

## CHAPTER 703

### CONDOMINIUMS

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**703.01 Condominium ownership act.** This chapter shall be known as the “Condominium Ownership Act”.

**History:** 1977 c. 407.

State and federal regulation of condominiums. Minahan, 58 MLR 55.

Condominium conversion and tenant rights—Wisconsin statutes section 703.08: What kind of protection does it really provide. Wynn, 63 MLR 73 (1979).

Transferring Declarant Rights and Obligations Under the Wisconsin Condominium Ownership Act. Ishikawa. Wis. Law. Feb. 1992.

**703.02 Definitions.** In this chapter, unless the context requires otherwise:

(1) “Allocated interests” means the undivided percentage interest in the common elements, the liability for common expenses and the number of votes at meetings of the association appurtenant to each unit.

(1m) “Association” means all of a condominium’s unit owners acting as a group, either through a nonstock, nonprofit corporation or an unincorporated association, in accordance with its bylaws and declaration.

(2) “Common elements” mean all of a condominium except its units.

(3) “Common expenses and common surpluses” mean the expenses and surpluses of an association.

(4) “Condominium” means property subject to a condominium declaration established under this chapter.

(5) “Condominium instruments” mean the declaration, plats and plans of a condominium together with any attached exhibits or schedules.

(6) “Conversion condominium” means a structure which, before the recording of a condominium declaration, was wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of the purchasers.

(7) “Declarant” means any owner who subjects his or her property to a condominium declaration established under this chapter.

(8) “Declaration” means the instrument by which a property becomes subject to this chapter, and that declaration as amended from time to time.

(9) “Expandable condominium” means a condominium to which additional property or units or both may be added in accordance with the provisions of a declaration and this chapter.

(10) “Limited common elements” mean those common elements identified in a declaration or on a condominium plat as reserved for the exclusive use of one or more but less than all of the unit owners.

(11) “Majority” or “majority of unit owners” mean the condominium unit owners with more than 50% of the votes assigned to the units in the condominium declaration.

(12) “Mortgagee” means the holder of any recorded mortgage encumbering one or more units or a land contract vendor.

(13) “Person” means an individual, corporation, partnership, association, trustee or other legal entity.

(14) “Property” means unimproved land, land together with improvements on it or improvements without the underlying land. Property may consist of noncontiguous parcels or improvements.

(14m) “Small residential condominium” means a condominium with no more than 4 units, all of which are restricted to residential uses.

(15) “Unit” means a part of a condominium intended for any type of independent use, including one or more cubicles of air at one or more levels of space or one or more rooms or enclosed spaces located on one or more floors (or parts thereof) in a building. A unit may include 2 or more noncontiguous areas.

(16) “Unit number” means the number, letter or combination thereof, identifying a unit in a declaration.

(17) “Unit owner” means a person, combination of persons, partnership or corporation who holds legal title to a condominium unit or has equitable ownership as a land contract vendee.

**History:** 1977 c. 407; 1985 a. 188.

The definition of “unit” under sub. (15) encompasses a property on which there is no constructed unit. *Aluminium Industries v. Camelot Trails*, 194 W (2d) 575, 535 NW (2d) 74 (Ct. App. 1995).

**703.03 Application of chapter.** This chapter applies only to property, a sole owner or all of the owners of which submit the

property to the provisions of this chapter by duly executing and recording a declaration as provided in this chapter.

**History:** 1977 c. 407.

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

**History:** 1977 c. 407.

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

**History:** 1977 c. 407.

**703.06 Alterations prohibited.** Except as otherwise provided in this chapter, no unit owner may do any alteration which would jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament.

**History:** 1977 c. 407.

**703.07 Establishment of condominium. (1)** A condominium may be created by recording condominium instruments with the register of deeds of the county where the property is located.

**(2)** A condominium instrument, and all amendments and certifications of a condominium instrument, shall be recorded in every county in which any portion of the condominium is located, and shall be indexed in the name of the declarant and the name of the condominium. Subsequent instruments affecting the title to a unit which is physically located entirely within a single county shall be recorded only in that county, notwithstanding the fact that the common elements are not physically located entirely within that county. Subsequent amendments shall be indexed under the name of the condominium.

**(3)** All instruments affecting title to units shall be recorded and taxed as in other real property transactions.

**History:** 1977 c. 407.

**703.08 Notice prior to conversion of residential property to condominium. (1)** Residential real property may not be converted to a condominium unless the owner of the residential real property gives 120 days' prior written notice of the conversion to each of the tenants of the building or buildings scheduled for conversion. A tenant has the exclusive option to purchase the unit for a period of 60 days following the date of delivery of the notice.

**(2)** A tenant may not be required to vacate the property during the period of the notice required under sub. (1) except for:

- (a) Violation of a covenant in the lease; or
- (b) Nonpayment of rent.

**History:** 1977 c. 407.

Condominium conversion and tenant rights—Wisconsin statutes section 703.08: What kind of protection does it really provide. Wynn, 63 MLR 73 (1979).

**703.09 Declaration. (1)** A condominium declaration shall contain:

(a) The name and address of the condominium and the name shall include the word "condominium" or be followed by the words "a condominium".

(b) A description of the land on which the condominium is, or is to be, located, together with a statement of the owner's intent to subject the property to the condominium declaration established under this chapter.

(c) A general description of each unit, including its perimeters, location and any other data sufficient to identify it with reasonable certainty.

(d) A general description of the common elements together with a designation of those portions of the common elements that are limited common elements and the unit to which the use of each is restricted. Fixtures designed to serve a single unit, located contiguous to the unit's boundaries, are deemed limited common elements appertaining to that unit exclusively and need not be shown

or designated as limited common elements in the condominium instruments.

(e) The percentage interests appurtenant to each unit.

(f) The number of votes at meetings of the association of unit owners appurtenant to each unit.

(g) Statement of the purposes for which the building and each of the units are intended and restricted as to use.

(h) The name of the person to receive service of process in the cases provided in this chapter, together with the address of that person and the method by which the association may designate a successor to the person.

(i) Provision as to the percentage of votes by the unit owners which shall be determinative of whether to rebuild, repair, restore or sell the property in the event of damage or destruction of all or part of the property.

(j) Any further details in connection with the property which the person executing the declaration deems desirable to set forth consistent with this chapter, except those provisions which are required to be included in the bylaws.

(k) A condominium declaration shall be signed by the owners of the property in the same manner as required in conveyances of real property.

**(2)** Except as provided in s. 703.26, a condominium declaration may be amended with the written consent of at least two-thirds of the unit owners or a greater percentage if provided in the declaration. An amendment becomes effective when it is recorded in the same manner as the declaration. A unit owner's written consent is not effective unless it is approved by the mortgagee of the unit, if any.

**(3) (a)** If an amendment to a condominium declaration has the effect of reducing the value of any unit owner's interest in any common element, including any limited common element, and increases the value of the declarant's or any other unit owner's interest in the common element or limited common element, then the declarant or other unit owner shall compensate the unit owner the value of whose interest is reduced in the amount of the reduction in value, either in cash or by other consideration acceptable to the unit owner.

(b) A unit owner may waive the right to obtain compensation under par. (a) in writing.

(c) Paragraph (a) does not apply to an expanding condominium under s. 703.26.

**History:** 1977 c. 407; 1985 a. 188, 332.

**703.10 Bylaws. (1)** BYLAWS TO GOVERN ADMINISTRATION. The administration of every condominium shall be governed by bylaws. Every unit owner shall comply strictly with the bylaws and with the rules adopted under the bylaws, as the bylaws or rules are amended from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to the unit. Failure to comply with any of the bylaws, rules, covenants, conditions or restrictions is grounds for action to recover sums due, for damages or injunctive relief or both maintainable by the association or, in a proper case, by an aggrieved unit owner.

**(2) REQUIRED PARTICULARS.** The bylaws shall express at least the following particulars:

(a) The form of administration, indicating whether the association shall be incorporated or unincorporated, and whether, and to what extent, the duties of the association may be delegated to a board of directors, manager or otherwise, and specifying the powers, manner of selection and removal of them.

(b) The mailing address of the association.

(c) The method of calling the unit owners to assemble; the attendance necessary to constitute a quorum at any meeting of the association; the manner of notifying the unit owners of any proposed meeting; who presides at the meetings of the association, who keeps the minute book for recording the resolutions of the association and who counts votes at meetings of the association.

(d) The election by the unit owners of a board of directors of whom not more than one is a nonunit owner, the number of persons constituting the same and that the terms of at least one-third of the directors shall expire annually, the powers and duties of the board, the compensation, if any, of the directors, the method of removal from office of directors and whether or not the board may engage the services of a manager or managing agent.

(e) The manner of assessing against and collecting from unit owners their respective shares of the common expenses.

(f) The manner of borrowing money and acquiring and conveying property.

**(2m) LIMITATION ON ENFORCEMENT OF CERTAIN PROVISIONS.** No bylaw or rule adopted under a bylaw and no covenant, condition or restriction set forth in a declaration or deed to a unit may be applied to discriminate against an individual in a manner described in s. 106.04.

**(3) PERMISSIBLE ADDITIONAL PROVISIONS.** The bylaws also may contain any other provision regarding the management and operation of the condominium, including any restriction on or requirement respecting the use and maintenance of the units and the common elements.

**(4) PROHIBITING VOTING BY CERTAIN UNIT OWNERS.** The bylaws may contain a provision prohibiting any unit owner from voting at a meeting of the association if the association has recorded a statement of condominium lien on the person's unit and the amount necessary to release the lien has not been paid at the time of the meeting.

**(5) AMENDMENT.** The bylaws may be amended by the affirmative vote of unit owners having 67% or more of the votes. Each particular set forth in sub. (2) shall be expressed in the bylaws as amended.

**(6) TITLE TO CONDOMINIUM UNITS UNAFFECTED BY BYLAWS.** Title to a condominium unit is not rendered unmarketable or otherwise affected by any provision of the bylaws or by reason of any failure of the bylaws to comply with the provisions of this chapter.

**History:** 1977 c. 407; 1987 a. 262; 1991 a. 295; 1995 a. 27.

**703.11 Condominium plat. (1) TO BE FILED FOR RECORD.** When any condominium instruments are recorded, the declarant shall file for record a condominium plat in a separate plat book maintained for condominium plats.

**(2) REQUIRED PARTICULARS.** A condominium plat may consist of one or more sheets and shall contain at least the following particulars:

(a) The name of the condominium and county in which the property is located on each sheet of the plat. If there is more than one sheet, each sheet shall be consecutively numbered and show the relation of that sheet number to the total number of sheets.

(b) A survey of the property described in the declaration complying with minimum standards for property surveys adopted by the examining board of architects, landscape architects, professional geologists, professional engineers, designers and land surveyors and showing the location of any unit or building located or to be located on the property.

(c) Diagrammatic floor plans of each building located or to be located on the property which show the approximate dimensions, floor area and location of each unit in it. Common elements shall be shown graphically to the extent feasible.

(d) All survey maps and floor plans submitted for filing shall be legibly prepared with a binding margin of 1.5 inches on the left side and a one-inch margin on all other sides on durable white paper 14 inches in length and 22 inches in width with nonfading black image or reproduced with photographic silver haloid image on double matt polyester film of not less than 4 millimeter thickness and 14 inches long by 22 inches wide. The maps and plans shall be drawn to a convenient scale.

**(3) DESIGNATION OF UNITS.** Every unit shall be designated on the condominium plat by the unit number or other appropriate designation.

**(4) SURVEYOR'S CERTIFICATE.** A condominium plat is sufficient for the purposes of this chapter if there is attached to or included in it a certificate of a licensed land surveyor authorized to practice that profession in this state that the plat is a correct representation of the condominium described and the identification and location of each unit and the common elements can be determined from the plat.

**History:** 1977 c. 407; 1983 a. 497; 1993 a. 463, 465, 491.

**703.12 Description of units.** A description in any deed or other instrument affecting title to any unit which makes reference to the letter or number or other appropriate designation on the condominium plat together with a reference to the condominium instruments shall be a good and sufficient description for all purposes.

**History:** 1977 c. 407.

Requirements of ch. 236 may not be used to legally describe condominium units. 75 Atty. Gen. 94.

**703.13 Percentage interests. (1) UNDIVIDED PERCENTAGE INTEREST IN COMMON ELEMENTS.** Every unit owner owns an undivided percentage interest in the common elements equal to that set forth in the declaration. Except as specifically provided in this chapter, all common elements shall remain undivided. Except as provided in this chapter, no unit owner, nor any other person, may bring a suit for partition of the common elements and any covenant or provision in any declaration, bylaws or other instrument to the contrary is void.

**(2) RIGHTS TO COMMON SURPLUSES.** Common surpluses shall be disbursed as provided under s. 703.16 (1).

**(3) LIABILITY FOR COMMON EXPENSES.** Except for the specially assessed common expenses, the amount of all common expenses shall be assessed as provided under s. 703.16 (2).

**(4) CHANGE IN PERCENTAGE INTEREST.** The percentage interests shall have a permanent character and, except as specifically provided by this chapter, may not be changed without the written consent of all of the unit owners and their mortgagees. Any change shall be evidenced by an amendment to the declaration and recorded among the appropriate land records. The percentage interests may not be separated from the unit to which they appertain. Any instrument, matter, circumstance, action, occurrence or proceeding in any manner affecting a unit also shall affect, in like manner, the percentage interests appurtenant to the unit.

**(5) ALTERATIONS WITHIN UNITS.** (a) A unit owner may make any improvements or alterations within his or her unit that do not impair the structural integrity or lessen the support of any portion of the condominium. A unit owner may not change the exterior appearance of a unit or of any other portion of the condominium without permission of the board of directors of the association.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitation specified therein, a unit owner acquiring an adjoining or adjoining part of an adjoining unit, may remove all or any part of any intervening partition or create doorways or other apertures therein, even if the partition may in whole or in part be a common element, if those acts do not impair the structural integrity or lessen the support of any portion of the condominium. The creation of doorways or other apertures is not deemed an alteration of boundaries.

**(6) RELOCATION OF BOUNDARIES.** (a) If any condominium instruments expressly permit a relocation of boundaries between adjoining units, those boundaries may be relocated in accordance with this section and any restrictions and limitations which the condominium instruments may specify.

(b) If any unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate those boundaries, the principal officer of the unit owners association, upon written

application from those unit owners and after 30 days' written notice to all other unit owners, shall prepare and execute appropriate instruments.

(c) An amendment to a declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof. The amendment shall contain words of conveyance between those unit owners, and when recorded shall also be indexed in the name of the grantor and grantee. If the adjoining unit owners have specified in their written application the reallocation between their units of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

(d) If the adjoining unit owners have specified in their written application a reasonable reallocation, as determined by the board of directors, of the number of votes in the association or liabilities for future common expenses not specially assessed, appertaining to their units, an amendment to the condominium instruments shall reflect those reallocations.

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

(f) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the adjoining unit owners upon payment by them of all reasonable charges for the preparation thereof. Those instruments are effective when the adjoining unit owners have executed them and they are recorded in the name of the grantor and grantee. The recordation thereof is conclusive evidence that the relocation of boundaries did not violate the condominium instruments.

**(7) SEPARATION OF UNITS.** (a) If any condominium instruments expressly permit the separation of a unit into 2 or more units, a separation shall be made in accordance with this section and any restrictions and limitations which the condominium instruments may specify.

(b) The principal officer of the association, upon written application of a person proposing the separation of a unit (separator) and after 30 days' written notice to all other unit owners shall promptly prepare and execute appropriate instruments under this subsection. An amendment to the condominium instruments shall assign a new identifying number to each new unit created by the separation of a unit, shall allocate to those units, on a reasonable basis acceptable to the separator and the executive board all of the undivided interest in the common element and rights to use the limited common elements and the votes in the association formerly appertaining to the separated unit. The amendment shall reflect a proportionate allocation to the new units of the liability for common expenses and rights to common surpluses formerly appertaining to the subdivided unit.

(c) Plats and plans showing the boundaries and dimensions separating the new units together with their other boundaries and their new identifying numbers or letters shall be prepared. The plats and plans shall be certified as to their accuracy and compliance with this subsection by a civil engineer, architect or licensed land surveyor authorized to practice his or her profession in the state.

(d) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the separator upon payment by him or her of all reasonable cost for their preparation. Those instruments are effective when the separator has executed them and they are recorded. The recording of the instruments is conclusive evidence that the separation did not violate any restrictions or limitation specified by the condominium instruments and

that any reallocations made under this subsection were reasonable.

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

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

**(2)** The declaration or bylaws may allow any unit owner of a unit to which the use of any limited common element is restricted to grant by deed, subject to the rights of any existing mortgagee, the use of the limited common element to any other unit owner. Thereafter, the grantor has no further right to use the limited common element.

**History:** 1977 c. 407.

**703.15 Association of unit owners. (1) LEGAL ENTITY.** The affairs of every condominium shall be governed by an association which, even if unincorporated, is constituted a legal entity for all purposes.

**(2) ORGANIZATION OF ASSOCIATION.** (a) *Establishment.* Every declarant shall establish an association to govern the condominium not later than the date of the first conveyance of a unit to a purchaser. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association. After it is organized, the membership of the association shall at all times consist exclusively of all of the unit owners.

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

(c) *Declarant control.* 1. Except as provided in par. (d), a declarant may authorize the declarant or persons designated by him or her to appoint and remove the officers of the association or to exercise the powers and responsibilities otherwise assigned by the declaration or this chapter to the association or its officers. A declaration may not authorize any declarant control of the association for a period exceeding the earlier of any of the following:

- a. Ten years in the case of an expandable condominium.
- b. Three years in the case of any other condominium.
- c. Thirty days after the conveyance of 75% of the common element interest to purchasers.

2. The period of declarant control begins on the date that the first condominium unit is conveyed by a declarant to any person other than the declarant. If there is any other unit owner other than a declarant, a declaration may not be amended to increase the scope or the period of the declarant control.

(d) *Meeting to elect directors.* Prior to the conveyance of 25% of the common element interest to purchasers, an association shall hold a meeting and the unit owners other than the declarant shall elect at least 25% of the directors of the executive board. Prior to the conveyance of 50% of the common element interest to purchasers, an association shall hold a meeting and the unit owners other than the declarant shall elect at least 33 1/3% of the directors of the executive board.

(e) *Calculation of percentage.* The calculation of the percentage of common element interest conveyed to purchasers under pars. (c) and (d) shall be based on the percentage of undivided interest appertaining to each unit which has been conveyed

assuming that all the units to be completed are included in the condominium.

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

(3) **POWERS OF THE ASSOCIATION.** (a) *Powers.* An association has the power to:

1. Adopt budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from unit owners;

2. Employ and dismiss employees and agents;

3. Sue on behalf of all unit owners; and

4. Exercise any other power conferred by the condominium instruments or bylaws.

(b) *Conditional powers.* Subject to any restrictions and limitations specified by the declaration, an association may:

1. Make contracts and incur liabilities.

2. Regulate and impose charges for the use of common elements.

3. Cause additional improvements to be made as a part of the common elements.

4. Acquire, hold, encumber and convey any right, title or interest in or to real property.

5. Grant easements through or over the common elements.

6. Receive any income derived from payments, fees or charges for the use, rental or operation of the common elements.

7. Grant or withhold approval of any action by a unit owner or other person which would change the exterior appearance of the unit or of any other portion of the condominium.

(4) **ROSTER OF UNIT OWNERS; MEETINGS OF ASSOCIATION.** (a) An association shall maintain a current roster of names and addresses of every unit owner to which notice of meetings of the association shall be sent.

(b) Every unit owner shall furnish the association with his or her name and current mailing address. No unit owner may vote at meetings of the association until this information is furnished.

(c) No regular or special meeting of the association may be held except on at least 10 days' written notice delivered or mailed to every unit owner at the address shown on the roster or unless waivers are duly executed by all unit owners.

(d) 1. At meetings of the association every unit owner is entitled to cast the number of votes appurtenant to his or her unit. Unit owners may vote by proxy, but, the proxy is effective only for a maximum period of 180 days following its issuance, unless granted to a mortgagee or lessee. If only one of multiple owners of a unit is present at a meeting of the association, the owner is entitled to cast the votes allocated to that unit.

2. If more than one of the multiple owners is present, the votes allocated to that unit may be cast proportionally among the owners unless the condominium instruments expressly provide otherwise, but unanimous agreement is conclusively presumed if any one of them purports to cast the votes allocated to that unit without protest being made promptly by any of the others to the person presiding over the meeting or until any one of the multiple owners files a statement with the secretary of the association stating that thereafter the vote must be cast proportionally.

(e) Unless otherwise provided in this chapter, and subject to provisions in the bylaws requiring a different majority, decisions of an association shall be made on a majority of votes of the unit owners present and voting.

(5) **UNIT OWNER'S INTEREST IN ASSOCIATION'S PROPERTY.** No unit owner may have any right, title or interest in any property owned by the association other than as holder of a percentage interest in common elements appurtenant to its unit.

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

**703.155 Master associations.** (1) **DEFINITION.** In this section, "master association" means a profit or nonprofit corporation or unincorporated association which exercises the powers under s. 703.15 (3) on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums.

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

(3) **POWERS LIMITED.** Unless a master association is the only association for a condominium under s. 703.15 (1), it may exercise the powers set forth in s. 703.15 (3) only to the extent expressly permitted in the declarations that are associated with the master association or expressly described in the delegations of power from those condominiums to the master association.

(4) **LIABILITY LIMITED.** If a declaration provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to the exercise of those powers following delegation.

(5) **UNIT OWNERS; RIGHTS AND RESPONSIBILITIES.** The rights and responsibilities of unit owners with respect to the association set forth in s. 703.15 apply, in the conduct of the affairs of a master association, only to those persons under sub. (6) who elect the executive board of a master association, whether or not those persons are unit owners.

(6) **MASTER ASSOCIATION; ELECTION OF EXECUTIVE BOARD.** Notwithstanding s. 703.15 (2) (f) and whether or not a master association is also an association described in s. 703.15 (1), the instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association shall provide that the executive board of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of the executive board.

(b) All members of the executive boards of all condominiums subject to the master association may elect all members of the executive board.

(c) All unit owners of each condominium subject to the master association may elect specified members of the executive board.

(d) All members of the executive board of each condominium subject to the master association may elect specified members of the executive board.

*History:* 1985 a. 188.

### 703.16 Common expenses and common surpluses.

(1) **DISPOSITION OF COMMON SURPLUSES.** All common surpluses of the association shall be credited to the unit owners' assessments for common expenses in proportion to their percentage interests in the common elements or as otherwise provided in the declaration or shall be used for any other purpose as the association decides.

(2) **FUNDS FOR PAYMENT OF COMMON EXPENSES OBTAINED BY ASSESSMENTS.** Funds for the payment of common expenses and for the creation of reserves for the payment of future common expenses shall be obtained by assessments against the unit owners in proportion to their percentage interests in the common elements or as otherwise provided in the declaration.

(3) **LIABILITY FOR ASSESSMENTS.** A unit owner shall be liable for all assessments, or instalments thereof, coming due while owning a unit. In a voluntary grant, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his or her share of the common expenses up to the time of the voluntary grant for which a statement of condominium lien is recorded, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee for such assessments. Liability for assessments may not be avoided by

waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

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

(5) **STATEMENT.** Any grantee of a unit is entitled to a statement from the association or the executive board, setting forth the amount of unpaid assessments against the grantor and the grantee is not liable for, nor shall the unit conveyed be subject to a lien which is not filed under sub. (4) for, any unpaid assessment against the grantor in excess of the amount set forth in the statement. If an association or a board of directors does not provide such a statement within 10 business days after the grantee's request, they are barred from claiming under any lien which is not filed under sub. (4) prior to the request for the statement against the grantee.

(6) **PRIORITY OF LIEN.** All sums assessed by an association but unpaid for the share of the common expenses chargeable to any unit constitutes a lien on the unit and on the undivided interest in the common elements appurtenant thereto prior to all other liens except:

- (a) Liens of general and special taxes.
- (b) All sums unpaid on a first mortgage recorded prior to the making of the assessment.
- (c) Mechanic's liens filed prior to the making of the assessment.
- (d) All sums unpaid on any mortgage loan made under s. 45.80, 1989 stats.
- (e) A lien under s. 292.31 (8) (i), 292.41 (6) (d) or 292.81.

(7) **INTEREST ON UNPAID ASSESSMENT.** Any assessment, or instalment thereof, not paid when due shall bear interest, at the option of the association, from the date when due until paid at a rate not exceeding the highest rate permitted by law as stated in the bylaws.

(8) **ENFORCEMENT OF LIEN.** A lien may be enforced and foreclosed by an association or any other person specified in the bylaws, in the same manner, and subject to the same requirements, as a foreclosure of mortgages on real property in this state. An association may recover costs and actual attorney fees. An association may, unless prohibited by the declaration, bid on the unit at foreclosure sale and acquire, hold, lease, mortgage and convey the unit. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. Suit for any deficiency following foreclosure may be maintained in the same proceeding. No action may be brought to foreclose the lien unless brought within 3 years following the recording of the statement of condominium lien. No action may be brought to foreclose the lien except after 10 days' prior written notice to the unit owner given by registered mail, return receipt requested, to the address of the unit owner shown on the books of the association.

(9) **FORM OF STATEMENT OF CONDOMINIUM LIEN.** A statement of condominium lien is sufficient for the purposes of this chapter if it contains the following information and is substantially in the following form:

#### Statement of Condominium Lien

This is to certify that ..... owner(s) of unit No. .... in ..... Condominium (is) (are) indebted to the association in the amount of \$..... as of ....., 19... for (his) (her) (its) (their) proportionate share of common expenses of the Condominium for the period from (date) to (date), plus interest thereon at the rate of ....%, costs of collection, and actual attorney fees.

Association

By: .....

Officer's title (or agent)

Address

Phone number

I hereby affirm under penalties of perjury that the information contained in the foregoing Statement of Condominium Lien is true and correct to the best of my knowledge, information, and belief.

.....

Officer (or agent)

**History:** 1977 c. 407; 1991 a. 39; 1993 a. 453; 1995 a. 224, 227.

Condominium land contract recorded before making of assessment lien has priority as first mortgage under (6)(b). *Towne Realty, Inc. v. Edwards*, 156 W (2d) 344, 456 NW (2d) 651 (Ct. App. 1990).

The definition of "unit" under sub. (15) encompasses a property on which there is no constructed unit. *Aluminium Industries v. Camelot Trails*, 194 W (2d) 575, 535 NW (2d) 74 (Ct. App. 1995).

**703.17 Insurance. (1)** An association shall obtain insurance for the property against loss or damage by fire and such other hazards for not less than full replacement value of the property insured and a liability policy covering all claims commonly insured against. Insurance coverage shall be written on the property in the name of the association as trustee for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses. Provisions for such insurance shall be without prejudice to the right of each unit owner to insure his or her own unit for personal benefit.

(2) Insurance proceeds shall first be disbursed by the trustees for the repair or restoration of the damaged common elements, and the unit owners and mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless the association has determined not to rebuild, or the court has ordered partition of the condominium property, or there is a surplus of insurance proceeds after the common elements have been completely repaired or restored.

**History:** 1977 c. 407; 1985 a. 332.

**703.18 Repair or reconstruction. (1)** A declaration shall provide for the repair or reconstruction of the common elements in the event of damage to all or part of the common elements of the condominium.

(2) (a) Unless otherwise provided in the declaration, in the event of damage to or destruction of common elements of a condominium, the association shall promptly undertake to repair or reconstruct it to a condition compatible with the remainder of the condominium. All cost of the repair or reconstruction in excess of available insurance proceeds shall be a common expense.

(b) However, if a condominium is damaged to an extent more than the available insurance proceeds, the condominium shall be subject to an action for partition upon obtaining the written consent of the unit owners having 75% or more of the votes. In the case of partition, the net proceeds of sale together with any net proceeds of insurance shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage interests in the common elements, and shall be distributed in accordance with the priority of interests in each unit.

**History:** 1977 c. 407.

**703.19 Eminent domain. (1) DEFINITION.** In this section, "taking under the power of eminent domain" includes any sale in settlement of any pending or threatened condemnation proceeding.

**(2) ALLOCATION OF AWARD; PROVISIONS IN DECLARATION OR BYLAWS.** A declaration or bylaws may provide for an allocation of any award for a taking under the power of eminent domain of all or part of the condominium. A declaration or bylaws also may provide for:

(a) Reapportionment or other change of the percentage interests appurtenant to each unit remaining after any taking; and

(b) Rebuilding, relocation or restoration of any improvements so taken in whole or in part.

**(3) ALLOCATION OF AWARD; IN ABSENCE OF PROVISIONS IN DECLARATION OR BYLAWS.** Unless otherwise provided for in a declaration or bylaws, any damages for a taking of all or part of a condominium shall be awarded as follows:

(a) Every unit owner is entitled to the entire award for the taking of all or part of their respective unit and for consequential damages to their unit.

(b) Any award for the taking of limited common elements shall be allocated to the unit owners of the units to which the use of those limited common elements is restricted in proportion to their respective percentage interests in the common elements.

(c) In the event no reconstruction is undertaken, any award for the taking of common elements shall be allocated to all unit owners in proportion to their respective percentage interests in the common elements.

**(4) RECONSTRUCTION FOLLOWING TAKING.** Following the taking of all or a part of the common elements, an association shall promptly undertake to restore the improvements of the common elements to an architectural whole compatible with the existing structure. Any costs of such restoration in excess of the condemnation award shall be a common expense. However, if the taking under the power of eminent domain is to the extent where the remaining condominium portion has been diminished to the extent that reconstruction or restoration is not practical, a condominium shall be subject to an action for partition upon obtaining the written consent of the unit owners having 75% or more of the vote. In the case of partition, the net proceeds of sale, together with any net proceeds of the award for taking, shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage interest in the common elements and shall be distributed in accordance with the priority of interests in each unit.

**(5) ADJUSTMENT OF PERCENTAGE INTERESTS FOLLOWING TAKING; EFFECT OF TAKING ON VOTES APPURTENANT TO UNIT.** Following the taking of all or a part of any unit, the percentage interests appurtenant to the unit shall be adjusted in proportion as provided in the condominium instruments or bylaws. The association promptly shall prepare and record an amendment to the declaration reflecting the new percentage interests appurtenant to the unit. Subject to sub. (7), following the taking of part of a unit, the votes appurtenant to that unit shall be appurtenant to the remainder of that unit, and following the taking of all of a unit, the right to vote appurtenant to the unit shall terminate.

**(6) PRIORITY IN DISTRIBUTION OF DAMAGES FOR EACH UNIT.** All damages for each unit shall be distributed in accordance with the priority of interests at law or in equity in each respective unit.

**(7) TAKING NOT TO INCLUDE PERCENTAGE INTERESTS OR VOTES.** A taking of all or part of a unit may not include any of the percentage interests or votes appurtenant to the unit.

**(8) PRESERVATION OF THE RIGHT OF APPEAL.** The owner of each unit taken shall have the individual right of appeal of the necessity of taking and of the condemnation award made for the taking. An association shall have the right of appeal of the necessity of taking of the common elements and the right of appeal of the condemnation award made for the taking of the common elements. An appeal by an association shall be binding upon the individual unit owners for the necessity of taking or the condemnation award made for the taking of the common elements. The unit owners having an interest in the ownership of limited common elements may individually or as a group appeal the necessity of taking or

the condemnation award made for the taking of the limited common elements.

**History:** 1977 c. 407.

### 703.20 Books of receipts and expenditures.

**(1) RECORD KEEPING; AVAILABILITY FOR EXAMINATION.** An association shall keep detailed, accurate records using standard book-keeping procedures of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours.

**(2) DISCLOSURE INFORMATION.** Within 10 days after a request by a seller other than the declarant, an association shall furnish the information necessary for the seller to comply with s. 703.33. The seller shall pay the association the actual costs of furnishing the information.

**History:** 1977 c. 407; 1985 a. 188.

**703.21 Separate taxation.** **(1)** Every unit and its percentage of undivided interest in the common elements shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit and special district for all types of taxes authorized by law including, but not limited to, special levies based on the value of property and special assessments. Neither the building, the property nor any of the common elements shall be deemed to be a parcel separate from the unit.

**(2)** The rights, duties and obligations of unit owners under this chapter shall inure to and be binding upon grantees under tax deeds and persons acquiring title by foreclosure of tax liens and their successors in interest.

**History:** 1977 c. 407; 1979 c. 110.

**703.22 Mechanics' and materialmen's liens.** **(1)** Subsequent to recording a declaration under this chapter and while the property remains subject to this chapter, any and all liens will exist only against individual units and the percentage of undivided interest in the common elements appurtenant to such unit, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

**(2)** Any mechanics' lien or materialmen's lien arising as a result of repairs to or improvements of a unit by a unit owner shall be a lien only against the unit.

**(3)** Any mechanics' or materialmen's lien arising as a result of repairs to or improvements of the common elements, if authorized in writing by the association, shall be paid by the association as a common expense and until paid shall be a lien against each unit in proportion to its percentage interest in the common elements. On payment of the proportionate amount by any unit owner to the lienor or on the filing of a written undertaking in the manner specified by s. 779.08, the unit owner shall be entitled to a release of his or her unit from the lien and the association shall not be entitled to assess his or her unit for payment of the remaining amount due for the repairs or improvements.

**History:** 1977 c. 407; 1979 c. 32 s. 92 (9).

Because the statute is silent as to the amount each unit should pay when a blanket lien is filed, application of the equitable principal that the lien should be applied proportionately against each unit was appropriate. *Torke/Wirth/Pujara v. Lakeshore Towers*, 192 W (2d) 481, 531 NW (2d) 419 (Ct. App. 1995).

### 703.23 Resident agent; exemption of unit owners from liability.

**(1) APPOINTMENT OF RESIDENT AGENT; CHANGE IN NAME OR ADDRESS.** When any property is submitted to a condominium declaration, the declarant shall appoint a resident agent for the condominium who shall be a citizen and actual resident of the state or corporation duly registered or qualified to do business in the state. The declarant shall file the name and address of the resident agent with the department of financial institutions. The name or address of the resident agent may be changed by the association or other proper authority of the condominium in the same manner

and to the same extent that names and addresses of registered agents may be changed by corporations. If the association is incorporated, the registered agent for the association shall be the registered agent for the condominium.

(2) INDEX OF NAMES AND ADDRESS OF RESIDENT AGENTS. The department of financial institutions shall keep an index of the names and addresses of resident agents and shall make the information available to the public on request.

(3) SUITS BROUGHT BY SERVICE ON RESIDENT AGENT. Suit may be brought by service on the resident agent in actions against an association, or which arise through any cause relating to the common elements.

(4) EXEMPTION OF UNIT OWNERS FROM LIABILITY FOR CERTAIN CLAIMS. Except in proportion to his or her percentage interest in the common elements, no unit owner personally is liable for damages as a result of injuries arising in connection with the common elements solely by virtue of his or her ownership of a percentage interest in the common elements, or for liabilities incurred by the association.

History: 1977 c. 407; 1995 a. 27.

**703.24 Remedies for violation by unit owner.** If any unit owner fails to comply with this chapter, the declaration or bylaws, the unit owner may be sued for damages caused by the failure or for injunctive relief, or both, by the association or by any other unit owner.

History: 1977 c. 407.

**703.25 Tort and contract liability. (1)** An action for tort alleging a wrong done by any agent or employe of a declarant or of an association, or in connection with the condition of any portion of a condominium which a declarant or an association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue of its ownership of an undivided interest in the common elements or by reason of its membership in the association or its status as an officer.

(2) An action arising from a contract made by or on behalf of an association shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved under the declaration. No unit owner shall be precluded from bringing such an action by reason of its membership in the association or its status as an officer.

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

History: 1977 c. 407.

**703.255 Noncompletion of units. (1)** A declarant who does not complete any unit described in the declaration within 5 years after recording the declaration under s. 703.07 shall do one of the following:

(a) Amend the declaration to remove the description of the uncompleted units and, notwithstanding the unit owner consent requirements of ss. 703.09 (2) and 703.13 (4), revise the percentage interests appurtenant to each unit and the number of votes appurtenant to each unit to adjust for the units removed.

(b) Secure a written agreement from at least 75% of the unit owners, not including the declarant, which permits the declarant to complete the uncompleted units within 5 years after the date of the written agreement and shall either complete the units within that time period or amend the declaration as provided in par. (a).

(2) Subsection (1) does not apply to expanding condominiums under s. 703.26.

(3) Subsection (1) does not eliminate any liability of a declarant under s. 703.24 or 703.25.

History: 1985 a. 188.

**703.26 Expanding condominiums. (1)** DECLARANT MAY RESERVE RIGHT TO EXPAND. A declarant may reserve the right to expand a condominium by subjecting additional property to the condominium declaration in such a manner that as each additional property is subjected to the condominium declaration, the percentage of undivided interests in the common elements of the preceding and new property shall be reallocated between the unit owners on the basis of the aggregate undivided interest in the common elements appertaining to the property.

(2) CONDITIONS TO WHICH RESERVATION SUBJECT. A reservation of the right to expand a condominium is subject to the conditions provided in this subsection.

(a) A declaration establishing a condominium shall describe each parcel of property which may be added to the condominium.

(b) A declaration establishing a condominium shall show the maximum number of units which may be added, and the percentage interests in the common elements, the liabilities for common expenses and the rights to common surpluses, and the number of votes appurtenant to each unit following the addition of property to the condominium, if added. The percentage interests in the common elements, the liabilities for common expenses and the rights to common surpluses, and the number of votes that each unit owner will have may be shown by reference to a formula or other appropriate method of determining them following each expansion of the condominium.

(c) A condominium plat for an original condominium shall include, in general terms, the outlines of the land, buildings, and common elements of new property that may be added to the condominium.

(d) In a declaration establishing a condominium, a right to expand the condominium may be reserved in the declaration for a period not exceeding 10 years from the date of recording of the declaration.

(3) RECORDATION OF AMENDMENTS TO DECLARATION AND PLAT. (a) If the conditions of sub. (2) are complied with, property may be added to a condominium if the declarant records an amendment to the declaration, showing the new percentage interests of the unit owners, and the votes which each unit owner may cast in the condominium as expanded, and records an amendment to the condominium plat that includes the detail and information concerning the new property as required in the original condominium plat.

(b) On recording of an amendment of a declaration and plat, each unit owner, by operation of law, has the percentage interests in the common elements, liabilities in the common expenses, rights to common surpluses, and shall have the number of votes, set forth in the amendment to the declaration. Following any expansion, the interest of any mortgagee shall attach, by operation of law, to the new percentage interests in the common elements appurtenant to the unit on which it is a lien.

History: 1977 c. 407.

Substantial compliance with formal requirements permitted by s. 703.30 (2) is limited to the condominium status of the property and title of unit owners. It does not apply to a project's status as an expanding condominium under this section. *Rock Lake Estates Unit Owners Ass'n v. Lake Mills*, 195 W (2d) 348, 536 NW (2d) 415 (Ct. App. 1995).

**703.27 Zoning and building regulations. (1)** A zoning or other land use ordinance or regulations may not prohibit the condominium form of ownership or impose any requirements upon a condominium which it would not impose upon a physically identical development under a different form of ownership. No provision of a state or local building code may be applied differently to a building in a condominium than it would be applied to a building of similar structure or occupancy under a different form of ownership unless the different application is expressly permitted in that provision. No subdivision ordinance may apply to any condominium unless the ordinance is, by its express terms, applicable to condominiums.

(2) No county, city or other jurisdiction may enact any law, ordinance or regulation which would impose a burden or restric-

tion on a condominium that is not imposed on all other property of similar character not subjected to a condominium declaration.

**History:** 1977 c. 407.

### 703.275 Merger or consolidation of condominiums.

**(1) AGREEMENT; LEGAL EFFECT.** Any 2 or more condominiums, by agreement of the unit owners as provided in this section, may be merged or consolidated into a single condominium. Unless the agreement otherwise provides, the condominium resulting from a merger or consolidation is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of the preexisting associations.

**(2) REALLOCATION OF INTERESTS.** The merger or consolidation agreement shall provide for the reallocation of the allocated interests among the units of the resultant condominium. The agreement may not change the ratio that exists before the merger or consolidation between the allocated interests of any unit and the allocated interests of any other unit in the same preexisting condominium. The agreement shall state one of the following:

(a) The reallocations or the formulas upon which they are based.

(b) The percentage of the total of allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums.

**(3) AGREEMENT; OTHER PROVISIONS.** The merger or consolidation agreement may contain any provisions consistent with this chapter in addition to those specified in sub. (2).

**(4) VOTES.** The merger or consolidation agreement is effective if the agreement is approved by the unit owners of units to which at least 80% of the votes in each preexisting association are allocated. If the declaration of a preexisting association specifies that a percentage greater than 80% of the votes in that association is required to approve a merger or consolidation agreement, the greater percentage applies to the vote of that association. A declaration of a preexisting association may specify a smaller percentage and the smaller percentage applies to the vote of that association only if all of the units in the preexisting condominium are restricted exclusively to nonresidential uses.

**(5) RECORDING.** The merger or consolidation agreement constitutes an amendment to the declaration of each preexisting condominium and shall be recorded as provided in s. 703.07.

**History:** 1985 a. 188.

### 703.28 Removal from provisions of this chapter.

**(1)** All of the unit owners may remove all or any part of the property from the provisions of this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property.

**(2)** Upon removal of any property from this chapter, the property shall be deemed to be owned in common by the unit owners. The undivided interest in the property owned in common which appertains to each unit owner shall be the percentage of undivided interest previously owned by the owner in the common elements.

**History:** 1977 c. 407.

### 703.29 Removal no bar to subsequent resubmission.

The removal provided for in s. 703.28 shall in no way bar the subsequent resubmission of the property to this chapter.

**History:** 1977 c. 407.

**703.30 Rules of construction. (1) CERTAIN RULES OF LAW NOT APPLICABLE.** Neither the rule of law known as the rule against perpetuities nor the rule of law known as the rule restricting unreasonable restraints on alienation may be applied to defeat or invali-

date any provision of this chapter or of any condominium instruments, bylaws or other instrument made pursuant to this chapter.

**(2) SUBSTANTIAL CONFORMITY OF CONDOMINIUM INSTRUMENTS AND BYLAWS SUFFICIENT.** The provisions of any condominium instruments and bylaws filed under this chapter shall be liberally construed to facilitate the creation and operation of the condominium. So long as the condominium instruments and bylaws substantially conform with the requirements of this chapter, no variance from the requirements shall affect the condominium status of the property in question nor the title of any unit owner to his or her unit, votes and percentage interests in the common elements and in common expenses and common surpluses.

**(3) PROVISIONS OF CONDOMINIUM INSTRUMENTS AND BYLAWS SEVERABLE.** All provisions of condominium instruments and bylaws are severable and the invalidity of one provision does not affect the validity of any other provision.

**(4) CONFLICTS IN PROVISIONS.** If there is any conflict between any provisions of a declaration and provisions of a condominium plat or any provisions of the bylaws, the provisions of the declaration shall control. If there is any conflict between any provisions of any condominium instruments and any provisions of any bylaws, the provisions of the condominium instruments shall control. If there is any conflict between any provisions of any condominium instruments or any provisions of any bylaws and any provisions of this chapter, the provisions of this chapter shall control.

**(5) INSTRUMENTS CONSTRUED TOGETHER.** Condominium instruments shall be construed together and are determined to incorporate one another to the extent that any requirement of this chapter applying to one instrument is satisfied if the deficiency can be corrected by reference to any of the others.

**History:** 1977 c. 407.

The application of this section is limited to the condominium status of the property and title of unit owners. It does not apply to a project's status as an expanding condominium under s. 703.26. *Rock Lake Estates Unit Owners Ass'n v. Lake Mills*, 195 W (2d) 348, 536 NW (2d) 415 (Ct. App. 1995).

**703.31 Personal application. (1)** All unit owners, tenants of the owners, employes of owners and tenants or any other persons that in any manner use property or any part thereof subject to this chapter shall be subject to this chapter and to the declaration and bylaws of the association adopted under this chapter.

**(2)** All agreements, decisions and determinations lawfully made by an association in accordance with the voting percentages established in this chapter, declaration or bylaws, shall be deemed to be binding on all unit owners.

**History:** 1977 c. 407.

### 703.32 Easements and encroachments. (1) PRESUMPTION AS TO EXISTING PHYSICAL BOUNDARIES.

Any existing physical boundaries of any unit or common elements constructed or reconstructed in substantial conformity with the condominium plat shall be conclusively presumed to be its boundaries, regardless of the shifting, settlement or lateral movement of any building and regardless of minor variations between the physical boundaries as described in the declaration or shown on the condominium plat and the existing physical boundaries of any such unit or common element. This presumption applies only to encroachments within the condominium.

**(2) ENCROACHMENT AS RESULT OF AUTHORIZED CONSTRUCTION, RECONSTRUCTION OR REPAIR.** If any portion of any common element encroaches on any unit or if any portion of a unit encroaches on any common element, as a result of the duly authorized construction, reconstruction or repair of a building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the building stands.

**(3) EASEMENTS INCLUDED IN GRANT OF UNIT.** A grant or other disposition of a condominium unit shall include and grant and be subject to any easement arising under the provisions of this section without specific or particular reference to the easement.

**(4) ASSOCIATION'S RIGHT OF ENTRY TO MAKE REPAIRS.** An association shall have an irrevocable right and an easement to enter

units to make repairs to common elements when the repairs reasonably appear necessary for public safety or to prevent damage to other portions of the condominium. Except in cases involving manifest danger to public safety or property, an association shall make a reasonable effort to give notice to the owner of any unit to be entered for the purpose of such repairs. No entry by an association for the purposes specified in this subsection may be considered a trespass.

**History:** 1977 c. 407.

**703.33 Disclosure requirements. (1) MATERIAL TO BE FURNISHED BY SELLER TO PURCHASER BEFORE CLOSING.** Not later than 15 days prior to the closing of the sale of a unit to a member of the public, the seller shall furnish to the purchaser the following:

- (a) A copy of the proposed or existing declaration, bylaws and any rules or regulations, together with an index of the contents.
- (b) A copy of the proposed or existing articles of incorporation of the association, if it is or is to be incorporated.
- (c) A copy of any proposed or existing management contract, employment contract or other contract affecting the use, maintenance or access of all or part of the condominium to which it is anticipated the unit owners or the association will be a party following closing.
- (d) A copy of the projected annual operating budget for the condominium including reasonable details concerning the estimated monthly payments by the purchaser for assessments, and monthly charges for the use, rental or lease of any facilities not part of the condominium.
- (e) A copy of any lease to which it is anticipated the unit owners or the association will be a party following closing.
- (f) A description of any contemplated expansion of the condominium with a general description of each stage of expansion and the maximum number of units that can be added to the condominium.
- (g) A copy of the floor plan of the unit together with the information that is necessary to show the location of the common elements and other facilities to be used by the unit owners and indicating which facilities will be part of the condominium and which facilities will be owned by others.

**(2) DISCLOSURE FORM.** The materials required in sub. (1) shall be delivered to a prospective purchaser with cover sheet, index and tables of contents as prescribed in this section. A cover sheet and index shall precede all other materials required in sub. (1). A table of contents shall precede the section to which it applies.

(a) *Cover sheet.* A cover sheet shall be of the same approximate size and shape as the majority of the disclosure materials required in sub. (1) and shall bear the title "Disclosure Materials" and shall contain the name and location of the condominium, the name and business address of the declarant, and the name and business address of the declarant's agent or, if the seller is not the declarant, the name and address of the seller. Following this information, but separate from it, there shall appear on the front of the cover sheet 3 statements in boldface type, or capital letters no smaller than the largest type on the page, in the following wording:

1. THESE ARE THE LEGAL DOCUMENTS COVERING YOUR RIGHTS AND RESPONSIBILITIES AS A CONDOMINIUM OWNER. IF YOU DO NOT UNDERSTAND ANY PROVISIONS CONTAINED IN THEM, YOU SHOULD OBTAIN PROFESSIONAL ADVICE.

2. THESE DISCLOSURE MATERIALS GIVEN TO YOU AS REQUIRED BY LAW MAY BE RELIED UPON AS CORRECT AND BINDING. ORAL STATEMENTS MAY NOT BE LEGALLY BINDING.

3. YOU MAY AT ANY TIME WITHIN 5 BUSINESS DAYS FOLLOWING RECEIPT OF THESE DOCUMENTS, OR FOLLOWING NOTICE OF ANY MATERIAL CHANGES IN THESE DOCUMENTS, CANCEL IN WRITING THE CON-

TRACT OF SALE AND RECEIVE A FULL REFUND OF ANY DEPOSITS MADE.

(b) *Index.* Following the material required in par. (a), there shall appear an index of the disclosure materials. An index may begin on the cover sheet, if space permits, and be continued on the first and subsequent pages immediately following the cover sheet or may begin on the first page immediately following the cover sheet and continue on subsequent pages. An index shall be in substantially the following form:

The disclosure materials the seller is required by law to provide to each prospective condominium purchaser contains the following documents and exhibits:

1. *Declaration.* The declaration establishes and describes the condominium, the units and the common areas. The declaration begins on page .....
2. *Bylaws.* The bylaws contain rules which govern the condominium and effect the rights and responsibilities of unit owners. The bylaws begin on page .....
3. *Articles of incorporation.* The operation of a condominium is governed by the association, of which each unit owner is a member. Powers, duties, and operation of an association are specified in its articles of incorporation. The articles of incorporation begin on page .....
4. *Management or employment contracts.* Certain services are provided to the condominium through contracts with individuals or private firms. These contracts begin on page .....
5. *Annual operating budget.* The association incurs expenses for the operation of the condominium which are assessed to the unit owners. The operating budget is an estimate of those charges which are in addition to mortgage and utility payments. The budget begins on page .....
6. *Leases.* Units in this condominium are sold subject to one or more leases of property or facilities which are not a part of the condominium. These leases begin on page .....

7. *Expansion plans.* The declarant has reserved the right to expand the condominium in the future. A description of the plans for expansion and its effect on unit owners begins on page .....

8. *Floor plan and map.* The seller has provided a floor plan of the unit being offered for sale and a map of the condominium which shows the location of the unit you are considering and all facilities and common areas which are part of the condominium. The floor plan and map begin on page .....

(c) *Tables of contents and page numbers.* In addition to an index required by par. (b), there shall be provided tables of contents for the declaration, bylaws and articles of incorporation which shall identify each section of these documents and provide a page number for each section. Each section of disclosure material required in sub. (1) shall, on the first page of that material, identify contents of that section but, with an exception of the declaration, bylaws and articles of incorporation, shall not be required to have a table of contents. Each page of disclosure materials shall contain a page number sufficient to identify it within the body of disclosure materials. Page numbers for the declaration, bylaws and articles of incorporation required in par. (b) shall be the first page of the table of contents for that section. All other page numbers required in the index shall refer to the first page of that section on which the title appears.

(cm) *Statements; building code violations.* Except with respect to a conversion condominium with 4 or fewer units, in addition to the other information required by this section, the declarant of a conversion condominium shall provide to each purchaser all of the following:

1. A statement by the declarant, based on a report prepared by an independent architect or engineer, describing the present condition of those structural components and mechanical and electrical installations that are material to the use and enjoyment of the building.

2. A statement by the declarant of the expected useful life of each item reported on in subd. 1. or a statement that no representations are made in that regard.

3. A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(d) *Additions or exclusions.* All materials required by this section shall be delivered to a prospective purchaser with disclosure materials required under sub. (1) except that articles of incorporation, leases and expansion plans of the index need not be included if they clearly do not apply.

(3) **CHANGE IN MATERIAL FOLLOWING DELIVERY TO PURCHASER.** Any material furnished under sub. (1) may not be changed or amended following delivery to a purchaser, if the change or amendment would affect materially the rights of the purchaser, without first obtaining approval of the purchaser. A copy of amendments shall be delivered promptly to the purchaser.

(4) **PURCHASER'S RIGHT TO RESCIND CONTRACT OF SALE.** Any purchaser may at any time within 5 business days following receipt of all information required under sub. (1) and within 5 business days following receipt of all information required under sub. (3), rescind in writing a contract of sale without stating any reason and without any liability on his or her part, and the purchaser is entitled to the return of any deposits made in account of the contract.

(5) **UNTRUE STATEMENT OR OMISSION OF MATERIAL FACT.** Any seller who in disclosing information required under subs. (1) and (2) makes any untrue statement of material fact or omits to state a material fact necessary in order to make statements made not misleading shall be liable to any person purchasing a unit from him or her. However, no action may be maintained to enforce any liability created under this section unless brought within one year after facts constituting a cause of action are or should have been discovered.

(6) **WAIVER OF PURCHASER'S RIGHT.** Rights of purchasers under this section may not be waived in the contract of sale and any attempt to waive is void. However, if the purchaser proceeds to closing, the purchaser's right under this section to rescind is terminated.

(7) **SALE OF UNIT FOR NONRESIDENTIAL PURPOSES.** Requirements of this section do not apply to a sale of any unit which is primarily intended to be occupied and used for nonresidential purposes.

(8) **LOCATION OF CONDOMINIUM IMMATERIAL.** Requirements of this section shall apply to a sale of any unit offered for sale in this state without regard to the location of a condominium.

*History:* 1977 c. 407; 1985 a. 188.

Tips for Representing Condominium Sellers. Hagopian. Wis. Law. May 1993.

**703.34 Blanket mortgages and other blanket liens affecting a unit at time of first conveyance.** As a condition to the first transfer of title to each unit:

(1) Every mortgage and other lien affecting such unit, including the undivided interest in the common areas and facilities appurtenant to such unit, shall be paid and satisfied of record;

(2) A unit being transferred and an undivided interest in the common areas and facilities appurtenant thereto shall be released by partial release duly recorded; or

(3) A mortgage or other lien shall provide for or be amended to provide for a release of the unit and the undivided interest in the common areas and facilities appurtenant thereto from the lien of a mortgage or other lien upon the payment of a sum certain.

*History:* 1977 c. 407.

**703.35 Termination of contracts and leases.** If entered into before the officers elected by the unit owners under s. 703.10 take office, any management contract, employment contract, lease of recreational or parking areas or facilities, any contract or lease to which a declarant or any person affiliated with the declarant is a party and any contract or lease which is not bona fide or

which was not commercially reasonable to unit owners when entered into under the circumstances then prevailing, may be terminated by the association or its executive board at any time without penalty upon not less than 90 days' notice to the other party thereto. This section does not apply to any lease the termination of which would terminate the condominium.

*History:* 1977 c. 407.

**703.36 Provisions requiring employment of declarant or vendor to effect sale.** Any provision of a declaration or other instrument made pursuant to this chapter which requires the owner of a unit to engage or employ the declarant or any subsidiary or affiliate of the declarant for the purpose of effecting a sale or lease of any unit is void. Any provision of any contract for a sale of any unit which requires a purchaser to engage or employ the vendor or any subsidiary or affiliate of the vendor for the purpose of effecting a sale or lease of any unit is void. This section applies to declarations, instruments and contracts made prior to and after August 1, 1978.

*History:* 1977 c. 407.

**703.365 Small residential condominiums. (1) APPLICABILITY.** (a) The declaration for a small residential condominium may provide that any or all of subs. (2) to (8) or any parts of those subsections apply to the small residential condominium.

(b) If a declaration under par. (a) provides that any or all of subs. (2) to (8) or any parts of those subsections apply, then, except as provided in those subsections or parts of those subsections, this chapter applies to the small residential condominium in the same manner and to the same extent as to other condominiums.

(2) **DECLARATION.** (a) The declaration for a small residential condominium need not contain those provisions otherwise required under s. 703.09 (1) (e) to (g) and (i).

(b) The undivided percentage interest in a small residential condominium shall be allocated equally among the units.

(c) Each unit in a small residential condominium shall have one vote at meetings of the association.

(d) Commercial activity is permitted in a small residential condominium only to the extent that commercial activity is permitted in residences in a zoning ordinance adopted under s. 59.69, 60.61, 61.35 or 62.23.

(e) All actions taken under this chapter which require a vote of units or unit owners must be approved by an affirmative vote or written consent of at least 75% of the unit votes of a small residential condominium, or a greater percentage if required by the declaration or this chapter.

(3) **BYLAWS.** (a) Notwithstanding s. 703.10 (2) (a), all aspects of the management, operation and duties of the association of a small residential condominium shall be delegated to the board of directors, which may retain a manager for the small residential condominium, and the bylaws shall so specify.

(b) Under s. 703.10 (2) (c), notice of meetings shall be given in a manner best calculated to assure that actual notice is received by the owners of all units of a small residential condominium, and the bylaws shall so specify.

(c) Section 703.10 (2) (d) does not apply to a small residential condominium. The board of directors shall be composed of one representative from each unit, chosen by and from among the unit owners of that unit.

(d) All actions taken by the board of directors of a small residential condominium under this chapter must be approved by an affirmative vote or written consent of at least 75% of the board.

(e) Section 703.10 (4) does not apply to a small residential condominium.

(4) **CONDOMINIUM PLAT.** (a) The survey under s. 703.11 (2) (b) shall be an as-built survey of the property described in the declaration, building and other improvements on the land which are part of the small residential condominium.

(b) The floor plans under s. 703.11 (2) (c) need only show the location and designation of each unit in the building and the lim-

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

**(5) ASSOCIATION.** (a) Under s. 703.15 (2), an association shall exist immediately upon establishment of a small residential condominium and the declarant shall have rights in the association only as an owner of a unit or units.

(b) Directors of a small residential condominium shall be chosen in accordance with sub. (3) (c). The board of directors shall meet at least quarterly.

(c) Unless included in the bylaws, s. 703.15 (4) (b) to (d) does not apply to a small residential condominium.

**(6) EXPENSES; MAINTENANCE; OPERATION.** (a) Paragraphs (b) to (e) apply to a small residential condominium if any of the following criteria is met:

1. A proposed expenditure or action for the repair, maintenance or upkeep of the property, or for the operation of the property, is not approved by the board of directors and any unit owner believes the expenditure or action is necessary for the safety and proper use of the property or of the owner's unit.

2. An expenditure or action is approved by the board of directors and any unit owner believes the expenditure or action is contrary to the safety and proper use of the property or the owner's unit.

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

(c) The unit owner or owners may challenge the decision after reconsideration by the board of directors under par. (b) only in an arbitration proceeding under ch. 788. Acceptance of a conveyance of a small residential condominium which is subject to pars. (b) to (e) is deemed to constitute an agreement by the unit owner to submit challenges to decisions of the board of directors to arbitration.

(d) The board of directors, upon submission of the matter to arbitration as provided in par. (c), shall name a proposed arbitrator. The unit owner or owners may accept the proposed arbitrator or propose a different arbitrator. If there is no agreement on a single arbitrator, the 2 arbitrators shall select a 3rd person and the 3 shall serve as an arbitration panel chaired by the 3rd person. The expense of the arbitration shall be shared equally by the association and the unit owner or owners challenging the decision of the board of directors.

(e) The arbitration award by the arbitration panel under par. (d) shall permit or prohibit the decision and the decision shall not be implemented, if it is an affirmative action, until the award is final unless there is a bona fide emergency requiring it.

**(7) EXPANDING CONDOMINIUMS.** Section 703.26 does not apply to a small residential condominium.

**(8) DISCLOSURE REQUIREMENTS.** The disclosure required for a small residential condominium under s. 703.33 shall be limited to the disclosure required under s. 703.33 (1) (a) to (e), if applicable, and a copy of the condominium plat.

**History:** 1985 a. 188, 332; 1995 a. 201.

**703.37 Interpretation.** For purposes of interpretation of this chapter, a condominium is not a subdivision as defined in ch. 236.

**History:** 1977 c. 407.

**703.38 Applicability to existing condominiums.**

**(1)** Except as otherwise provided in this section, this chapter is applicable to all condominiums, whether established before or after August 1, 1978. However, with respect to condominiums existing on August 1, 1978, the declaration, bylaws or condominium plat need not be amended to comply with the requirements of this chapter.

**(2)** Section 703.10 (5) is not applicable to a condominium existing on August 1, 1978 if the existing declaration or bylaws provide otherwise.

**(3)** Section 703.15 (4) (c) and (d) 2. are not applicable to a condominium existing on August 1, 1978 if the existing declaration or bylaws provide otherwise.

**(4)** Section 703.18 is applicable only to those condominiums which are damaged or destroyed on or after August 1, 1978.

**(5)** Section 703.19 is applicable only to those eminent domain proceedings filed on or after August 1, 1978.

**(6)** Unless a declarant elects to conform to the requirements of s. 703.26, s. 703.26 is not applicable to those condominiums created prior to August 1, 1978 under circumstances where the declarant reserved the right to expand the condominium.

**(7)** Section 703.33 is applicable only to contracts executed after August 1, 1978.

**(8)** Section 703.35 is applicable only to leases or management and similar contracts executed after August 1, 1978.

**(9)** Unless the declaration is amended as provided under s. 703.09 (2), 1983 stats., to provide otherwise, a condominium created prior to April 22, 1986, is subject to s. 703.09 (2), 1983 stats., rather than s. 703.09 (2).

**(10)** Section 703.365 applies to condominiums created on or after April 22, 1986, and to condominiums created before April 22, 1986, that elect to be subject to s. 703.365.

**(11)** Section 703.255 applies to condominiums created after December 31, 1986.

**History:** 1977 c. 407; 1985 a. 188.