



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5567/1
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2021 SENATE BILL 865

January 13, 2022 - Introduced by Senator BALLWEG, cosponsored by Representatives BROOKS, ALLEN, KUGLITSCH, KRUG and SUBECK. Referred to Committee on Housing, Commerce and Trade.

1 **AN ACT** *to create* 182.01 (7) and 710.18 of the statutes; **relating to:** regulating
2 homeowners' associations and requiring the Department of Financial
3 Institutions to create a filing system for notices filed by homeowners'
4 associations.

Analysis by the Legislative Reference Bureau

This bill creates requirements for and restrictions on the authority of certain homeowners' associations.

Applicability

The bill applies to a homeowners' association only if all of the following apply:

1. The homeowners' association is an entity that is created to manage or regulate, or to enforce covenants and restrictions for, real estate that includes at least one residential lot (residential planned community).

2. The residential planned community is described in covenants and restrictions that a) provide for such management, regulation, or enforcement by the homeowners' association; and b) provide for restrictions on or requirements for residential lots that run with the land, such as restrictions or requirements regarding allowable structures; building setbacks; architectural standards; fence restrictions; or the use, occupancy, appearance, or maintenance of property.

3. Substantially all of the members, stockholders, or other owners of the homeowners' association are owners of residential lots that are part of the residential planned community.

SENATE BILL 865***Public access to covenants and restrictions***

The bill specifies that the covenants and restrictions for a residential planned community that has a homeowners' association must be recorded with the register of deeds in every county in which the residential planned community is located. The bill also provides that, if the homeowners' association for a residential planned community maintains an Internet site on which information related to the residential planned community is available to the public, the homeowners' association must post the covenants and restrictions on that Internet site.

Public information regarding homeowners' associations

The bill requires a homeowners' association to give public notice of certain information, including the name and contact information for an individual who is authorized to provide information on behalf of the homeowners' association, by filing with the Department of Financial Institutions a notice containing the information. The bill requires each homeowners' association to annually file a renewal notice with DFI and, if any information contained in a notice changes, to file an amended notice with DFI within 30 days to update the information.

The bill requires DFI to establish and maintain a statewide searchable filing system for these notices. DFI may establish a fee not exceeding \$25 for filing a notice, but the public must be allowed to search the system's database of filings without charge. DFI must also prescribe a form for filing notices with DFI.

The bill provides that, if a homeowners' association fails to file a required notice, the homeowners' association may not, during the period of noncompliance, charge any late fees or other fines for unpaid assessments owed by residential lot owners or charge any fees in connection with transfers of ownership of residential lots.

Notices of homeowners' association meetings

The bill requires a homeowners' association to provide notice of any meeting of the homeowners' association at least 48 hours before the meeting. Under the bill, a homeowners' association must provide notice as specified in the covenants and restrictions for the residential planned community or, if the covenants and restrictions do not specify how notice is provided, by providing notice to residential lot owners by doing all of the following: 1) providing written notice; 2) sending notice to owners' last-known electronic mail addresses; 3) sending notice by 1st class mail to owners' last-known post-office addresses; 4) posting notice on an Internet site on which the homeowners' association posts other information related to the residential planned community, if applicable; and 5) posting notice in at least one improved area accessible to all owners, if applicable.

Limitation on fees for providing documentation

The bill limits the amount a homeowners' association may charge a residential lot owner for furnishing copies of the covenants and restrictions or other information and documentation related to the residential planned community. Under the bill, a homeowners' association is not required to furnish copies, but, if the homeowners' association does so, it may not charge more than the actual costs of furnishing the

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copies or \$50, whichever is less. The bill allows a homeowners' association to charge a higher amount if the covenants and restrictions authorize it.

Suspension of rights for failure to pay assessments; notice required

The bill requires a homeowners' association to provide written notice to a residential lot owner before the homeowners' association suspends the owner's rights for failure to timely pay assessments or other amounts owed to the homeowners' association. The notice must identify the rights the homeowners' association intends to suspend and the actions the owner may take to avoid that suspension. The bill allows a homeowners' association to suspend rights without notice if the covenants and restrictions for the residential planned community authorize such action.

Providing payoff statements

The bill requires a homeowners' association to provide a residential lot owner a payoff statement within 10 business days after the owner requests. Under the bill, the homeowners' association must provide one payoff statement without charge during any two-month period and may charge a fee not to exceed \$25 for each additional payoff statement provided during that two-month period. The bill allows a homeowners' association to charge a fee for the first payoff statement if the homeowners' association follows certain procedures, including holding a meeting and adopting a written resolution.

The bill specifies that, if a homeowners' association fails to provide a payoff statement by the 10-business-day deadline, the homeowners' association is liable to the residential lot owner that requested the payoff statement for any actual damages caused by that failure or \$350, whichever is less.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 182.01 (7) of the statutes is created to read:
- 2 182.01 (7) HOMEOWNERS' ASSOCIATION FILING SYSTEM. (a) The department shall
- 3 establish and maintain a statewide searchable filing system for notices filed under
- 4 s. 710.18 (3) (e). The department shall design the system to function in a manner
- 5 similar to the department's corporate record filing system, including display of
- 6 search result information in a manner similar to the way search results are displayed
- 7 in the department's corporate record filing system.

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1 (b) The department may establish a fee not exceeding \$25 for filing a notice
2 under s. 710.18 (3) (e). The department's system shall allow public users to search
3 the system's database of filings without charge.

4 (c) The department shall prescribe a form for filing notices under s. 710.18 (3)
5 (e) that includes all information specified in s. 710.18 (3) (e) 1. to 4.

6 **SECTION 2.** 710.18 of the statutes is created to read:

7 **710.18 Homeowners' associations; regulation. (1) DEFINITIONS.** In this
8 section:

9 (a) "Assessment" means a regular or special charge or fee for common expenses,
10 or a charge, fee, or fine against a specific residential lot or residential lot owner, that
11 an association is authorized to levy or impose under the covenants and restrictions
12 for a residential planned community.

13 (b) "Association" means an entity that is created to manage or regulate, or to
14 enforce covenants and restrictions for, a residential planned community and that
15 consists of members, stockholders, or other owners substantially all of whom are
16 owners of residential lots that are part of the residential planned community.
17 "Association" includes a management company acting on behalf of the entity.
18 "Association" does not include a condominium association, as defined in s. 703.02
19 (1m).

20 (c) 1. "Covenants and restrictions" means a declaration, covenant, or other
21 instrument, including any amendments to the declaration, covenant, or instrument,
22 that describes a residential planned community and that does all of the following:

23 a. Provides for restrictions on or requirements for residential lots that are part
24 of the residential planned community, such as restrictions or requirements

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1 regarding allowable structures; building setbacks; architectural standards; fence
2 restrictions; or the use, occupancy, appearance, or maintenance of property.

3 b. Provides that the residential planned community is managed or regulated
4 by an association or that an association enforces the instrument on behalf of the
5 residential planned community.

6 c. Provides that the restrictions or requirements described under subd. 1. a. run
7 with the land.

8 2. "Covenants and restrictions" does not include a condominium declaration,
9 as defined in s. 703.02 (8).

10 (d) "Residential lot" means a parcel of residential real estate that is part of a
11 residential planned community. "Residential lot" does not include an outlier.

12 (e) "Residential lot owner" means a person, or combination of persons, that
13 holds legal title to a residential lot in a residential planned community or that has
14 equitable ownership as a land contract vendee.

15 (f) "Residential planned community" means real estate that includes one or
16 more residential lots and that is described in covenants and restrictions.

17 **(2) COVENANTS AND RESTRICTIONS.** (a) *Recording required.* If an association is
18 created to manage or regulate, or to enforce covenants and restrictions for, a
19 residential planned community, the covenants and restrictions shall be recorded
20 with the register of deeds in every county in which the residential planned
21 community is located.

22 (b) *Posting on Internet site.* Beginning on January 1, 2023, if the association
23 for a residential planned community maintains an Internet site on which
24 information related to the residential planned community is available to the public,

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1 the association shall post the covenants and restrictions for the residential planned
2 community on the Internet site.

3 (3) PUBLIC NOTICES REGARDING ASSOCIATIONS. (a) *New associations.* An
4 association created on or after the effective date of this paragraph [LRB inserts
5 date], shall file a notice under par. (e) no later than 30 days after the association is
6 created.

7 (b) *Existing associations.* An association existing on the effective date of this
8 paragraph [LRB inserts date], shall file a notice under par. (e) no later than 30
9 days after the effective date of this paragraph [LRB inserts date].

10 (c) *Annual renewals.* Each association that files a notice required under par.
11 (a) or (b) annually shall file a renewal notice under par. (e) no later than the deadline
12 established by the department of financial institutions.

13 (d) *Requirement to update public information.* If any information contained in
14 a notice filed under this subsection changes, the association shall file an amended
15 notice under par. (e) to update the information no later than 30 days after the date
16 on which the change occurs.

17 (e) *Form and contents of public notices.* An association shall file a notice under
18 par. (a) or (b), a renewal notice under par. (c), or an amended notice under par. (d) with
19 the department of financial institutions on a form prescribed by the department
20 under s. 182.01 (7) (c). The notice shall contain all of the following information:

21 1. The name and mailing address of the association and, if applicable, the name
22 and mailing address of any management company for the association.

23 2. The name of the county and the city, village, or town in which the residential
24 planned community is located.

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1 3. The name, mailing address, and electronic mail address or daytime
2 telephone number for an individual who is authorized to respond on behalf of the
3 association to requests for copies of the covenants and restrictions and other
4 information and documentation related to the residential planned community.

5 4. If the association posts information related to the residential planned
6 community on an Internet site that is available to the public, the address of the
7 Internet site.

8 (f) *Penalty for noncompliance.* 1. If an association fails to file a notice required
9 under this subsection, the association may not do any of the following until the
10 association files the required notice:

11 a. Charge a late fee or other fine for any unpaid assessments owed by any
12 residential lot owner.

13 b. Charge a fee in connection with any transfer of ownership of a residential
14 lot that the association would otherwise be authorized to charge under the covenants
15 and restrictions for the residential planned community.

16 2. Any prohibited action taken by an association during a period of
17 noncompliance under this paragraph is void and unenforceable.

18 **(4) NOTICE OF ASSOCIATION MEETINGS REQUIRED.** The association of a residential
19 planned community shall provide notice of any meeting of the association at least 48
20 hours before the meeting. Unless the covenants and restrictions for the residential
21 planned community provide otherwise, the association shall provide notice by doing
22 all of the following:

23 (a) Providing written notice of the meeting to all residential lot owners.

24 (b) Sending notice of the meeting to the last-known electronic mail address for
25 each residential lot owner.

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1 (c) Sending notice of the meeting by 1st class mail to the last-known post-office
2 address for each residential lot owner.

3 (d) If the association posts information related to the residential planned
4 community on an Internet site that is available to the public, posting notice of the
5 meeting on the Internet site.

6 (e) If the residential planned community has an improved area that is
7 accessible to all residential lot owners, posting notice of the meeting in at least one
8 such area.

9 **(5) LIMITATION ON FEES FOR PROVIDING DOCUMENTATION.** If the association for a
10 residential planned community furnishes copies of the covenants and restrictions or
11 other information and documentation related to the residential planned community
12 upon request by a residential lot owner, the association may not, unless the
13 covenants and restrictions provide otherwise, charge the residential lot owner an
14 amount that exceeds the actual costs of furnishing the information or \$50, whichever
15 is less.

16 **(6) FAILURE TO PAY ASSESSMENTS; NOTICE OF SUSPENSION OF RIGHTS.** If the
17 covenants and restrictions for a residential planned community authorize the
18 association to suspend certain rights of a residential lot owner for failure to timely
19 pay assessments or other amounts owed to the association, the association may,
20 unless the covenants and restrictions provide otherwise, suspend those rights only
21 after the association provides the residential lot owner a written notice identifying
22 the rights the association intends to suspend and the actions the residential lot
23 owner may take to avoid that suspension.

24 **(7) PAYOFF STATEMENTS; LIMITATION ON FEES.** (a) *Definition.* In this subsection,
25 “payoff statement” means a document that sets forth the total amount necessary, as

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1 of a date specified in the document, to satisfy all monetary obligations, including
2 unpaid assessments, owed by a residential lot owner to the association in connection
3 with a particular residential lot.

4 (b) *Request for payoff statement; deadline.* A residential lot owner may submit
5 to the association a written request for a payoff statement for a specified date not
6 more than 30 days after the request is submitted. The association shall provide a
7 payoff statement to the residential lot owner within 10 business days after the
8 request is submitted.

9 (c) *Fees.* 1. Except as provided under subds. 2. and 3., an association shall
10 provide one payoff statement requested under par. (b) with respect to a residential
11 lot without charge during any 2-month period. The association may charge a fee not
12 to exceed \$25 for each additional payoff statement requested for the residential lot
13 during that 2-month period.

14 2. An association may charge a fee for providing the first payoff statement
15 within a 2-month period described under subd. 1. if the association does all of the
16 following:

17 a. Holds a meeting at which the association will consider whether to establish
18 the fee and set the amount of the fee.

19 b. Provides written notice of the meeting held under subd. 2. a. as provided
20 under sub. (4).

21 c. Adopts a written resolution at the meeting held under subd. 2. a. to establish
22 the fee or set the amount of the fee, or both.

23 d. No later than 48 hours after adopting the resolution under subd. 2. c.,
24 provides written notice to residential lot owners that the association established the
25 fee or set the amount of the fee, or both.

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1 3. If an association establishes a fee under subd. 2., the association may
2 increase the amount of the fee only by following the procedure under subd. 2. a. to
3 d.

4 4. An association's failure to provide a notice required under subd. 2. b. or d.
5 does not affect the right of the association to charge the fee established or increased
6 under subd. 2. or 3.

7 (d) *Damages*. If an association to which a request is submitted under par. (b)
8 does not provide a payoff statement within the deadline described under par. (b), the
9 association is liable to the residential lot owner for any actual damages caused by the
10 association's failure or \$350, whichever is less.

SECTION 3. Nonstatutory provisions.

11 (1) STATEWIDE FILING SYSTEM.

12 (a) The department of financial institutions shall establish the statewide
13 searchable filing system under s. 182.01 (7) (a) no later than January 1, 2023.

14 (b) If the department of financial institutions establishes the statewide
15 searchable filing system under s. 182.01 (7) (a) before January 1, 2023, the
16 department shall notify the legislative reference bureau of that establishment. The
17 legislative reference bureau shall publish a notice in the Wisconsin Administrative
18 Register that specifies that date.

SECTION 4. Initial applicability.

19 (1) PUBLIC NOTICES REGARDING ASSOCIATIONS; PENALTY FOR NONCOMPLIANCE.

20 (a) Except as provided under par. (b), the treatment of s. 710.18 (3) (f) first
21 applies to a fee, late fee, or other fine charged on the effective date of this paragraph.
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23 (b) If the fee, late fee, or other fine described under s. 710.18 (3) (f) is authorized
24 under covenants and restrictions, as defined in s. 710.18 (1) (c), that contain
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1 provisions inconsistent with the treatment of s. 710.18 (3) (f), that treatment first
2 applies on the day on which the covenants and restrictions are extended, modified,
3 or renewed, whichever occurs first.

4 **SECTION 5. Effective dates.** This act takes effect on the day after publication,
5 except as follows:

6 (1) STATEWIDE FILING SYSTEM; PUBLIC NOTICES REGARDING ASSOCIATIONS. The
7 treatment of s. 710.18 (3) and SECTION 4 (1) of this act take effect on the date specified
8 in the notice published in the Wisconsin Administrative Register under SECTION 3 (1)
9 (b) of this act or on January 1, 2023, whichever is earlier.

10 (END)