



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0414/1
CMH:cjs

2019 SENATE BILL 512

1 **AN ACT to create** 703.245 of the statutes; **relating to:** creating a pre-filing notice
2 requirement applicable to a dispute between a condominium association and a
3 unit owner.

Analysis by the Legislative Reference Bureau

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

4 **SECTION 1.** 703.245 of the statutes is created to read:

5 **703.245 Association-unit owner dispute; notice required. (1)**

6 DEFINITIONS. In this section:

7 (a) "Claim" means a request or demand by an association or unit owner for a
8 remedy related to a dispute.

9 (b) "Direct negotiation" has the meaning given in s. 802.12 (1) (b).

10 (c) "Dispute" means a disagreement between an association and a unit owner
11 arising out of or related to a condominium.

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1 (d) "Party" means an association or unit owner involved in a dispute.

2 (2) LIMITATION ON JUDICIAL ACTIONS. An association may not commence or
3 maintain a claim in circuit court against a unit owner unless the association complies
4 with this section, and a unit owner may not commence or maintain a claim in circuit
5 court against an association unless the unit owner complies with this section.

6 (3) NOTICE OF CLAIM REQUIRED. Before an association or unit owner files a claim
7 described under sub. (2) in circuit court, the association or unit owner shall deliver
8 to the other party a written notice of the claim that includes all of the following
9 information:

10 (a) A description of the dispute to which the claim relates, including the date,
11 time, and location of the events giving rise to the dispute, the persons involved in the
12 events, and the other party's role in the events.

13 (b) The legal basis for the claim, including any applicable provisions of the
14 condominium instruments, bylaws, rules, or other documents relating to the
15 condominium or the association.

16 (c) A proposal for resolving the dispute to which the claim relates.

17 (d) A statement that the other party may request a direct negotiation
18 conference under sub. (4) and the name and address of the person to which the other
19 party may deliver the request.

20 (4) REQUEST FOR DIRECT NEGOTIATION CONFERENCE. An association or unit owner
21 that delivers or receives a notice of claim under sub. (3) may, no later than 10 business
22 days after delivering or receiving the notice, request a direct negotiation conference
23 with the other party by delivering a written request for direct negotiation that
24 includes at least 3 proposed dates and times for the direct negotiation conference that
25 are at least 5 days but not more than 30 days after the request is delivered. If the

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1 association or unit owner delivered the notice of claim, the association or unit owner
2 shall deliver the request to the other party in the same manner that the notice was
3 delivered under sub. (3). If the association or unit owner received the notice of claim,
4 the association or unit owner shall deliver the request to the person identified under
5 sub. (3) (d).

6 **(5) DIRECT NEGOTIATION CONFERENCE.** (a) If a unit owner delivers a request
7 under sub. (4) to an association, the association shall participate in a direct
8 negotiation conference with the unit owner as provided under par. (c).

9 (b) If an association delivers a request under sub. (4) to a unit owner, the unit
10 owner may, but is not required to, participate in a direct negotiation conference with
11 the association as provided under par. (c).

12 (c) If an association and a unit owner participate in a direct negotiation
13 conference under this subsection, the association and unit owner shall, no later than
14 30 days after the request under sub. (4) is delivered, meet at a mutually agreed upon
15 time and place to engage in good faith direct negotiation to resolve the dispute
16 described in the notice of claim delivered under sub. (3). The association and unit
17 owner shall participate in the conference personally or by a representative or agent
18 having authority to act with respect to the dispute and to bind the party represented.
19 The association and unit owner may conduct the conference through the use of any
20 means of communication by which any of the following occurs:

21 1. All participating individuals may simultaneously hear each other during the
22 conference.

23 2. All communication during the conference is immediately transmitted to each
24 participating individual, and each participating individual is able to immediately
25 send messages to all other participating individuals.

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1 **(6) CIRCUIT COURT ACTION.** If an association or unit owner sends a notice of claim
2 under sub. (3), the association or unit owner may file the claim in circuit court when
3 the earliest of the following occurs:

4 (a) No party timely delivers a request for a direct negotiation conference under
5 sub. (4).

6 (b) The parties fail to resolve the dispute described in the notice within 10
7 business days after participating in a direct negotiation conference under sub. (5) (c).

8 (c) The parties fail to conduct a direct negotiation conference under sub. (5) (c)
9 within the time limit provided under sub. (5) (c).

10 (d) A party notifies the other party that direct negotiation under sub. (5) (c) has
11 not resulted in a resolution of the dispute described in the notice and the notifying
12 party is terminating direct negotiations.

13 **(7) TOLLING OF STATUTES OF LIMITATIONS.** Any statute of limitations applicable
14 to a claim is tolled for the period beginning on the date an association or unit owner
15 delivers notice of the claim under sub. (3) and ending on the date the association or
16 unit owner is allowed under sub. (6) to file the claim in circuit court.

17 **(8) BREACH OF SETTLEMENT AGREEMENT; FEE SHIFTING.** If an association and a unit
18 owner resolve the dispute to which a claim described under sub. (3) (a) relates
19 through direct negotiation under sub. (5) (c), the association and unit owner may
20 document that resolution in a written settlement agreement signed by them. If the
21 association or unit owner materially breaches any material part of the agreement,
22 subs. (2) to (6) do not apply to a claim of the nonbreaching party against the breaching
23 party related to the breach, and the nonbreaching party may file a claim in circuit
24 court related to the breach. If the nonbreaching party prevails in the circuit court

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1 action under this subsection, the circuit court shall award the nonbreaching party
2 costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.

3 **(9) APPLICABILITY.** (a) *Exempt claims.* This section does not apply to any of the
4 following claims:

5 1. A claim by an association related to unpaid assessments, including filing a
6 statement of lien under s. 703.165 (3) and an action to collect unpaid assessments or
7 enforce a lien under s. 703.165 (7).

8 2. A claim by an association related to a violation, as defined in s. 703.24 (1),
9 by a tenant for which notice is given under s. 703.24 (4).

10 3. A claim by a unit owner related to a decision of the board of directors of a
11 small condominium described under s. 703.365 (6) (a).

12 4. A claim for a temporary injunction or other similar emergency equitable
13 relief under s. 813.02.

14 (b) *Applicability to new and existing condominiums.* This section does not
15 apply to a condominium if the declaration of the condominium provides a process for
16 resolving disputes through direct negotiation, mediation, or arbitration.

17 **SECTION 2. Initial applicability.**

18 (1) This act first applies to a claim described under s. 703.245 (2) that is filed
19 in circuit court on the effective date of this subsection.

20

(END)