association may seek the
3 right to proceed with the proposed action under ch. 840.

****NOTE: I don't understand the context of this provision. Is it intended to apply to any situation under the chapter in which mortgagee consent or approval is required or only under s. 703.34? If it is intended to apply to situations throughout the chapter, it should not be placed in s. 703.34. Is the "proposed action" any action in the chapter for which mortgagee consent or approval is required or only an action under s. 703.34? Would the "proposed action" necessarily be listed in s. 840.03 or in another provision in ch. 840 or does an action under ch. 703 need to be added to ch. 840?

4 **SECTION 94.** 703.365 (6) (a) 3. of the statutes is created to read:

5 703.365 (6) (a) 3. An action is proposed by one unit owner that may have an
6 adverse impact on the condominium or the use and enjoyment of another unit in the
7 condominium.

8 **SECTION 95.** 703.365 (6) (b) of the statutes is amended to read:

9 703.365 (6) (b) The unit owner or owners challenging a decision of the board
10 of directors described under par. (a) 1. or 2. or the unit owner under par. (a) 3. shall
11 give written notice of the objection to all unit owners and mortgagees within 45 days
12 after the decision but before any action is taken or expenditure is made. Upon receipt
13 of this notice, the board of directors shall reconsider its decision and either affirm,
14 reverse or modify the decision.

****NOTE: The two provisions above do not work as proposed because no decision is being made by the board in par. (a) 3. to reconsider in par. (b), and the unit owner proposing the action in par. (a) 3. has nothing to object to, as stated in par. (b). How do you want to resolve this? Do you want the board to make a decision in par (a) 3. and either the unit owner proposing the action or the other unit owners may challenge the decision?

15 **SECTION 96.** 703.365 (6) (d) of the statutes is amended to read:

16 703.365 (6) (d) The board of directors, upon submission of the matter to
17 arbitration as provided in par. (c) or sub. (12) (b), shall name a proposed arbitrator.
18 The unit owner or owners may accept the proposed arbitrator or propose a different
19 arbitrator. If there is no agreement on a single arbitrator, the 2 arbitrators shall

Insert 30-3

1 select a 3rd person and the 3 shall serve as an arbitration panel chaired by the 3rd
2 person. The expense of the arbitration shall be shared equally by the association and
3 the unit owner or owners challenging the decision of the board of directors.

4 SECTION 97. 703.365 (7) of the statutes is renumbered 703.365 (9) and amended
5 to read:

6 703.365 (9) EXPANDING CONDOMINIUMS. Section 703.26 does not apply to a small
7 condominium, and the declaration for a small condominium may not provide that s.
8 703.26 applies to the small condominium.

9 SECTION 98. 703.365 (10) of the statutes is created to read:

10 703.365 (10) RESIDENT AGENT; TAXES. In the declaration for a small
11 condominium, the declarant shall designate one of the unit owners as the resident
12 agent of the condominium and shall specify how real estate taxes for the year the
13 condominium is created will be divided among the units if different from the
14 percentage interests in the common elements.

15 SECTION 99. 703.365 (11) of the statutes is created to read:

16 703.365 (11) UTILITY EASEMENTS. The units and limited common elements of
17 a small condominium are subject to cross easements for any utility services to other
18 units in the condominium.

****NOTE: Is it unnecessary to provide that the common elements are subject to those easements?

19 SECTION 100. 703.365 (12) of the statutes is created to read:

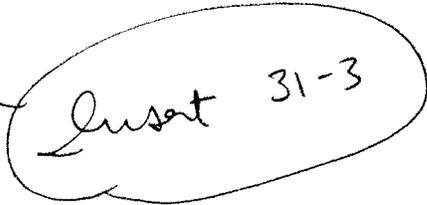
20 703.365 (12) TWO-UNIT CONDOMINIUMS. (a) Unless the declaration provides
21 otherwise, units in a 2-unit small condominium shall be insured by the same insurer.

22 (b) Any improvement, decoration, or repair to the exterior of either unit of a
23 2-unit small condominium must be agreed to by the owners of both units. In the

1 event of a dispute, the matter may be submitted to the board of directors, and the
2 decision of the board of directors may be challenged in an arbitration proceeding in
3 the manner provided in sub. (6) (d) and (e).

4

(END)



Insert 31-3

D - note

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FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1733/P2ins
PJK:.....

INSERT 3-2

1 SECTION 1. 703.02 (9d) of the statutes is created to read:

2 703.02 (9d) "First mortgagee" includes a holder of a security interest that is
3 equivalent to a first mortgage.

(END OF INSERT 3-2)

INSERT 4-11

4 *WFF* the declaration, or the bylaws, or any rules promulgated under any of them,

(END OF INSERT 4-11)

INSERT 4-13

5 *WFF* affecting property that is not a part of the unit

(END OF INSERT 4-13)

INSERT 6-14

6 SECTION 2. 703.09 (3) (bm) of the statutes is created to read:

7 703.09 (3) (bm) Any action to recover compensation under par. (a) shall be
8 commenced no later than one year after the amendment is recorded or be barred.

History: 2003 a. 283.

(END OF INSERT 6-14)

INSERT 7-15

9 *WFF* because the unit is subject to the terms of a declaration, a condominium plat,
10 bylaws, or rules

(END OF INSERT 7-15)

~~INSERT 9-17~~



Insert 9-17 182

1 **SECTION 3.** 703.13 (4) of the statutes is renumbered 703.13 (4) (a) and amended
2 to read:

3 703.13 (4) (a) The Except as provided in this chapter, the undivided percentage
4 interests shall have a permanent character and, except as specifically provided by
5 this chapter, in the common elements established in the declaration may not be
6 changed without the written consent of all of the unit owners of every unit in the
7 condominium and their mortgagees. Any change shall be evidenced by an
8 amendment to the declaration and recorded among the appropriate land records the
9 approval of the first mortgagee of each unit subject to a mortgage. The percentage
10 interests may not be separated from the unit to which they appertain. Any
11 instrument, matter, circumstance, ~~action~~, occurrence, or proceeding in any manner
12 affecting a unit also shall affect, in like manner, the undivided percentage interests
13 appurtenant to the unit.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

14 **SECTION 4.** 703.13 (4) (b) of the statutes is created to read:

15 703.13 (4) (b) Except for the total destruction of the condominium, in the event
16 that one or more units of a condominium are destroyed and not rebuilt, or in the event
17 that one or more units are removed from the condominium, the percentage interests
18 in the common elements shall be adjusted to maintain the same ratio of those
19 interests among the remaining units.

20 **SECTION 5.** 703.13 (4) (c) of the statutes is created to read:

21 703.13 (4) (c) If a condominium plat depicts a building as containing a specified
22 number of units but the building is constructed in such a manner as to physically
23 preclude the building from containing the full number of units shown on the plat, the
24 declaration may be amended as provided in s. 703.09 (2) to remove the excess units

Ins 9-17 contd 2012

1 from the condominium. The percentage interests appertaining to the excess units
2 shall be added on a pro rata basis to the percentage interests appertaining to the
3 remaining units. Amendments enacted under this paragraph shall specify the new
4 percentage interests for all of the remaining units, which percentage interests
5 collectively shall total 100 percent.

6 **SECTION 6.** 703.13 (4) (d) of the statutes is created to read:

7 703.13 (4) (d) Any change to the undivided percentage interests in the common
8 elements must be evidenced by amending the declaration in the manner provided in
9 s. 703.09 (2).

10 **SECTION 7.** 703.13 (4) (e) of the statutes is created to read:

11 703.13 (4) (e) Section 703.09 (3) does not apply to any amendment made to a
12 declaration under this subsection.

(END OF INSERT 9-17)

INSERT 13-13 *1014*

13 **SECTION 8.** 703.13 (7) (b) of the statutes is renumbered 703.13 (7) (b) 2. and
14 amended to read:

15 703.13 (7) (b) 2. The ~~principal officer of the~~ association, upon written
16 application of a person proposing the separation of a unit (separator), and after
17 determining that the separation does not violate the condominium instruments and
18 providing 30 days' written notice to all other unit owners, shall promptly prepare and
19 execute appropriate instruments under this subsection paragraph. An amendment
20 to the condominium instruments shall assign a new identifying number designation
21 to each new unit created by the separation of a unit, except that one of the new units
22 may retain the original designation of the separated unit. The amendment shall



Ens. 13-13 contd 284

1 allocate to those new units, on a reasonable basis acceptable to the separator and the
2 executive board, all of the undivided interest in the common ~~element~~ elements and
3 rights to use the limited common elements and the votes in the association formerly
4 appertaining to the separated unit. The amendment shall reflect a proportionate
5 allocation to the new units of the liability for common expenses and rights to common
6 surpluses formerly appertaining to the subdivided unit.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

****NOTE: I deleted "principal officer" in this provision, as you requested that I do
in s. 703.16 (6) (b). Okay?

7 **SECTION 9.** 703.13 (7) (b) 1. of the statutes is created to read:

8 703.13 (7) (b) 1. This paragraph applies when the effect of the separation is to
9 create 2 or more units of the existing condominium and the resulting interests will
10 not be subject to organizational or operating documents other those of the existing
11 condominium.

12 **SECTION 10.** 703.13 (7) (c) of the statutes is renumbered 703.13 (7) (b) 3. and
13 amended to read:

14 703.13 (7) (b) 3. Plats and plans showing the boundaries and dimensions
15 separating of the new units ~~together with their other boundaries and their new~~
16 ~~identifying numbers or letters, including the boundary separating them, together~~
17 with their new designations, shall be prepared. The plats and plans shall be certified
18 as to their accuracy and compliance with this subsection paragraph by a civil
19 engineer, architect, or licensed land surveyor authorized to practice his or her
20 profession in the state.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

21 **SECTION 11.** 703.13 (7) (cm) of the statutes is created to read:

22 703.13 (7) (cm) 1. In subd. 4., "unit" has the meaning given for "property."



703.13(7)(cm)

Ens 13-13 covered 3874

1

1. This paragraph applies when the effect of the separation involves the creation of 2 or more ownership interests in the unit that are subject to organizational or operating documents in addition to those of the existing condominium.

5

2. If the interests are based on time intervals, ch. 707 applies.

6

3. If permitted in the declaration, a condominium unit itself may be subjected to the condominium form of ownership in accordance with this paragraph and any restrictions and limitations that the condominium instruments may specify. In that case, all of the following apply:

10

a. The unit subjected to the condominium form of ownership shall be considered to be property.

12

b. The unit subjected to the condominium form of ownership shall remain a unit in the original condominium and shall continue to be subject to the condominium instruments for the the original condominium.

15

c. The association of the new condominium shall have all rights and obligations of the unit owner of the unit in the original condominium from which the new condominium is created.

18

d. All assessments and other expenses chargeable to the unit from which the new condominium is created shall be common expenses of the new condominium.

20

e. Upon the creation of separate tax parcels under s. 703.21 for the units in the newly created condominium, the unit subjected to the condominium form of ownership shall cease to be a separate tax parcel under s. 703.21.

23

f. Creation of the new condominium shall not require the unit from which the new condominium is created to be removed from the provisions of this chapter.

24



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1 4. If the interests arise in any other way, the organizational and operating
2 documents must be legally sufficient to create the proposed interests and any entity
3 involved.

4 **SECTION 12.** 703.13 (7) (d) of the statutes is renumbered 703.13 (7) (b) 4. and
5 amended to read:

6 703.13 (7) (b) 4. After appropriate instruments have been prepared and
7 executed, they shall be delivered promptly to the separator upon payment by him or
8 her of all reasonable cost for their preparation. Those instruments are effective when
9 the separator has executed them and they are recorded. The recording of the
10 instruments is conclusive evidence that the separation did not violate any
11 restrictions or limitation specified by the condominium instruments and that any
12 reallocations made under this subsection paragraph were reasonable.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

13 **SECTION 13.** 703.13 (7) (dm) of the statutes is created to read:

14 703.13 (7) (dm) All interests created in connection with the separation of a unit
15 remain subject to the condominium instruments and association documents.

(END OF INSERT 13-13)

INSERT 16-7 *183*

16 703.15 (2) (a) *Establishment.* ~~Every~~ Unless the declarant shall establish
17 earlier establishes an association to govern the condominium ~~not later than, as of the~~
18 date of the first conveyance of a unit to a purchaser, an association shall immediately
19 exist to govern the affairs of the condominium. The association shall be organized
20 ~~as a profit or nonprofit corporation or exist~~ as an unincorporated association, unless
21 the declarant has organized it as a nonprofit corporation before the first conveyance.
22 ~~After it is organized, the~~ the first conveyance, the association may be organized as



Sec 16-7 cont'd 2003

1 a nonprofit corporation only with the consent of all of the unit owners. The declarant
2 shall operate the association until the declarant transfers control of the association
3 to the unit owners. The membership of the association shall at all times consist
4 exclusively of all of the unit owners.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

****NOTE: Who may organize the association after the first conveyance? May the unit owners do so? Only the declarant with the consent of all unit owners? Either the unit owners or the declarant with the consent of all unit owners?

5 **SECTION 14.** 703.15 (2) (a) of the statutes is amended to read:

6 703.15 (2) (a) *Establishment.* ~~Every~~ Unless the declarant shall establish
7 earlier establishes an association to govern the condominium ~~not later than, as of~~
8 the date of the first conveyance of a unit to a purchaser. The association shall be
9 organized as a profit or nonprofit corporation or as an unincorporated association.
10 After it is organized, the membership of the association shall at all times consist
11 exclusively of all of the unit owners.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

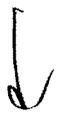
12 **SECTION 15.** 703.15 (2) (b) of the statutes is amended to read:

13 703.15 (2) (b) *Power and responsibility prior to establishment* ~~existence.~~ Until
14 an association ~~is established~~ exists under par. (a), a declarant has the power and
15 responsibility to act in all instances where this chapter, any other provision of the
16 law, or the declaration require action by the association or its officers.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

17 **SECTION 16.** 703.15 (2) (c) 1. (intro.) of the statutes is amended to read:

18 703.15 (2) (c) 1. (intro.) Except as provided in par. (d), a declarant may
19 authorize the declarant or persons designated by him or her to appoint and remove
20 the officers of the association or to exercise the powers and responsibilities otherwise
21 assigned by the declaration or this chapter to the association or its officers. A



Ins 16-7 contd 3 of 3

1 declaration may not authorize any declarant control of the association for a period
2 exceeding ~~the earlier of~~ any of the following:

3 History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

SECTION 17. 703.15 (2) (c) 1. a. of the statutes is amended to read:

4 703.15 (2) (c) 1. a. ~~Ten~~ Except as provided in subd. 1. c., 10 years in the case of
5 an expandable condominium.

6 History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

SECTION 18. 703.15 (2) (c) 1. b. of the statutes is amended to read:

7 703.15 (2) (c) 1. b. ~~Three~~ Except as provided in subd. 1. c., 3 years in the case
8 of any other condominium.

9 History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

SECTION 19. 703.15 (2) (c) 1. c. of the statutes is amended to read:

10 703.15 (2) (c) 1. c. Thirty days after the conveyance of ~~75%~~ 75 percent of the
11 common element interest to purchasers if the conveyance of 75 percent of the
12 common element interest occurs before the time specified in subd. 1. a. or b.,
13 whichever is applicable.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

(END OF INSERT 16-7)

INSERT 17-8

14 **SECTION 20.** 703.15 (2) (e) of the statutes is amended to read:

15 703.15 (2) (e) *Calculation of percentage.* The calculation of the percentage of
16 common element interest conveyed to purchasers under pars. (c) and (d) shall be
17 based on the percentage of undivided interest appertaining to each unit ~~which~~ that
18 has been conveyed assuming that all the units to be completed are included in the



Ins 17-8 cont'd

1 condominium, including, in the case of an expanding condominium, the maximum
2 number of units that may be added.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

(END OF INSERT 17-8)

INSERT 18-21

3 **SECTION 21.** 703.15 (6) of the statutes is created to read:

4 703.15 (6) RIGHT OF ACTION AGAINST DECLARANT TOLLED. Except with respect to
5 any warranties included in a contract of purchase for a specific unit, any applicable
6 statute of limitations affecting the association's right of action against the declarant
7 is tolled until declarant control terminates under sub. (2) (c).

(END OF INSERT 18-21)

INSERT 19-24

8 ^{with} Declarant obligations under this paragraph shall be considered an assessment
9 under s. 703.165.

(END OF INSERT 19-24)

INSERT 21-18

10 **SECTION 22.** 703.165 (7) of the statutes is amended to read:

11 703.165 (7) ENFORCEMENT OF LIEN. A lien may be enforced and foreclosed by an
12 association or any other person specified in the bylaws, in the same manner, and
13 subject to the same requirements, as a foreclosure of mortgages on real property in
14 this state, including the redemption time reductions under s. 846.101 for waiving a
15 deficiency judgment. An association may recover costs and actual attorney fees. An
16 association may, unless prohibited by the declaration, bid on the unit at foreclosure
17 sale and acquire, hold, lease, mortgage and convey the unit. Suit to recover a money



Ins 21-18 cont'd

1 judgment for unpaid common expenses shall be maintainable without foreclosing or
 2 waiving the lien securing the same. Suit for any deficiency following foreclosure may
 3 be maintained in the same proceeding. No action may be brought to foreclose the lien
 4 unless brought within 3 years following the recording of the statement of
 5 condominium lien. No action may be brought to foreclose the lien except after 10
 6 days' prior written notice to the unit owner given by registered mail, return receipt
 7 requested, to the address of the unit owner shown on the books of the association.

History: 2003 a. 283 ss. 31, 34; 2003 a. 326.

(END OF INSERT 21-18)

INSERT 25-12

8 703.26 (1) DECLARANT MAY RESERVE RIGHT TO EXPAND. A declarant may reserve
 9 the include in the original declaration of a condominium a right to expand ^{X2} ~~the~~
 10 condominium by ~~subjecting additional property to the condominium declaration~~
 11 adding land, one or more units, or both, in such a manner that as each additional
 12 property any added land or unit is subjected to the condominium declaration and, if
 13 any unit or units are added, the percentage of undivided interests in the common
 14 elements ~~of the preceding and new property shall be~~ are reallocated between the unit
 15 owners ~~on the basis of the aggregate undivided interest in the common elements~~
 16 ~~appertaining to the property~~ among all units.

History: 1977 c. 407; 1997 a. 333.

(END OF INSERT 25-12)

~~INSERT 27-4~~



Insert 27-4

1 *not* The percentage interest of each unit owner shall be determined as specified in
2 the declaration.

(END OF INSERT 27-4)

INSERT 27-6

3 *4* 703.28 (3) If less than all of the property is being removed, all of the following
4 apply:

5 *4* (a) If the removal results from the exercise of the power of eminent domain, s.
6 703.195 applies.

7 *4* (b) 1. Except as provided in par. (c)

(END OF INSERT 27-6)

INSERT 27-9

8 *not* If the property is to be owned differently from the manner in which it was owned
9 immediately before removal, the removal instrument shall contain language of
10 conveyance to the party or parties that will own the property after removal. The
11 conveyance language shall be effective to vest ownership in the party or parties even
12 if fewer than all of the unit owners of the condominium have joined in the removal
13 instrument.

(END OF INSERT 27-9)

INSERT 28-12

1003

14 *4* 2. A removal instrument under this paragraph must be signed by the unit
15 owners holding at least 80 percent of the aggregate of the votes established under s.
16 703.09 (1) (f), or a greater percentage if so provided in the declaration, plus all of the
17 owners of units that are being removed, and consented to by the holders of all liens
18 affecting the condominium or any unit.



Div. 28-12 contd 2013

1 3. Removal of less than all of the property is permitted only if, following
2 removal, the condominium and the property removed comply with the laws and
3 ordinances regulating zoning and land division.

4 4. At the time a removal instrument under this paragraph is recorded, the
5 party recording the instrument shall also record an addendum to the condominium
6 plat containing the same details and information concerning the remaining
7 condominium property as was required in the original condominium plat.

8 (c) If the part being removed does not include all of a unit, all of a limited
9 common element, or a part of the common elements that is essential to the use and
10 enjoyment of or access to any unit, the removal instrument must specify all of the
11 following:

- 12 1. The part of the property that is being removed.
- 13 2. Who will own the part of the property that is being removed after its removal.
- 14 3. The consideration received for the property being removed and how the
15 consideration will be used.

****NOTE: This is drafted in such a way that the situation in par. (c) requires less information than the situation in par. (b). Is that your intent? Is the only real difference between the two situations that, in the situation in par. (c), the removal instrument must also specify the use of the consideration?

16 (d) If the property that is being removed is owned by the association and is not
17 any part of a unit or the common elements, its transfer shall be as provided in the
18 declaration or association bylaws and shall not affect the percentage interests in the
19 common elements.

20 **SECTION 23.** 703.28 (4) of the statutes is created to read:

21 703.28 (4) A removal instrument under sub. (3) (b) or (c) must meet the
22 requirements for an amendment to the declaration. An amendment to the
23 declaration and an addendum to the condominium plat must be recorded to reflect



July 28-12 cont'd 303

1 the removal. The part that is removed must result in a legal parcel for its intended
2 use.

(END OF INSERT 28-12)

INSERT 28-17

3 **SECTION 24.** 703.33 (9) of the statutes is created to read:

4 703.33 (9) ELECTRONIC DISCLOSURE. Notwithstanding sub. (6), the information
5 required under subs. (1) and (2) may be disclosed electronically if the purchaser
6 agrees to that method of transmission and the seller verifies that the purchaser
7 received the information transmitted electronically.

****NOTE: Note how I modified this provision. The concern was that the purchaser
might be unable to receive information by e-mail, or that it might be sent but not received.
Do you want any changes?

(END OF INSERT 28-17)

INSERT 30-3

183

8 703.34 (4) If a mortgagee whose consent or approval is required for an action
9 under this chapter cannot be contacted with the use of reasonable diligence, the
10 association may seek the right to proceed with the proposed action under ch. 841,
11 notwithstanding the missing consent or approval. In determining whether to permit
12 the action for which mortgagee consent or approval has not been obtained, the court
13 shall consider whether the action is needed to permit the effective management and
14 operation of the condominium and any impact the action would have on the value of
15 the units in the condominium as security for mortgages on the units.

16 **SECTION 25.** 703.365 (4) (b) of the statutes is amended to read:

17 703.365 (4) (b) The floor plans under s. 703.11 (2) (c) need only show the location
18 and designation of each unit in the building and the limited common elements



jus 30-3 cont'd 2003

1 appurtenant to each unit of a small condominium. These plans may be
2 supplemented by an agreement among all unit owners and their first mortgagees
3 regarding the allocation of use and enjoyment of common elements, which
4 agreement, in both its original and any amended form, shall be recorded.

History: 1985 a. 188, 332; 1995 a. 201; 2003 a. 283.

5 **SECTION 26.** 703.365 (6) of the statutes is repealed and recreated to read:

6 703.365 (6) ASSOCIATION OPERATIONS; ARBITRATION. (a) With respect to
7 operational decisions in a small condominium, including decisions concerning
8 repairs, maintenance, the exterior appearance, and expenditures, the association
9 may submit a proposed action to arbitration under ch. 788 if any of the following
10 applies:

11 1. The required majority under the declaration or bylaws for the proposed
12 action cannot be achieved.

13 2. The proposed action would involve unbudgeted expenditures per unit in
14 excess of \$2,500 in any one year or \$5,000 overall.

15 (b) 1. A unit owner in a small condominium may propose in writing an action
16 or expenditure by the association that the unit owner believes is necessary for the
17 proper operation of the condominium. The association shall act on any unit owner
18 proposal in a timely manner.

19 2. If the association does not adopt the unit owner's proposal, cannot achieve
20 the majority required to take an action, or levies assessments for unbudgeted
21 expenditures in excess of the amounts specified in par. (a) 2., a unit owner may
22 request reconsideration of the decision and, if unsatisfied with the result, submit the
23 issue to arbitration under ch. 788.



Ins 30-3 cont'd 30/3

1 (c) Notice of arbitration under par. (a) or (b) shall be given to the first mortgagee
2 of any unit subject to a mortgage. The results of the arbitration shall be final as to
3 the matter under consideration. The association may adopt rules establishing
4 arbitration procedures. Acceptance of a deed to a unit in a small condominium
5 constitutes agreement to the resolution of disputes over operational decisions by
6 arbitration.

7 (d) If, after arbitration under par. (b), the challenge is wholly denied, costs of
8 the arbitration shall be borne by the unit owner submitting the issue to arbitration.
9 If the challenge is wholly upheld, costs shall be borne by the association. In all other
10 cases, the costs shall be shared equally by the unit owner and the association.

***NOTE: Does this address costs only for arbitration under par. (b)? Does the
association pay all costs of arbitration under par. (a)?

(END OF INSERT 30-3)

INSERT 31-3

11 SECTION 27. 709.02 (2) (intro.) of the statutes is amended to read:

12 709.02 (2) (intro.) In regard to a transfer of a condominium unit, as defined in
13 s. 703.02 (15), if the owner is required to provide the information under sub. (1), the
14 owner shall furnish, in addition to and at the same time as the information required
15 under sub. (1), all the following information as an addendum to the real estate
16 condition report under s. 709.03:

History: 1991 a. 162; 1995 a. 180; 1999 a. 150 s. 672; 2003 a. 283.

17 SECTION 28. 709.02 (2) (d) of the statutes is amended to read:

18 (18) 709.02 (2) (d) Unless the condominium is a small condominium, as defined
19 in s. 703.02 (14m), a copy of the executive summary required under s. 703.33 (1) (h).

History: 1991 a. 162; 1995 a. 180; 1999 a. 150 s. 672; 2003 a. 283.

(END OF INSERT 31-3)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1733/P2dn

PJK:.....

Does this draft need an initial applicability? Should any of the changes be noted in a separate provision in s. 703.38?

Please review especially carefully proposed ss. 703.13 (7) (cm) and 703.28 (3). They may not accomplish what you intended.

I did not include a cross-reference to proposed s. 703.13 (7) (cm) 4. in s. 703.09 (2) or 703.28 (1m) (b), as was suggested. In this draft, the cross-references in s. 703.09 (2) were changed to "this chapter" and s. 703.28 (1m) was repealed. Do you want a cross-reference to proposed s. 703.13 (7) (cm) 4. in any other statute?

The draft contains a few embedded notes

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NO

= In order to have an introducible version before
= October 9, I will need your responses to my
questions and comments by September 28, if
possible.