

2019 DRAFTING REQUEST**Bill**

For: **Robert Cowles (608) 266-0484** Drafter: **kpleviak**
 By: **Heather** Secondary Drafters:
 Date: **10/4/2018** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Sen.Cowles@legis.wisconsin.gov**
 Carbon copy (CC) to: **krista.pleviak@legis.wisconsin.gov**
fern.knepp@legis.wisconsin.gov
Rachel.Snyder@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Grievance process for condominium unit owners

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kpleviak 10/10/2018	ccarmich 10/12/2018			
/P1	kpleviak 11/9/2018		dwalker 10/12/2018		
/P2	kpleviak 12/4/2018	ccarmich 11/13/2018	mbarman 11/13/2018		
/P3	kpleviak 8/26/2019	ccarmich 12/7/2018	mbarman 12/7/2018		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P4	kpleviak 9/10/2019	ccarmich 8/27/2019	dwalker 8/27/2019		
/1		kfollett 9/10/2019	dwalker 9/10/2019	lparisi 10/10/2019	

FE Sent For: *Not Needed* <END>

2019 DRAFTING REQUEST

Bill

See updated sheet attached. -kpp

Legislative Council Staff 504-5728

Rachel Snyder

For:

Drafter:

kpleviak

By:

Secondary Drafters:

Date:

10/4/2018

May Contact:

Same as LRB:

Submit via email:

YES

Requester's email:

Rachel.Snyder@legis.wisconsin.gov

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/?	kpleviak 10/10/2018	ccarmich 10/12/2018			
/P1			dwalker 10/12/2018		

FE Sent For:

<END>

WISCONSIN LEGISLATIVE REFERENCE BUREAU

Information Services 608-266-0341—Legal Services 608-266-3561



10/4/18 Telephone conference with Rachel Snyder at Leg. Council:

- Prepare a preliminary draft that creates a grievance process to resolve disputes between condo associations and unit owners. Model the bill on Indiana Code ch. 32-25-8.5. The basics of the process include:

- An aggrieved party can require a meeting.

- If the meeting doesn't resolve the dispute, either party can require mediation or non-binding arbitration.

- Whoever requests med/arb pays for it.

- If med/arb doesn't resolve the dispute, either party can sue.

- The draft is for a preliminary meeting with stakeholders, so it's OK to leave blanks and ask questions in the draft.

-KRP



State of Wisconsin
2019 - 2020 LEGISLATURE

W: 10/10/18
DUE: 10/12/18 (Fri.)

LRB-0414/?
KRP:

P1
edce *gf*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{gc}...; relating to: creating a dispute resolution process for ^e disputes among ^x
2 condominium associations and unit owners.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

3 SECTION 1. 703.245[✓] of the statutes is created to read:
4 **703.245 Association-unit owner dispute resolution process. (1)**
5 DEFINITIONS. In this section:
6 (a) "Claim" means a request or demand by a claimant for a remedy related to
7 a dispute.[✓]
8 (b) "Claimant" means an association or unit owner that asserts that it is an
9 aggrieved person in a dispute.

- 1 (c) "Direct negotiation" has the meaning given in s. 802.12 (1) (b). ✓
- 2 (d) "Dispute" means a disagreement arising out of or related to a condominium.
- 3 (e) "Mediation" has the meaning given in s. 802.12 (1) (e). ✓
- 4 (f) "Nonbinding arbitration" has the meaning given in s. 802.12 (1) (h). ✓
- 5 (g) "Party" means a claimant or respondent.
- 6 (h) "Respondent" means an association or unit owner against whom a claimant

7 asserts a claim.

between a unit owner and an association, but also to a dispute among

****NOTE: As currently drafted, the dispute resolution process created in this bill *not only* applies to a dispute ~~among~~ unit owners. Let me know if you want the process to apply only to a dispute between a unit owner and an association.

****NOTE: Do you want to allow any other *created in* persons (for example, tenants or contractors) to use the dispute resolution process *creating is* this bill? Do you want the dispute resolution process to apply to a declarant? If yes, do you want it to apply without restrictions or only during the period of declarant control under s. 703.15 (2) *stats?*

****NOTE: Are these definitions consistent with your intent? *(E)*

8 (2) LIMITATION ON JUDICIAL ACTIONS. A claimant may not commence or maintain
9 a claim in circuit court against a respondent unless the claimant complies with this
10 section.

****NOTE: During the period of time the parties are participating in the dispute resolution process created in this bill, do you want to toll any applicable statutes of limitations that may apply?

****NOTE: Consider how the dispute resolution process created in this bill would work for a dispute involving multiple parties, particularly if a party is not a unit owner or association. For example, if a unit owner intends to sue an association and a contractor hired by the association, may the unit owner immediately sue the contractor and later join the association after complying with the notice requirement in this section?

11 (3) NOTICE OF CLAIM REQUIRED. Before filing a claim in circuit court against a
12 respondent, a claimant shall deliver to the respondent a written notice of the claim
13 that includes all of the following information:

- 14 (a) A description of the dispute to which the claim relates, including the date,
- 15 time, and location of the events giving rise to the dispute, the persons involved in the
- 16 events, and the respondent's role in the events.

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

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

5 (d) A statement that the respondent may demand a direct negotiation
6 conference under sub. (4) and the name and address of the person to which the
7 respondent may deliver the demand.

****NOTE: Do you want to include any other information regarding the notice of
claim? For example, do you want to specify how the notice is delivered?

8 (4) DIRECT NEGOTIATION CONFERENCE. A respondent that receives a notice of
9 claim under sub. (3) may demand that the claimant engage in direct negotiation with
10 the respondent to resolve the dispute to which the claim relates. If the respondent
11 demands direct negotiation, the respondent shall deliver the demand in writing, no
12 later than 10 business days after the respondent receives the notice of claim, to the
13 person identified in the notice of claim for delivery under sub. (3) (d). No later than
14 60 days after the respondent delivers the demand, the claimant and respondent shall
15 meet at a mutually agreed upon time and place to engage in good faith direct
16 negotiation to resolve the claim.

****NOTE: The 60-day deadline is a placeholder. Do you want to provide a deadline
for the direct negotiation conference? Is there any concern that an unscrupulous
respondent could use this process to place a 60-day pause on potential litigation without
any real interest in settling the claim through direct negotiation?

****NOTE: As currently drafted, this provision allows a respondent to force a
claimant to engage in direct negotiation. Is that consistent with your intent?

****NOTE: As this provision is currently drafted, only the respondent may demand
a direct negotiation conference. Do you want to also allow the claimant to request or
demand direct negotiation?

****NOTE: Parties can always "directly negotiate" regarding a dispute. So, the legal
effect of this provision is 1) to allow one party to require the other party to agree upon a
time and place to meet and negotiate in good faith, and 2) to place a time limit on those
required negotiations. The bill does not prohibit the parties from continuing direct
negotiations, but those direct negotiations would not prohibit a claimant from filing a
claim in circuit court. Is that consistent with your intent?

λ

SECTION 1

1 **(5) MEDIATION OR ARBITRATION.** (a) If direct negotiation under sub. (4) does not
 2 resolve the dispute or if the claimant and respondent choose not to engage in direct
 3 negotiations under sub. (4), the claimant or respondent may request mediation or
 4 nonbinding arbitration. The claimant or respondent may deliver the request to the
 5 other party no later than 10 business days after the earliest of the following occurs:

6 1. The respondent fails to timely deliver the demand for direct negotiation
 7 under sub. (4).

8 2. The claimant and respondent fail to resolve the dispute within 10 business
 9 days after participating in the direct negotiation conference under sub. (4).

10 3. The claimant and respondent fail to conduct the direct negotiation
 11 conference under sub. (4) within the time limit provided under sub. (4).

12 4. The claimant or respondent notifies the other party that direct negotiation
 13 under sub. (4) has not resulted in a resolution of the dispute and the notifying party
 14 is terminating direct negotiations.

 ****NOTE: As this provision is currently drafted, a party may request mediation or
 nonbinding arbitration under this subsection at any time if the party gives notice that the
 party is ending direct negotiations.

15 (b) If a claimant or respondent requests mediation or nonbinding arbitration
 16 under par. (a) and the other party agrees to the request, the requesting party may
 17 submit the dispute to mediation or nonbinding arbitration, and, unless the claimant
 18 and respondent agree otherwise, the requesting party shall select and pay all costs
 19 of the mediator or arbitrator.

 ****NOTE: As currently drafted, this provision allows either party to request
 mediation or nonbinding arbitration, but the other party is not required to participate.
 Is that consistent with your intent?

 ****NOTE: Parties can always agree to participate in mediation or nonbinding
 arbitration (or other forms of alternative dispute resolution). So, the effect of this
 provision is 1) to allow one party to offer to pay for a mediator or arbitrator if that party
 also gets to select the mediator or arbitrator, and 2) to place a time limit on the party's
 right to make that offer. However, current law already provides those rights, and the

X

parties have the right under current law to engage or not engage in any alternative dispute resolution process they agree upon on any terms and conditions to which they agree. The bill does not limit those rights. Is that consistent with your intent?

1 (6) CIRCUIT COURT ACTION. A claimant may file a claim in circuit court against
2 a respondent if any of the following occurs:

3 (a) Neither the claimant or the respondent requests mediation or nonbinding
4 arbitration under sub. (5) (a) within the time limit provided under sub. (5) (a).

5 (b) The claimant or respondent requests mediation or nonbinding arbitration
6 under sub. (5) (a) and the other party does not agree to the request within 10 business
7 days after the request is made.

8 (c) The claimant or respondent notifies the other party that mediation or
9 nonbinding arbitration under sub. (5) (a) has not resulted in a resolution of the
10 dispute and the notifying party is terminating mediation or nonbinding arbitration.

11 (7) BREACH OF SETTLEMENT AGREEMENT; FEE SHIFTING. If a claimant and
12 respondent resolve the dispute to which a claim described under sub. (3) (a) relates
13 through direct negotiation under sub. (4) or mediation or nonbinding arbitration
14 under sub. (5) (a), the claimant and respondent may document that resolution in a
15 written settlement agreement signed by them. If the claimant or respondent
16 breaches any material part of the agreement, subs. (2) to (6) do not apply to a claim
17 of the non-breaching party against the breaching party related to the breach, and
18 the non-breaching party may file a claim in circuit court related to the breach. If the
19 non-breaching party prevails in the circuit court action under this subsection, the
20 circuit court may award the non-breaching party costs and, notwithstanding s.
21 814.04 (1), reasonable attorney fees.

****NOTE: The policy implications of this fee-shifting provision are unclear. The Judicial Council may be a good resource for digging into policy implications of the dispute resolution process created in this bill. For example, does the fee-shifting provision create an incentive or disincentive to settlement?

X



LRB-0414

11/05/18 Per Heather:

- Limit scope to disputes between an association and a unit owner
- Time limit for direct negotiation is 30 days, rather than 60 days
- The direct negotiation conference may be held over the telephone or other means that allows all parties to communicate in real time
- If a unit owner requests a conference, the association must participate. But that doesn't apply in the other direction. No penalty applies for failure to participate.
- Association ~~may~~^{must} be represented at the conference by an individual who has authority to act on behalf of and bind the association.
- Remove the steps after direct negotiation (i.e., mediation and arbitration), but keep the settlement agreement and fee shifting stuff.
- For fee shifting, add that any breach must be "material."

-KRP



State of Wisconsin
2019 - 2020 LEGISLATURE

IN: 11/09/18
DUE: 11/13/18 (Tues.)

LRB-0414/P1
KRP:cdc&kjf

P2
KMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT
1-1

1 AN ACT to create 703.245 of the statutes; relating to: creating a dispute
2 resolution process for disputes among condominium associations and unit
3 owners.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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:

; notice required B

5 703.245 Association-unit owner dispute resolution process. (1)

6 DEFINITIONS. In this section:

an association or unit owner

7 (a) "Claim" means a request or demand by a claimant for a remedy related to
8 a dispute.

9 (b) "Claimant" means an association or unit owner that asserts that it is an
10 aggrieved person in a dispute.

SECTION 1

between an association and a unit owner

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

2 (c) (d) "Dispute" means a disagreement arising out of or related to a condominium.

3 (e) "Mediation" has the meaning given in s. 802.12 (1) (e).

4 (f) "Nonbinding arbitration" has the meaning given in s. 802.12 (1) (h).

5 (d) (g) "Party" means a claimant or respondent *an association or unit owner involved in a dispute*

6 (h) "Respondent" means an association or unit owner against whom a claimant
7 asserts a claim.

***NOTE: As currently drafted, the dispute resolution process created in this bill not only applies to a dispute between a unit owner and an association, but also to a dispute among unit owners. Let me know if you want the process to apply only to a dispute between a unit owner and an association.

***NOTE: Do you want to allow any other persons (for example, tenants or contractors) to use the dispute resolution process created in this bill? Do you want the dispute resolution process to apply to a declarant? If yes, do you want it to apply without restrictions or only during the period of declarant control under s. 703.15 (2), stats.?

***NOTE: Are these definitions consistent with your intent?

8 (2) LIMITATION ON JUDICIAL ACTIONS. A claimant may not commence or maintain
9 a claim in circuit court against a respondent unless the claimant complies with this
10 section.

***NOTE: During the period of time the parties are participating in the dispute resolution process created in this bill, do you want to toll any applicable statutes of limitations that may apply?

***NOTE: Consider how the dispute resolution process created in this bill would work for a dispute involving multiple parties, particularly if a party is not a unit owner or association. For example, if a unit owner intends to sue an association and a contractor hired by the association, may the unit owner immediately sue the contractor and later join the association after complying with the notice requirement in this section?

11 (3) NOTICE OF CLAIM REQUIRED. Before filing a claim in circuit court against a
12 respondent, a claimant shall deliver to the respondent a written notice of the claim
13 that includes all of the following information:

14 (a) A description of the dispute to which the claim relates, including the date,
15 time, and location of the events giving rise to the dispute, the persons involved in the
16 events, and the respondent's role in the events.

other party's

INSERT 2-8

INSERT 2-11

1 (b) The legal basis for the claim, including any applicable provisions of the
2 condominium instruments, bylaws, rules, or other documents relating to the
3 condominium or the association. other party

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

5 (d) A statement that the respondent may demand a direct negotiation
6 conference under sub. (4) and the name and address of the person to which the

7 respondent may deliver the demand. request

***NOTE: Do you want to include any other information regarding the notice of claim? For example, do you want to specify how the notice is delivered?

INSERT
3-8

8 (4) DIRECT NEGOTIATION CONFERENCE. A respondent that receives a notice of

9 claim under sub. (3) may demand that the claimant engage in direct negotiation with
10 the respondent to resolve the dispute to which the claim relates. If the respondent
11 demands direct negotiation, the respondent shall deliver the demand in writing, no
12 later than 10 business days after the respondent receives the notice of claim, to the
13 person identified in the notice of claim for delivery under sub. (3) (d). No later than
14 60 days after the respondent delivers the demand, the claimant and respondent shall
15 meet at a mutually agreed upon time and place to engage in good faith direct
16 negotiation to resolve the claim.

***NOTE: The 60-day deadline is a placeholder. Do you want to provide a deadline for the direct negotiation conference? Is there any concern that an unscrupulous respondent could use this process to place a 60-day pause on potential litigation without any real interest in settling the claim through direct negotiation?

***NOTE: As currently drafted, this provision allows a respondent to force a claimant to engage in direct negotiation. Is that consistent with your intent?

***NOTE: As this provision is currently drafted, only the respondent may demand a direct negotiation conference. Do you want to also allow the claimant to request or demand direct negotiation?

***NOTE: Parties can always "directly negotiate" regarding a dispute. So, the legal effect of this provision is 1) to allow one party to require the other party to agree upon a time and place to meet and negotiate in good faith, and 2) to place a time limit on those required negotiations. The bill does not prohibit the parties from continuing direct negotiations, but those direct negotiations would not prohibit a claimant from filing a claim in circuit court. Is that consistent with your intent?

1 (5) MEDIATION OR ARBITRATION. (a) If direct negotiation under sub. (4) does not
2 resolve the dispute or if the claimant and respondent choose not to engage in direct
3 negotiations under sub. (4), the claimant or respondent may request mediation or
4 nonbinding arbitration. The claimant or respondent may deliver the request to the
5 other party no later than 10 business days after the earliest of the following occurs:

6 1. The respondent fails to timely deliver the demand for direct negotiation
7 under sub. (4).

8 2. The claimant and respondent fail to resolve the dispute within 10 business
9 days after participating in the direct negotiation conference under sub. (4).

10 3. The claimant and respondent fail to conduct the direct negotiation
11 conference under sub. (4) within the time limit provided under sub. (4).

12 4. The claimant or respondent notifies the other party that direct negotiation
13 under sub. (4) has not resulted in a resolution of the dispute and the notifying party
14 is terminating direct negotiations.

***NOTE: As this provision is currently drafted, a party may request mediation or
nonbinding arbitration under this subsection at any time if the party gives notice that the
party is ending direct negotiations.

15 (b) If a claimant or respondent requests mediation or nonbinding arbitration
16 under par. (a) and the other party agrees to the request, the requesting party may
17 submit the dispute to mediation or nonbinding arbitration, and, unless the claimant
18 and respondent agree otherwise, the requesting party shall select and pay all costs
19 of the mediator or arbitrator.

***NOTE: As currently drafted, this provision allows either party to request
mediation or nonbinding arbitration, but the other party is not required to participate.
Is that consistent with your intent?

***NOTE: Parties can always agree to participate in mediation or nonbinding
arbitration (or other forms of alternative dispute resolution). So, the effect of this
provision is 1) to allow one party to offer to pay for a mediator or arbitrator if that party
also gets to select the mediator or arbitrator, and 2) to place a time limit on the party's
right to make that offer. However, current law already provides those rights, and the

parties have the right under current law to engage or not engage in any alternative dispute resolution process they agree upon on any terms and conditions to which they agree. The bill does not limit those rights. Is that consistent with your intent?

INSERT
5-1

1 (6) CIRCUIT COURT ACTION. A claimant may file a claim in circuit court against
 2 a respondent if any of the following occurs:
 3 (a) Neither the claimant nor the respondent requests mediation or nonbinding
 4 arbitration under sub. (5) (a) within the time limit provided under sub. (5) (a).
 5 (b) The claimant or respondent requests mediation or nonbinding arbitration
 6 under sub. (5) (a) and the other party does not agree to the request within 10 business
 7 days after the request is made.
 8 (c) The claimant or respondent notifies the other party that mediation or
 9 nonbinding arbitration under sub. (5) (a) has not resulted in a resolution of the
 10 dispute and the notifying party is terminating mediation or nonbinding arbitration.

11 (7) BREACH OF SETTLEMENT AGREEMENT; FEE SHIFTING. If ^{an association and a unit owner} a claimant and
 12 respondent resolve the dispute to which a claim described under sub. (3) (a) relates
 13 through direct negotiation under sub. (4) or mediation or nonbinding arbitration
 14 under sub. (5) (a), ^{association and unit owner} the claimant and respondent may document that resolution in a
 15 ^{association or unit owner} written settlement agreement signed by them. If the ^{association or unit owner} claimant or respondent
 16 ^{materially} breaches any material part of the agreement, subs. (2) to (6) do not apply to a claim
 17 of the nonbreaching party against the breaching party related to the breach, and the
 18 nonbreaching party may file a claim in circuit court related to the breach. If the
 19 nonbreaching party prevails in the circuit court action under this subsection, the
 20 circuit court may award the nonbreaching party costs and, notwithstanding s. 814.04
 21 (1), reasonable attorney fees.

****NOTE: The policy implications of this fee-shifting provision are unclear. The Judicial Council may be a good resource for digging into a policy implications of the dispute resolution process created in this bill. For example, does the fee-shifting provision create an incentive or disincentive to settlement?

fee shifting

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0414/P2ins
KRP:...

INSERT 1-1

1 *no P* pre-filing notice requirement applicable to a dispute between a condominium
2 association and a unit owner *no P*

(END INSERT 1-1)

INSERT 2-8

3 *no P* An association may not commence or maintain a claim in circuit court against a unit
4 owner unless the association complies with this section, and a unit owner may not
5 commence or maintain a claim in circuit court against an association unless the unit
6 owner complies with this section.

one word → *in so far* ******NOTE:** As currently drafted, this bill could be interpreted to apply to a declarant in so far as the declarant is acting on behalf of an association during the period of declarant control under s. 703.15 (2), stats. Let me know if you want to revise the bill to explicitly include or exclude declarants under these circumstances.

(END INSERT 2-8)

INSERT 2-11

7 *no P* an association or unit owner files a claim described under sub. (2) in circuit court, the
8 association or unit owner shall deliver to the other party *no P*

(END INSERT 2-11)

INSERT 3-8

9 *no P* **REQUEST FOR DIRECT NEGOTIATION CONFERENCE.** An association or unit owner that
10 receives a notice of claim under sub. (3) may, no later than 10 business days after
11 receiving the notice, request a direct negotiation conference with the other party by
12 delivering a written request to the person identified under sub. (3) (d).

******NOTE:** As currently drafted, this provision allows only a potential defendant to request a direct negotiation conference. Although the provision does not prevent a

potential plaintiff from requesting a conference, the requirements and limitations in this bill would not apply to such a request. Is that consistent with your intent?

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

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

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

16 1. All participating individuals may simultaneously hear each other during the
17 conference.

18 2. All communication during the conference is immediately transmitted to each
19 participating individual, and each participating individual is able to immediately
20 send messages to all other participating individuals.

****NOTE: Compare with ss. 180.0820 (2), 181.0820 (3), 185.32 (5), and 193.425 (2),
stats.

(END INSERT 3-8)

INSERT 5-1

1 *no P* An association or unit owner may file a claim described under sub. (2) in circuit court
2 if the association or unit owner sends a notice of claim under sub. (3) and any of the
3 following occurs:

4 (1) The party that receives the notice fails to timely deliver a request for a direct
5 negotiation conference under sub. (4).

6 (2) The association or unit owner and the party that receives the notice fail to
7 resolve the dispute described in the notice within 10 business days after
8 participating in a direct negotiation conference under sub. (5) (c).

9 (3) The association or unit owner and the party that receives the notice fail to
10 conduct a direct negotiation conference under sub. (5) (c) within the time limit
11 provided under sub. (5) (c).

12 (4) The association or unit owner notifies the party that receives the notice, or
13 the party notifies the association or unit owner, that direct negotiation under sub.
14 (5) (c) has not resulted in a resolution of the dispute described in the notice and the
15 notifying party is terminating direct negotiations.

(END INSERT 5-1)

Pleviak, Krista

From: Moore, Heather
Sent: Thursday, November 29, 2018 3:10 PM
To: Pleviak, Krista
Subject: RE: Drafting Instructions for Condominium Bill Drafts

Hi Krista,

This looks correct.

Heather Moore Legislative Assistant I Office of State Senator Robert Cowles
(608) 266-0484 | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>



From: Pleviak, Krista
Sent: Tuesday, November 27, 2018 5:16 PM
To: Moore, Heather <Heather.Moore@legis.wisconsin.gov>
Cc: Snyder, Rachel <Rachel.Snyder@legis.wisconsin.gov>
Subject: Drafting Instructions for Condominium Bill Drafts

Heather:

Below I have summarized my understanding of the changes you would like to see to LRB-0478/P2 (regarding condominium records) and LRB-0414/P2 (regarding a pre-filing notice requirement for condo-unit owner disputes). Please let me know if I missed anything or if you want to make any corrections or changes to these drafting instructions.

~~Redraft LRB-0478/P2 (regarding condominium records) as follows:~~

- ~~1. On page 3, line 6, change "contract bids" to "contracts and any bids for those contracts" or something similar.~~
- ~~2. On page 3, lines 20 to 23, clarify that a unit owner may not inspect the records described under s. 703.20 (1m) (b) 3. and 4., as created in the bill, unless those records are related to the unit owner making the request.~~
- ~~3. Create a new provision that allows a majority of unit owners, after the period of declarant control has ended, to request a financial audit of the association's records, and the association must pay the cost of the audit. However, if a majority of unit owners makes a second request within 36 months after a previous request (based on the date of the previous request, not the date the previous audit was completed), the unit owners making the request must pay the cost of the second audit.~~
- ~~4. Create a new provision that provides that, if an association directly or indirectly owns 50 percent or more of, or controls, another entity, a unit owner may access records of the entity to the same extent that the association may access those records.~~

~~**NOTE:** At the meeting, you indicated that you are considering whether "large" condominiums should be required to make all records that unit owners are entitled to inspect under s. 703.20 (1m), as created in the bill, available on the Internet. The consensus from the meeting was that, if this requirement is included in the bill: a) an association must provide a unit owner with login information upon request; b) an association cannot charge a unit owner for this type of access; and c) the provision could be modeled on Florida law. However, you indicated that you wanted to give more thought to whether to include this requirement in the bill and, if the requirement is included, to the size of~~

~~condominiums that must comply (e.g., is 150 units too large to have an effect?). Let's place 100 units or larger as a place holder~~

Redraft LRB-0414/P2 (regarding a pre-filing notice requirement for condo-unit owner disputes) as follows:

1. Page 2, first note after line 7, keep current language.
2. Page 2, second note after line 7, yes, toll the statutes of limitation from the date the notice under s. 703.245 (3), as created in the bill, is sent until the date on which the unit owner or association is allowed to file a claim in circuit court under s. 703.245 (6), as created in the bill.
3. On page 3, note after line 4, allow either party to request a direct negotiation conference (i.e., either the sender or the recipient of the notice) may make a request under s. 703.245 (4), as created in the bill.
4. On page 4, note after line 3, keep current language.
5. On page 4, the meeting attendees agreed to review the language in s. 703.245 (6), as created in the bill, to confirm that the deadline is clear and covers all situations.
6. On page 5, note after line 5, keep current language.
7. On page 5, note after line 16, keep current language.

Krista R. Pleviak

Legislative Attorney

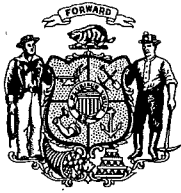
Wisconsin Legislative Reference Bureau

P.O. Box 2037

Madison, WI 53701-2037

(608) 504-5818

krista.pleviak@legis.wisconsin.gov



State of Wisconsin
2019 - 2020 LEGISLATURE

IN: 12/4/18

DUE: 12/7/18 (Fri.)

LRB-0414/P2
KRP:cdc&kjf

P3

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

✓
SIA
x-gef
S/C ✓

1 AN ACT ^{relgn} 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

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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).

INSERT
A-1 →

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

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

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

****NOTE: As currently drafted, this bill could be interpreted to apply to a declarant
insofar as the declarant is acting on behalf of an association during the period of declarant
control under s. 703.15 (2), stats. Let me know if you want to revise the bill to explicitly
include or exclude declarants under these circumstances.

****NOTE: During the period of time the parties are participating in the dispute
resolution process created in this bill, do you want to toll any applicable statutes of
limitations that may apply?

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

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

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

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

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

1 (4) REQUEST FOR DIRECT NEGOTIATION CONFERENCE. An association or unit owner
 2 delivers or that receives a notice of claim under sub. (3) may, no later than 10 business days after
 3 delivering or receiving the notice, request a direct negotiation conference with the other party by
 4 delivering a written request to the person identified under sub. (3) (d).

INSERT
3-4

***NOTE: As currently drafted, this provision allows only a potential defendant to request a direct negotiation conference. Although the provision does not prevent a potential plaintiff from requesting a conference, the requirements and limitations in this bill would not apply to such a request. Is that consistent with your intent?

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

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

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

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

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

****NOTE: Compare with ss. 180.0820 (2), 181.0820 (3), 185.32 (5), and 193.425 (2),
stats.

4 (6) CIRCUIT COURT ACTION. An association or unit owner may file a claim
5 described under sub. (2) in circuit court if the association or unit owner sends a notice
6 of claim under sub. (3) and any of the following occurs:

7 (a) ^{No} The party that receives the notice fails to ^S timely deliver a request for a direct
8 negotiation conference under sub. (4). parties

9 (b) The association or unit owner and the party that receives the notice fail to
10 resolve the dispute described in the notice within 10 business days after
11 participating in a direct negotiation conference under sub. (5) (c). parties

12 (c) The association or unit owner and the party that receives the notice fail to
13 conduct a direct negotiation conference under sub. (5) (c) within the time limit
14 provided under sub. (5) (c). A party other

15 (d) The association or unit owner notifies the party that receives the notice, or
16 the party notifies the association or unit owner, that direct negotiation under sub.
17 (5) (c) has not resulted in a resolution of the dispute described in the notice and the
18 notifying party is terminating direct negotiations.

19 (7) BREACH OF SETTLEMENT AGREEMENT; FEE SHIFTING. If an association and a unit
20 owner resolve the dispute to which a claim described under sub. (3) (a) relates
21 through direct negotiation under sub. (5) (c), the association and unit owner may
22 document that resolution in a written settlement agreement signed by them. If the
23 association or unit owner materially breaches any material part of the agreement,

INSERT
4-4

INSERT
4-19

1 subs. (2) to (6) do not apply to a claim of the nonbreaching party against the breaching
2 party related to the breach, and the nonbreaching party may file a claim in circuit
3 court related to the breach. If the nonbreaching party prevails in the circuit court
4 action under this subsection, the circuit court may award the nonbreaching party
5 costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.

****NOTE: The policy implications of this fee-shifting provision are unclear. The
Judicial Council may be a good resource for digging into policy implications of the fee
shifting created in this bill. For example, does the fee-shifting provision create an
incentive or disincentive to settlement?

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

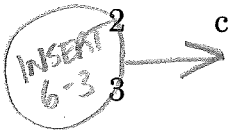
- 1. A claim by an association related to unpaid assessments, including filing a statement of lien under s. 703.165 (3) and an action to collect unpaid assessments or enforce a lien under s. 703.165 (7).
- 2. A claim by an association related to a violation, as defined in s. 703.24 (1), by a tenant for which notice is given under s. 703.24 (4).
- 3. A claim by a unit owner related to a decision of the board of directors of a small condominium described under s. 703.365 (6) (a).
- 4. A claim for a temporary injunction or other similar emergency equitable relief under s. 813.02.

****NOTE: Are these exemptions consistent with your intent?

- (b) *Applicability to new and existing condominiums.* 1. This section applies to a condominium created on or after the effective date of this subdivision [LRB inserts date].
- 2. This section applies to a condominium existing on the effective date of this subdivision [LRB inserts date], unless the existing declaration or bylaws of the condominium provide otherwise. For a condominium whose existing declaration or

1 bylaws provide otherwise, this section applies to the condominium if the
2 condominium elects to be subject to this section.

INSERT
6-3
3

A handwritten note in a circle containing the text "INSERT 6-3" and the number "3". An arrow points from the note to the second line of the text above.

(END)

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0414/P3ins
KRP:...

INSERT A-1

This bill provides that, if a condominium association and unit owner have a disagreement arising out of or related to the condominium, the association or unit owner may not file a claim related to the disagreement in circuit court until the association or unit owner complies with certain requirements created in the bill.

Under the bill, the association or unit owner must provide a notice of claim to the other party, and either party may, within ^{ten}10 business days, request a direct negotiation conference, which must occur no later than 30 days after the request is delivered, to resolve the disagreement. Under the bill, "direct negotiation" means "a dispute resolution process that involves an exchange of offers and counteroffers by the parties or a discussion of the strengths and weaknesses or the merits of the parties' positions, without the use of a 3rd person." If a unit owner requests a direct negotiation conference, the association is required to participate. If an association requests a direct negotiation conference, the unit owner may, but is not required, to participate.

The bill provides that, after the association or unit owner gives the notice of claim, the association or unit owner may file the claim in circuit court when the earliest of the following occurs:

1. Neither party timely requests a direct negotiation conference.
- a 2. The parties fail to resolve the dispute within ten business days after participating in ~~the~~ direct negotiation conference.
3. The parties fail to timely conduct a direct negotiation conference.
4. A party notifies the other party that direct negotiation has not resulted in a resolution of the disagreement and the notifying party is terminating direct negotiations.

The bill also provides that, if the parties resolve the disagreement through direct negotiation and document that resolution in a written settlement agreement signed by the parties and a party to the agreement materially breaches any material part of the agreement, the nonbreaching party may file a claim in circuit court related to the breach without first providing a notice of claim. If the nonbreaching party prevails in the circuit court action, the circuit court may award the nonbreaching party costs and reasonable attorney fees.

(END INSERT A-1)

INSERT 3-4

1 ^{no P} for direct negotiation. If the association or unit owner delivered the notice of claim,
2 the association or unit owner shall deliver the request to the other party in the same

1 manner that the notice was delivered under sub. (3). If the association or unit owner
2 received the notice of claim, the association or unit owner shall deliver the request

(END INSERT 3-4)

INSERT 4-4

3 If an association or unit owner sends a notice of claim under sub. (3), the association
4 or unit owner may file the claim in circuit court when the earliest of the following
5 occurs:

(END INSERT 4-4)

INSERT 4-19

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

(END INSERT 4-19)

INSERT 6-3

10 **SECTION 1. Initial applicability.**

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

(END INSERT 6-3)

noP

noP

WISCONSIN LEGISLATIVE REFERENCE BUREAU

Information Services 608-266-0341—Legal Services 608-266-3561



08/22/19 Meeting with Heather (and others) re LRB-0414. Make the following changes:

- Add a requirement for a person requesting direct negotiation to propose at least 3 different dates and times that are at least 5 days but not more than 30 days after the date of the statement on which the requesting party is available for the negotiation conference.

- Provide that, if a non-breaching party prevails under sub. (8), the court "shall" award costs and attorney fees.

-KRP



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0414/P3
KRP:cdc&kjf

W: 08/26/19

DUE: 08/28/19 (Wed.)

P4

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

generally. This bill provides that, if a condominium association and unit owner have a disagreement arising out of or related to the condominium, the association or unit owner may not file a claim related to the disagreement in circuit court until the association or unit owner complies with certain requirements created in the bill.

Under the bill, the association or unit owner must provide a notice of claim to the other party, and either party may, within ten business days, request a direct negotiation conference, which must occur no later than 30 days after the request is delivered, to resolve the disagreement. Under the bill, "direct negotiation" means "a dispute resolution process that involves an exchange of offers and counteroffers by the parties or a discussion of the strengths and weaknesses or the merits of the parties' positions, without the use of a 3rd person." If a unit owner requests a direct negotiation conference, the association is required to participate. If an association requests a direct negotiation conference, the unit owner may, but is not required, to participate.

The bill provides that, after the association or unit owner gives the notice of claim, the association or unit owner may file the claim in circuit court when the earliest of the following occurs:

1. Neither party timely requests a direct negotiation conference.
2. The parties fail to resolve the dispute within ten business days after participating in a direct negotiation conference.

3. The parties fail to timely conduct a direct negotiation conference.

4. A party notifies the other party that direct negotiation has not resulted in a resolution of the disagreement and the notifying party is terminating direct negotiations.

The bill also provides that, if the parties resolve the disagreement through direct negotiation and document that resolution in a written settlement agreement signed by the parties and a party to the agreement materially breaches any material part of the agreement, the nonbreaching party may file a claim in circuit court related to the breach without first providing a notice of claim. If the nonbreaching party prevails in the circuit court action, the circuit court may award the nonbreaching party costs and reasonable attorney fees.

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

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

2 **703.245 Association-unit owner dispute; notice required. (1)**

3 DEFINITIONS. In this section:

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

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

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

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

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

14 **(3) NOTICE OF CLAIM REQUIRED.** Before an association or unit owner files a claim
15 described under sub. (2) in circuit court, the association or unit owner shall deliver

1 to the other party a written notice of the claim that includes all of the following
2 information:

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

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

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

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

INSERT
3-16

13 (4) REQUEST FOR DIRECT NEGOTIATION CONFERENCE. An association or unit owner
14 that delivers or receives a notice of claim under sub. (3) may, no later than 10 business
15 days after delivering or receiving the notice, request a direct negotiation conference
16 with the other party by delivering a written request for direct negotiation. If the
17 association or unit owner delivered the notice of claim, the association or unit owner
18 shall deliver the request to the other party in the same manner that the notice was
19 delivered under sub. (3). If the association or unit owner received the notice of claim,
20 the association or unit owner shall deliver the request to the person identified under
21 sub. (3) (d).

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

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

4 (c) If an association and a unit owner participate in a direct negotiation
5 conference under this subsection, the association and unit owner shall, no later than
6 30 days after the request under sub. (4) is delivered, meet at a mutually agreed upon
7 time and place to engage in good faith direct negotiation to resolve the dispute
8 described in the notice of claim delivered under sub. (3). The association and unit
9 owner shall participate in the conference personally or by a representative or agent
10 having authority to act with respect to the dispute and to bind the party represented.
11 The association and unit owner may conduct the conference through the use of any
12 means of communication by which any of the following occurs:

13 1. All participating individuals may simultaneously hear each other during the
14 conference.

15 2. All communication during the conference is immediately transmitted to each
16 participating individual, and each participating individual is able to immediately
17 send messages to all other participating individuals.

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

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

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

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

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

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

10 (8) BREACH OF SETTLEMENT AGREEMENT; FEE SHIFTING. If an association and a unit
11 owner resolve the dispute to which a claim described under sub. (3) (a) relates
12 through direct negotiation under sub. (5) (c), the association and unit owner may
13 document that resolution in a written settlement agreement signed by them. If the
14 association or unit owner materially breaches any material part of the agreement,
15 subs. (2) to (6) do not apply to a claim of the nonbreaching party against the breaching
16 party related to the breach, and the nonbreaching party may file a claim in circuit
17 court related to the breach. If the nonbreaching party prevails in the circuit court
18 action under this subsection, the circuit court ^{shall} ~~may~~ award the nonbreaching party
19 costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.

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

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

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0414/P4ins
KRP:...

INSERT 3-16

- 1 *no P* that includes at least 3 proposed dates and times for the direct negotiation conference
- 2 that are at least 5 days but not more than 30 days after the request is delivered *no P*

(END INSERT 3-16)

WISCONSIN LEGISLATIVE REFERENCE BUREAU

Information Services 608-266-0341—Legal Services 608-266-3561



LRB-0414

09/10/19 - Telephone conference with Heather (Sen. Cowles): Make the draft into a /1 introducible version. No changes.

-KRP



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0414/P4
KRP:cdc&kjf

TODAY

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No CHANGES

- 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

This bill provides that, if a condominium association and unit owner have a disagreement arising out of or related to the condominium, the association or unit owner generally may not file a claim related to the disagreement in circuit court until the association or unit owner complies with certain requirements created in the bill.

Under the bill, the association or unit owner must provide a notice of claim to the other party, and either party may, within ten business days, request a direct negotiation conference, which must occur no later than 30 days after the request is delivered, to resolve the disagreement. Under the bill, "direct negotiation" means "a dispute resolution process that involves an exchange of offers and counteroffers by the parties or a discussion of the strengths and weaknesses or the merits of the parties' positions, without the use of a 3rd person." If a unit owner requests a direct negotiation conference, the association is required to participate. If an association requests a direct negotiation conference, the unit owner may, but is not required to, participate.

The bill provides that, after the association or unit owner gives the notice of claim, the association or unit owner may file the claim in circuit court when the earliest of the following occurs:

1. Neither party timely requests a direct negotiation conference.
2. The parties fail to resolve the dispute within ten business days after participating in a direct negotiation conference.

3. The parties fail to timely conduct a direct negotiation conference.

4. A party notifies the other party that direct negotiation has not resulted in a resolution of the disagreement and the notifying party is terminating direct negotiations.

The bill also provides that, if the parties resolve the disagreement through direct negotiation and document that resolution in a written settlement agreement signed by the parties and a party to the agreement materially breaches any material part of the agreement, the nonbreaching party may file a claim in circuit court related to the breach without first providing a notice of claim. If the nonbreaching party prevails in the circuit court action, the circuit court must award the nonbreaching party costs and reasonable attorney fees.

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

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

2 **703.245 Association-unit owner dispute; notice required. (1)**

3 DEFINITIONS. In this section:

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

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

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

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

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

14 **(3) NOTICE OF CLAIM REQUIRED.** Before an association or unit owner files a claim
15 described under sub. (2) in circuit court, the association or unit owner shall deliver

1 to the other party a written notice of the claim that includes all of the following
2 information:

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

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

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

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

13 **(4) REQUEST FOR DIRECT NEGOTIATION CONFERENCE.** An association or unit owner
14 that delivers or receives a notice of claim under sub. (3) may, no later than 10 business
15 days after delivering or receiving the notice, request a direct negotiation conference
16 with the other party by delivering a written request for direct negotiation that
17 includes at least 3 proposed dates and times for the direct negotiation conference that
18 are at least 5 days but not more than 30 days after the request is delivered. If the
19 association or unit owner delivered the notice of claim, the association or unit owner
20 shall deliver the request to the other party in the same manner that the notice was
21 delivered under sub. (3). If the association or unit owner received the notice of claim,
22 the association or unit owner shall deliver the request to the person identified under
23 sub. (3) (d).

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

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

7 (c) If an association and a unit owner participate in a direct negotiation
8 conference under this subsection, the association and unit owner shall, no later than
9 30 days after the request under sub. (4) is delivered, meet at a mutually agreed upon
10 time and place to engage in good faith direct negotiation to resolve the dispute
11 described in the notice of claim delivered under sub. (3). The association and unit
12 owner shall participate in the conference personally or by a representative or agent
13 having authority to act with respect to the dispute and to bind the party represented.
14 The association and unit owner may conduct the conference through the use of any
15 means of communication by which any of the following occurs:

16 1. All participating individuals may simultaneously hear each other during the
17 conference.

18 2. All communication during the conference is immediately transmitted to each
19 participating individual, and each participating individual is able to immediately
20 send messages to all other participating individuals.

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

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

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

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

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

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

12 **(8) BREACH OF SETTLEMENT AGREEMENT; FEE SHIFTING.** If an association and a unit
13 owner resolve the dispute to which a claim described under sub. (3) (a) relates
14 through direct negotiation under sub. (5) (c), the association and unit owner may
15 document that resolution in a written settlement agreement signed by them. If the
16 association or unit owner materially breaches any material part of the agreement,
17 subs. (2) to (6) do not apply to a claim of the nonbreaching party against the breaching
18 party related to the breach, and the nonbreaching party may file a claim in circuit
19 court related to the breach. If the nonbreaching party prevails in the circuit court
20 action under this subsection, the circuit court shall award the nonbreaching party
21 costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.

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

Parisi, Lori

From: Pleviak, Krista
Sent: Thursday, October 10, 2019 11:33 AM
To: Barman, Mike
Cc: Parisi, Lori; Walker, Dan
Subject: FW: LRB 0414/1

See below. Will you please jacket LRB-0414 for the senate?

Krista R. Pleviak

Legislative Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 504-5818
krista.pleviak@legis.wisconsin.gov

From: Moore, Heather <Heather.Moore@legis.wisconsin.gov>
Sent: Thursday, October 10, 2019 11:28 AM
To: Pleviak, Krista <Krista.Pleviak@legis.wisconsin.gov>
Cc: Tobias, Adam <Adam.Tobias@legis.wisconsin.gov>
Subject: LRB 0414/1

Hi Krista,

Can I please get a Senate jacket for LRB 0414/1? Also, Rep. Kitchens is going to be the Assembly lead on the bill. Could I please get a jacket ready for them as well?

Thanks,

Heather Moore Legislative Assistant | Office of State Senator Robert Cowles
(608) 266-0484 | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>

