

1999 DRAFTING REQUEST

Bill

Received: **10/12/1999**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **John La Fave (608) 266-0486**

By/Representing: **himself**

This file may be shown to any legislator: NO

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Real Estate - condominiums**

Extra Copies: **Mary Matthias, Leg. Council**

Pre Topic:

No specific pre topic given

Topic:

Various additions to the condominium laws

Instructions:

See Attached

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/3	kahlepj 01/31/2000	chanaman 01/31/2000	martykr 02/01/2000	_____	lrb_docadmin 02/01/2000	lrb_docadmin 02/02/2000	

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Extra Copies: *Mary Matthews -
Leg. Council*

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FE Sent For:		11/03	10/26 MRC		MRC/RJF		
			11/4		<END> 11/4		
			MRC				

1 **AN ACT** to amend 703.09 (1) (g), 703.10 (3), 703.16 (3) and 703.24; to repeal and
 2 **recreate** 703.33 (d); and **to create** 703.10 (2g), 703.33 (cm) and (em), 704.17 (6) and
 3 704.50 (1) of the statutes; **relating to:** the bylaws and board of directors of a
 4 condominium.

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

LEGISLATIVE COUNCIL STAFF PREFATORY NOTE:

5 **SECTION 1.** 703.09 (1) (g) of the statutes is amended to read:

6 703.09 (1) (g) Statement of the purposes for which the building and each of the units
 7 are intended and restricted as to use, including any restriction on or prohibition against the
 8 rental of units and, if applicable, a statement describing the authority of the board of directors
 9 to approve and direct the eviction of any tenant.

10 **SECTION 2.** 703.10 (2g) of the statutes is created to read:

11 **703.10 (2g) RESIDENCY REQUIREMENTS FOR BOARD OF DIRECTORS . . .** (a) The bylaws may
 12 provide that a unit owner may not serve as a director unless he or she resides in his or her unit.
 13 The bylaws shall provide that if a majority of the directors are not residents of the
 14 condominium, the board of directors shall enter into a contract for the management of all units
 15 in which the owner of the unit does not reside.

does not make sense.

16 (b) If the board enters into a management contract under par. (a), a unit owner may not
 17 contract directly with any person for the rental or ^{or} lease the owner's unit. The person with
 18 whom the board contracts under par. (a) shall have all the rights and duties of a landlord set
 19 forth in ch. 704 with respect to units offered for rent or lease and shall do all of the following:

1 1. Manage the rental and lease of units.

2 2. Oversee the association trust fund under s. _____

3 **SECTION 3.** 703.10 (3) of the statutes is amended to read:

4 ' 703.10 (3) **PERMISSIBLE ADDITIONAL PROVISIONS.** The bylaws also may contain any other
5 provision regarding the management and operation of the condominium, including any
6 restriction on or requirement respecting the use and maintenance of the units and the common
7 elements. ~~The bylaws may place restrictions on the rental or lease of units including~~
8 ~~prohibiting the rental or lease of units, limiting the number or percentage of units that may be~~
9 ~~rented or leased, or requiring the prior approval of the board before entering into an agreement~~
10 ~~for the rental or lease of a unit.~~

11 **SECTION 4.** 703.16 (3) of the statutes is amended to read:

12 703.16 (3) **LIABILITY FOR ASSESSMENTS.** A unit owner shall be liable for all assessments,
13 or instalments thereof, coming due while owning a unit, ~~including any assessments coming~~
14 ~~due during the Dendency of any claim by the unit owner against the association and during any~~
15 ~~period when the unit has been leased or rented to any other person.~~ In a voluntary grant, the
16 grantee shall be jointly and severally liable with the grantor for all unpaid assessments against
17 the grantor for his or her share of the common expenses up to the time of the voluntary grant
18 for which a statement of condominium lien is recorded, without prejudice to the rights of the
19 grantee to recover from the grantor the amounts paid by the grantee for such assessments.
20 Liability for assessments may not be avoided by waiver of the use or enjoyment of any
21 common element or by abandonment of the unit for which the assessments are made.

22 **SECTION 5.** 703.24 of the statutes is amended to read:

23 **703.24 Remedies for violation by unit owner or tenant of a unit owner.** If any unit
24 owner fails to comply with this chapter, the declaration or bylaws, or a tenant of the unit owner

1 violates any rule or bylaw of the association or any condition or restriction set forth in the
 2 condominium declaration, the unit owner may be sued for damages caused by the failure or
 3 the violation or for injunctive relief, or both, by the association or by any other unit owner.

4 **SECTION 6.** 703.33⁽¹⁾ ~~(cm)~~ and (em) of the statutes are created to read:

5 703.33^{CO} ~~(cm)~~ **A** statement of the rights of the purchaser regarding the lease or rental of
 6 the unit, including any restrictions or conditions on the lease or rental of units, together with
 7 a reference to any provision in the declaration, bylaws or rules and regulations that pertain to
 8 the lease or rental of units by unit owners.

9 ~~(em)~~ **A** statement as to whether the seller is aware of any pending litigation involving
 10 the association along with a reasonably detailed description of the nature of the litigation.

11 **SECTION 7.** 703.33⁽¹⁾ ~~(d)~~ of the statutes is repealed and recreated to read: *why rc?*

12 703.33 (d) **A** copy of the projected annual operating budget for the condominium setting
 13 forth all anticipated common operating expenses, anticipated capital expenditures from
 14 reserves for capital repair or replacement of common elements, anticipated contributions to
 15 reserves, the amount of existing reserves, the estimated monthly payments by the purchaser
 16 for assessments and monthly charges for the use, rental or lease of any facilities not part of the
 17 condominium.

18 **SECTION 8.** 704.17 (6) of the statutes is created to read:

19 704.17 (6) **CONDOMINIUMS.** In this section, whenever the premises are part of a
 20 condominium: (a) “covenant or condition of the tenant’s agreement” includes any rule or
 21 bylaw of a condominium association or any condition or restriction set forth in a condominium
 22 declaration, which is included in an agreement for the rental of a condominium unit; (b)
 23 “landlord” includes the board of directors of the condominium association.

24 **SECTION 9.** 704.50 (1) of the statutes is created to read:

1 **AN ACT** to create 703.165 of the statutes; relating to: reserve accounts maintained by
 2 condominium associations.

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

3 **SECTION 1.** 703.165 of the statutes is created to read:

4 **703.165 Budget and Reserve Requirements. (1) ANNUAL BUDGET.** The board of
 5 directors shall annually prepare and distribute to all unit owners a detailed annual budget
 6 setting forth the following:

- 7 (a) All anticipated common expenses and common surpluses.
- 8 (b) The amount and purpose of each anticipated expenditure from reserves.
- 9 (c) The amount and source of all anticipated contributions to the reserve account.
- 10 (d) The amount in the reserve account.
- 11 (e) The total amount of assessments to be levied against owners.
- 12 (f) The amount and source of any other income of the association.
- 13 (g) The amount and purpose of any other anticipated expenditure by the association,

14 **(2) RESERVE ACCOUNT; BUDGETING AND RESERVE PLAN.** (a) An annual budget adopted
 15 by a board of directors on or after _____ shall provide for adequate funds in the reserve
 16 account for the purposes specified in sub. (3). The board shall assess unit owners for
 17 contributions to be placed into the reserve account.

18 (b) All funds in the reserve account shall be held in a secured, no risk, interest bearing
 19 savings, certificate of deposit or money market account in a federally insured financial
 20 institution.

? ? ← by phone
 not w/ account

1 (c) The board of directors shall develop and annually evaluate and revise, as necessary,
 2 a long-range reserve account plan. In accordance with this plan, the board of directors shall
 3 annually determine the amount which is necessary to be contributed to the reserve account for
 4 the needs of the condominium. In developing and evaluating the long-range reserve plan, the
 5 board of directors shall take into consideration all of the following:

6 1. The results of any independent professional reserve study conducted on behalf of the
 7 association.

8 2. The estimated ^{cost} ~~expense~~ of the ^{see 703.20(1)} ~~maintained and~~ repair or replacement of all major
 9 components that have a remaining useful life of less than 20 years and which the association
 10 has the duty to ^{or} repair, replace ~~or maintain~~.

11 3. The estimated repair and replacement costs of all other common elements.

12 4. The length of the normal useful life and the estimated remaining useful life of all other
 13 common elements.

14 5. The estimated costs of materials and labor necessary to repair, ~~maintain~~ and replace,
 15 as necessary, the common elements.

16 6. The amount of interest or other earnings attributable to the reserve account.

17 7. An estimate of the total annual contribution to the reserve account necessary to meet
 18 the obligations of the association to ~~maintain, repair~~ and replace common elements.

19 8. A comparison of the anticipated costs to ~~maintain, repair~~ and replace, as necessary,
 20 the common elements to the amounts held in the reserve account.

COMMENT: Should the draft provide a definition of "major components"?

21 (3) USE OF RESERVE ACCOUNT. (a) Except as provided in par. (b), the amounts contained
 22 in the reserve account shall be used only for major repairs and replacement of common

1 elements. Amounts in the reserve account shall not be used for routine expenditures such as
2 normal or routine repair and maintenance of common elements or customary services such as
3 snow and trash removal.

4 (b) Amounts in the reserve account may be used for a purpose other than those specified
5 in par. (a) if the use of reserve funds for a specific purpose and in a specific amount is approved
6 by the affirmative vote of unit owners having 75% or more of the votes.

7 (c) All amounts in the reserve account and any interest accruing on those amounts shall
8 remain in the reserve account unless expended in accordance with pars. (a) or (b).

9 (4) **BORROWING FROM RESERVE ACCOUNT.** The board of directors may borrow amounts
10 from the reserve account if all of the following are met:

11 (a) The amount and specific purpose of the loan from the reserve account is approved
12 by the affirmative vote of at least 51% of unit owners having 66% or more of the votes.

COMMENT: The drafting instructions state that borrowing from the reserve account must be voted on at the "annual meeting of the unit owners". However, it appears that ch. 703 does not require or anticipate an annual meeting of unit owners.

13 (b) The amounts borrowed are expended for repair or replacement of common
14 elements.

15 (c) The board of directors executes a loan agreement which specifies the principal
16 amount of the loan, the time period for repayment of the loan, the initial rate of interest on the
17 loan and contains a schedule of monthly principal and interest payments.

18 (d) The rate of interest on the loan is equal to at least two times the prime interest rate
19 and is adjusted annually.

20 (e) The term of the loan is no greater than 7 years.

except as provided (4)

why borrow? isn't this the only auth use?

1 (f) The amount of the loan is no greater than 40% of the total value of the reserve
2 account.

3 (g) There is no other loan from the reserve account outstanding.

4 **(5) REPORTING REQUIREMENTS.** (a) Every association shall annually provide to the
5 department of financial institutions and to each unit owner a report on the reserve account of
6 the association setting forth all of the following:

7 1. A statement of the amount held in the reserve account at the beginning and at the close
8 of the previous one-year period.

9 2. The amount and source of funds added to the reserve account during the previous
10 one-year period.

11 3. The amounts expended from the reserve account during the previous one-year period
12 and a description of the purposes for which all amounts were expended.

13 (b) Failure of the association to submit the report to the department of financial
14 institutions as required under (a) shall subject each unit holder to a forfeiture of \$50 for each
15 day of violation. *need to specify how freq. imposed?*

16 (6) **AUDIT.** Upon the written request of any unit owner ~~of any potential unit owner~~ the
17 board of directors shall conduct an audit of the reserve account and provide the results of the
18 audit to the requesting party. The board of directors may require the requesting party to pay
19 the reasonable costs of the audit.

COMMENT: What is meant by a "potential unit owner"?

20 (END)

unit → at pt of rental
unit owner first, if owner doesn't then bd does
bd needs all responsibility

all bds have this authority
or only if

make it part of lease

goes into bylaws → bd may decide to have rentals (or not to have rentals) (revision power)

either way → owner-occupant bd or mgmt agent

David or Leo
for Q's

SI bd get copy of lease
or that they be kept on file w/ assoc.

#9 modify 703.23(1) → provide name annually
each unit owner gets fined \$50/day
goes into assessment

municipality
municipality may adopt an ordinance that allows
see → s. 66.05(10) for forfeiture

RENTAL RULES

definite or allow
assoc - board to
impose rules so ↓

1. All leases for the rental of units shall be in writing, utilizing Form WB-20, Apartment Lease, or such revisions of such form lease as approved by the Wisconsin Real Estate Examining Board.

2. All such written leases must be submitted by the unit owner to the Board of Directors for approval prior to occupancy by the tenant and such approval shall not reasonably withheld.

3. All leases shall be for a period of one (1) year.

4. The lease must include a provision that the tenant acknowledges receipt of and agrees to abide by the Declaration, by-laws and Rules and Regulations of the ?

5. The lease shall also contain a provision that both the owner and the tenant are responsible for any damage caused by the tenant to **property** and/or any violation by the tenant of Declaration, By-Laws, or Rules and Regulations!

6. The lease shall also indicate the address and telephone number of the owner, and the tenant, upon occupancy, shall immediately advise the Association of his or her telephone number.

7. The lease shall also state the owner acknowledges that he or she is not relieved of any **responsibility** to pay maintenance fees or any assessed special assessments to the ?

8. Failure to submit a written lease pursuant to these rules may result in an action for eviction or damages, or both.

↳ of tenant?
9. A copy of the Form **WB-20**, Apartment Lease, is attached to these rules.

10. These Rental Rules have been approved by the Board of Directors for the _____ and shall be effective as of August 1, 1987.

1 **Proposed Legislation**
2 **Budgeting and Maintaining Adequate Reserves**

3 February 19, 1999

4 Submitted by

5 Matthew Berkowitz, CPM, Bartlein & Company

6 John P. **Poehlmann**, Reserve Advisors, Inc.

7 Theodore J. Salgado, PE, Reserve Advisors, Inc.

8 Condominium associations within the State of Wisconsin shall be required to annually prepare and
9 distribute to all unit owners a detailed proposed annual budget setting forth with particularity all
10 anticipated common operating expenses, anticipated capital expenditures from **reserves** for capital
11 repair or replacement of property owned-in-common (common elements), contributions to
12 reserves, amount of existing **reserves**, the ~~annual~~ ^{who assesses} ~~at, and~~ ~~ment~~ ~~and~~ income.

13 To implement a policy to accumulate funds for major repairs and replacements, a Board of
14 Directors often needs to educate owners about the benefits of accumulating **such funds** in advance
15 through regular assessments and to understand that the systematic accumulation of funds is:

- 16 • A means of assuring that funds for major repairs and replacements will be available when
17 needed, thus avoiding special assessments.
- 18 • An equitable method of charging current rather than future owners with the cost of the
19 current use of common elements.
- 20 • A means of preserving the market value of individual units or shares in the cooperative.

21 Inadequate **funding** for future major repairs and replacements may adversely **affect** the ability of
22 owners to sell or refinance their units, because of the concerns of prospective buyers, or because
23 of the difficulty of obtaining mortgage **financing**. **All** budgets adopted by a Board of Directors on
24 or **after** July 1, 1999 shall provide for reasonable reserves for capital expenditures and deferred
25 maintenance for the repair or replacement of the common elements-

1 RESERVE RESPONSIBILITIES OF BOARD OF DIRECTORS

2 - **Including** Developer, who by definition comprises the initial board of directors

3 The board is responsible for **assessing** unit owners for reserve contributions into a reserve fund.

4 The funds contained in the reserve fund shall only be used for major repairs and replacement of
5 common elements.

6 The reserve fund shall not be used for normal routine budget expenditures such as: repairs and
7 maintenance, snow removal, services such as trash removal, utility bills, etc. Reserve funds and
8 any interest accruing thereon shall remain in the reserve account and shall be used only for capital
9 repairs and replacements unless their use for other purposes is approved in advance by a vote of
10 $\frac{3}{4}$ of the **voting** interests.

11 REQUIREMENTS FOR THE DEVELOPMENT OF A RESERVE PLAN

12 In developing a reserve plan, the age and components of the common property must be
13 considered. The specific components of common property that an association may decide to
14 include in its **funding** plan depend on the kind of project, its construction and the governing
15 documents. Such components may include, but are not limited to: building exterior **walls**,
16 plumbing, roofs and related roofing assemblies, painting heating, and air conditioning systems,
17 roads, recreational facilities, and furniture and equipment owned or maintained by the association.

18 To determine the amount of reserves appropriate for an association, the board shall take the
19 **following** into consideration:

- 20 • Any independent professional Reserve Study by engineering specialists that the association
21 may obtain

- 1 • Identification of the **major** components which the association is obligated to repair, replace or
- 2 maintain that have a **remaining useful** life of less than 20 years

- 3 • The repair and replacement costs of the common elements

- 4 • The normal useful lives of the common elements

- 5 • Remaining lives of the common elements

- 6 • Inflation rate of materials and labor

- 7 • Interest or other earnings rates obtained **from** invested **reserves**

- 8 • An estimate of the total annual **contribution** necessary to defray the cost to repair, replace, or
- 9 maintain the components identified above

- 10 • Amount of future costs of repair and replacements as matched against existing reserves

11 **BORROWING FROM RESERVE FUND**

- 12 The reserve fund may be borrowed against by the Board of Directors of the association on behalf
- 13 of the association for common area and limited common area expenditures which are not defined
- 14 under reserve fund expenditures, by adhering to the following repayment guidelines set forth. The

- 1 loan would have to include: the principle amount of loan, specified time period for repayment,
- 2 initial interest amount, and contain a monthly principle and interest payment schedule.

- 3 The interest rate would have to be adjustable, and twice the percentage of the prime interest rate,
- 4 to account for the lost earned interest income. The initial determined interest rate would be
- 5 adjusted on an annual basis from the initial start date of the loan. The time period for repayment
- 6 of the loan could be no longer than seven years from the initial start date of the loan. Only up to
- 7 40% of the total value of the reserve fund may be borrowed. No other loan may be taken against
- 8 the reserve fund while a loan from the fund is outstanding. Borrowing of reserve **funds** would
- 9 have to be voted upon at an annual meeting of the unit owners, by a 5 1% majority vote of **2/3** of
- 10 the eligible voters.

11 ENACTMENT

- 12 **All** existing condominium associations five years or older **from** the enactment of the statute would
- 13 be allowed five years **from** the date of the enactment of the statute to come into **full** compliance
- 14 with the statute. Any condominium association constructed within five years ^{before} ~~from~~ **the enactment**
- 15 of the statute would be required to come into **full** compliance of the statute within one year **from**
- 16 the date of the enactment of the statute. All condominium associations constructed/formed after
- 17 the date of the **enacted statute shall be supplied a Reserve Study** **from** the developer and must
- 18 **have the monthly** reserve fund deduction incorporated into the first budget of the association.

19 SANCTIONS

- 20 Any association that has not complied with this law would be subject to a **penalty/fine** of no less
- 21 than \$25,000 and no more than **\$ 100,000**. This fine would be placed in the same fund with
- 22 interest earned on Real Estate Trust Accounts.

who imposes? (forfeiture)

?

1 AUDIT

2 A unit owner or any potential unit owner may in writing, request an audit of the account, but the
3 requesting party would be responsible for the cost of the audit, unless the audit was requested in a
4 legal action, and then the final outcome of the judicial proceeding would determine who is
5 responsible for the cost of the audit.

6 DUTIES AND **RESPONSIBILITIES** OF THE DEVELOPER PRIOR TO ELECTION OF
7 INITIAL NON DEVELOPER CONTROLLED BOARD OF DIRECTORS

8 Until election of the initial non developer **controlled. Board** of Directors, the same rights titles, , ,
9 powers, ' privileges, trusts, duties and obligations vested in or imposed upon the Board of
10 Directors by the Wisconsin Condominium Act and in the declaration **and** bylaws shall be held **and**
11 performed by the developer. **The** developer shall be required to develop a **reserve** plan and
12 maintain appropriate reserves in a reserve account.

13 **Within** 60 days following the election of a majority of the Board of Directors other than the
14 developer, the developer shall deliver to the Board of Directors a detailed accounting by the
15 developer, setting forth the source and nature of receipts and expenditures in connection with the
16 management, maintenance and operation of the property. The developer **will** provide for reserve
17 funds into a reserve account that is equivalent to the percent of future repair and replacement
18 costs of the common elements while the association is under developer control.

19 FULL DISCLOSURE BEFORE SALE

70.3.33 apply to both
declarant & unit owners
at sale?

1 In relation to the initial sale or offering for sale of any condominium unit, the seller must make full
2 disclosure of, and provide copies to the prospective buyer of, the following information relative to
3 the condominium project:

4 (a) the Declaration;

5 (b) the Bylaws of the association;

6 (c) a projected operating budget for the condominium unit to be sold to the
7 prospective buyer, including full details concerning the estimated monthly
8 payments for the condominium unit, estimated monthly charges for maintenance or
9 management of the condominium property, and monthly charges for the use of
10 recreational facilities; and

11 (d) a floor plan of the apartment to be purchased by the prospective buyer and the
12 street address of the unit, if any, and if the unit has no unique street address, the
13 street address of the project.

14 (e) in addition, any developer of a conversion condominium shall include the following
15 information:

16 (1) A specific statement of the amount of any initial or special condominium fee due
17 from the purchaser on or before settlement of the purchase contract and the basis
18 of such fee;

19 (2) Information, if available, on the actual expenditures made on all repairs, maintenance,
20 operation, or upkeep of the subject building or buildings within the last 2 years, set forth
21 tabularly with the proposed budget of the condominium and cumulatively, broken down
22 on a per unit basis in proportion to the relative voting strengths allocated to the units by
23 the bylaws. If such building or buildings have not been occupied for a period of 3 years
24 then the information shall be set forth for the last 2 year period such building or buildings
25 have been occupied;

26 (3) a description of any provisions made in the budget for reserves for capital expenditures
27 and an explanation of the basis for such reserves, or if no provision is made for such
28 reserves, a statement to that effect; and

← s/that
be 3?

1 (4) For developments of more than 6 units for which the notice of intent to convert is issued
2 after the effective date of this **amendatory** Act, an engineer's report furnished by the
3 developer as to the present condition of all structural components and major utility
4 installations in the condominium which statement shall include the approximate dates of
5 construction, installation, major repairs and the expected useful life of such items, together
6 with the estimated cost (in current dollars) of replacing such items.

7 All of the information required by this Section which is available at the time shall be furnished to
8 the prospective buyer before execution of the contract for sale. Thereafter, no changes or
9 amendments may be made in any of the items furnished to the prospective buyer which would
10 materially **affect** the rights of the buyer or the value of the unit without obtaining the approval of
11 at least 75% of the buyers then owning interest in the condominium. **If all** of the **information** is not
12 available at the time of execution of the contract for sale, **then the contract shall** be voidable at
13 option **of the** buyer at any time up until 5 days after the **last item of** required information is
14 furnished to the prospective buyer, or until the closing **of the** sale, whichever & earlier. **Failure** on
15 the part of the **seller** to make full disclosure as required by this Section shall entitle the buyer to
16 rescind the contract for **sale** at any time before the closing of the contract and to receive a refund
17 of all deposit moneys paid with interest thereon at the rate then in effect for interest on judgments.

18 A sale is not an initial sale for the purposes of this Section if there is not a bona fide transfer of the
19 ownership and possession of the condominium unit for the purpose of occupancy of such unit as
20 the result of the sale or if the sale was entered into for the purpose of avoiding the requirements of
21 this Section. The buyer in the first bona fide sale of any condominium unit has the **rights** granted
22 to buyers under this Section. If the buyer in any sale of a condominium unit asserts that such sale
23 is the first bona fide sale of that unit, the seller has the burden of proving that his interest was
24 acquired through a bona fide sale.

25 REALES - DISCLOSURES -FEES.

703.33 additional?
replace?

1 In the event of any resale of a condominium unit by a unit owner other than the developer such
2 owner shall obtain **from** the Board of Directors and shall make available for inspection to the
3 prospective purchaser, upon demand. the **following**:

4 (1) A copy of the Declaration, bylaws, other condominium instruments and any rules
5 and regulations.

6 (2) A statement of any liens, including a statement of the account of the unit setting
7 forth the amounts of unpaid assessments and other charges due. 703.16(5)

10 bus.
day

8 (3) A statement of any capital expenditures anticipated by the unit owner's association
9 within the current or succeeding two fiscal years.

10 (4) A statement of the status and amount of the reserve for replacement fund and any
11 portion of such fund earmarked for any specified project by the Board of
12 Directors.

13 (5) A copy, of the statement of financial condition of the unit **owner's association** for
14 the last **fiscal** year for which such statement is available.

15 (6) A **statement of** the status of **any** pending suits or judgments in **which** the **unit**
16 owner's association is a party.

17 (7) A statement setting forth what insurance **coverage** is provided for all unit owners
18 by the unit owner's association.

19 (8) A statement that any improvements or alterations made to the unit, or the limited
20 common elements assigned thereto, by the prior unit owner are in good **faith**
21 believed to be in compliance with the condominium instruments.

22 (9) The identity and mailing address of the principal officer of the unit owner's
23 association or of the other officer or **agent** as is specifically designated to receive
24 notices.

25 The principal officer of the unit owner's association or such other officer as is specifically
26 designated shall furnish the above information when requested to do so in writing and within 30
27 days of the request.

by anyone?
or by unit seller?

15 days
703.33

Deed of trust?

1 Within 15 days of the recording of a mortgage or trust deed against a unit ownership given by the
2 owner of that unit to securing debt, the owner shall inform the Board of Directors of the unit
3 owner's association of the identity of the lender together with a mailing address at which the
4 lender can receive notices **from** the association.

5 A reasonable fee covering the direct out-of-pocket cost of providing such information and
6 copying may be charged by the association or its Board of Directors to the unit seller for
7 providing such information → *info (1) - (9)?*

1. The first part of the text discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part of the text focuses on the role of the management team in setting clear goals and objectives for the organization. It highlights that effective communication and collaboration are essential for achieving these goals.

3. The third part of the text discusses the importance of regular communication and reporting to the stakeholders. It notes that this helps in building trust and maintaining a positive relationship with the community.

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Kelly, Judy

From: LaFave, John
Sent: Sunday, March 21, 1999 9:05 PM
To: Kelly, Judy
Subject: FW: Meeting to discuss Chapter 703 legislation

Please print this e-mail for me.
Thanks.

Rep. John La Fave
Room 220-N
P.O. Box 8952
Madison, WI 53708-8952
Toll-free in Wis: 1-888-534-0023
Off ice: (608) 266-0486
Home: (414) 357-7432

RPN ?
MES ?
JK ?

-----Original Message-----

From: Kahler, Pam
Sent: Friday, March 19, 1999 9:26 AM
To: LaFave, John
Subject: RE: Meeting to discuss Chapter 703 legislation

The date and time are fine for me. I will reserve our conference room on the 2nd floor for the meeting. Take the stairway to the left (just before the elevators) after you enter the building; at the top of the stairs, take a right to the end of the short hallway, then go left. The conference room is the 3rd room on the right after that last left turn. If anyone gets lost, they can just ask at the front desk at the top of the stairway. Does the legislation that will be drafted relate to a specific topic so that I can review the relevant statutory sections beforehand? Thanks.

To: Pam Kahler, LRB
From: John LaFave
Re: Condo legislation

- Information is attached.
Attending the meeting will be:
- Leo Ries, ~~Asst. City Atty.~~ Housing Division, City of Milw.
 - David Haldbrooks, Ass't. City Atty., Milw.
 - Mary Mathias, Leg. Council
 - John Sumi, Sen. ~~Proboscini's~~ Office
 - Me

Milw. Journal Sentinel
3/28/99

More deserving

The 42 million Americans who live in condominium, cooperative or organized communities aren't getting the leadership they deserve, say experts in the field.

They should be getting plain language rules, alternative dispute resolution, equity in tax treatment and increased scrutiny of reserve funds, said Evan MacKenzie, University of Illinois professor, speaking at a recent conference of the Community Association Institute.

Brent Herrington, an association manager speaking at the same meeting, told colleagues that too many governing groups engage in heavy-handed rules enforcement and bureaucracy and have board members who serve to advance personal agendas. There also is poor communication and resident apathy.

He observed that today's association manager needs the business skills of a corporate executive but the heart of a social worker to provide leadership, inspiration and know-how to help volunteer boards create successful communities.

Both speakers called for reforms and increased involvement and education of unit owners.

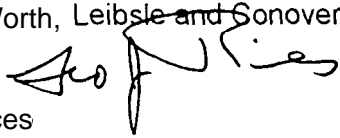
5*

DEPARTMENT OF NEIGHBORHOOD SERVICES

Housing and Neighborhood Development Division

March 29, 1999

MEMO TO: Roger Raasch, Wisconsin Condominium Association
Neil Siegel, MGIC
Morton Grodsky, Hersh & Grodsky
Matt Berkowitz, Bartlein and Company, Inc.
Scott L. Langlois, Quarles and Brady
State Representative John LaFave
State Representative Jeff Stone
John Poehlmann, Reserve Advisors, Inc.
David Halbrooks, City Attorney's Office
Ted Salgado, Reserve Advisors, Inc.
Robert Liebsle, Godfrey, Neshek, Worth, Liebsle and Sonover

FROM: Leo J. Ries, Deputy Commissioner 
Department of Neighborhood Services

SUBJECT: Workgroup on Condominium Issues

Ref. Condo Memo4

Attached are the notes from our meeting on March 26, 1999 as well as the final version of our proposed legislative agenda relative to condominium regulation. These recommendations are being forwarded to the state legislative reference bureau for drafting.

Be assured that I will keep you informed as this bill works its way through the legislature, and advise you of the public hearing when it is scheduled.

Thank you all for the time, enthusiasm and insight that you invested in this important project. I think we should all take pride in what we have accomplished.

cc: Lee Jensen
Pat Curley
Mike Dawson
Ald. Thomas Nardelli
Ald. Don Richards

NOTES FROM MEETING ON MARCH 26, 1999

Attending: John LaFave Ted Saigado
 John Poehlmann Corrina Herr
 David Halbrooks Matt Berkowitz
 Leo Ries Scott Langlois
 Robert Liebsle Neil Siegel

Drafting legislation

John LaFave reported that he, Leo Ries and David Halbrooks will meet a representative of the state legislative reference bureau at 10 A.M. on March 31st to begin drafting legislation. Also joining them will be Senator Richard Grobschmidt who has agreed to serve as The Senate sponsor for the bill.

Condo clearance letter

It was decided to drop the idea whereby Title Companies would be required to obtain a clearance letter and a real estate condition report from Condo Associations. It was felt that this would be too difficult to achieve.

Reserve Requirements

It was agreed that the state should not require a reserve study since it would result in numerous reports of minimal value conducted by individuals with questionable qualifications.

It was also agreed that the state should not require a minimum reserve amount, as is currently the case in Michigan. John Poehlmann noted that Michigan is currently re-evaluating this provision in their statutes.

It was agreed to endorse the proposal drafted by Berkowitz, Poehlmann and Saigado, with a couple of modifications.

Follow-up

It was agreed that the group should reconvene after the legislation is drafted. John LaFave asked everyone to identify people from around the state who could testify in support of the proposed changes.

It was further agreed to reconvene in 2000, to evaluate changes which are currently being considered by the State of Michigan.

DEPARTMENT OF NEIGHBORHOOD SERVICES
Housing and Neighborhood Development Division

March 15, 1999

MEMO TO: Roger Raasch, **Wisconsin** Condominium Association
Neil Siegel, **MGIC**
Morton Grodsky, **Hersh & Grodsky**
Matt Berkowitz, Bartlein and Company, Inc.
Scott L. Langlois, Quarles and Brady
State Representative John **LaFave**
State Representative Jeff Stone
John Poehlmann, Reserve Advisors, Inc.
David Halbrooks, City Attorney's Office
Ted Salgado, Reserve Advisors, Inc.
Robert Liebsle, Godfrey, Neshek, Worth, ~~Leibslie and Conover~~

FROM: Leo J. Ries, Deputy Commissioner 
Department of Neighborhood Services

SUBJECT: Workgroup on Condominium Issues

Ref. Condo Memo4

The next meeting of this Workgroup is scheduled for:

Friday, March 26, 1999
at 1:30 p.m.
City Attorney's Office
City Hall, 8th Floor
200 East Wells Street, Room 804

If we are unable to complete our work on March 26th, a follow-up meeting has tentatively been planned for:

Friday, April 9, 1999
Department of City Development
809 North Broadway
3-West Conference Room
1:30 p.m.

ATTACHMENTS:

1. Notes from March 12, 1999 meeting.
2. Proposed legislative agenda as of March 12, 1999
3. Rental rules proposed by Mort Grodsky
4. Proposed legislation on maintaining reserves
5. Chapter 718 of Florida Condominium Act.

cc: Lee Jensen
Pat Cutiey
Mike Dawson
Ald. Thomas Nardelli
Ald. Don Richards

NOTES FROM MEETING ON MARCH 12, 1999

Attending:	Mort Grodsky	Ted Salgado
	John LaFave	Corrina Herr
	John Poehlmann	Matt Berkowitz
	David Halbrooks	Scott Langlois
	Leo Ries	

Payment of Condo fees by Developer

Mort Grodsky advised that 703.16(3) be modified to make explicit the obligation of the developer to pay assessments on units which have not been conveyed to new owners. The group endorsed language as proposed in item #12 & 13 on the attached.

It was understood that there are problems associated with this clause. For example, maintenance costs could be lower for the developer than for the association. Nonetheless, it is believed that the clause as proposed will at least insure that reserve payments are being made prior to the Transition event, so that the a-ion will have some money in the bank when it takes over control of the association.

Municipal enforcement of code and maintenance violations against common areas

Leo reported a concern from City building inspectors that they often have trouble enforcing the code on common areas of a condo complex. Since condo's are often unincorporated and do not have a registered agent, inspectors end up having to deal with all the individuals who are listed as unit holders.

It was suggested that this problem could be remedied by requiring all condo's to be incorporated (except for small residential condo's which are described in 703.36(5) as associations of 4 units or less). The group, however, felt that incorporation wasn't necessary.

Instead, it was proposed that all condos be required to submit a reserve report and the name of a registered agent annually to the Department of Financial Institutions (DFI). It was noted that 703.23(l) already requires associations to appoint a registered agent, but there is no penalty for failing to do so. Consequently, it was proposed that penalties be charged "up to \$50 per day per unit holder" for failure to comply with enforcement by DFI or the local municipality.

There was some discussion on the relative advantage and disadvantage of public disclosure of an association's reserve status. The group felt that advantages outweighed disadvantages. It was felt that public reporting would ensure compliance with state statute and would provide needed information to prospective unit buyers.

NOTE: City of Milwaukee could amend rental property recording ordinance to require the listing of a registered agent for condo's as it currently does for rental properties.

Reserve Requirements

The discussion continued on the proposed language relative to "Budgeting and Maintaining Adequate Reserves" as proposed by John Poehlmann and Ted Salgado.

Matt Berkowitz endorsed the proposal but proposed three modifications:

1. The funds must be kept in a secured, no risk, interest bearing savings, certificate of deposit, or money market account in a federally insured financial institution.
2. All existing condominium associations five years or older from the enactment of the statute, would be allowed five years from the date of the enactment **of the statute, to come into full compliance with the statute.** Any condominium association **constructed within five years** from the enactment of the statute, would be **required to come into full compliance of the statute,** within one year from the date of the enactment of the statute. All condominium associations constructed/formed after the date of the enacted statute, shall be supplied a Reserve Study from the developer, and must have the monthly reserve fund deduction incorporated into the first budget of the association.
3. Any association who has not complied with the law, would be subject to a penalty/fine of not less than \$25000.00 and no more than **\$100,000.00.** This fine would be placed in the same fund, with interest earned on Real Estate Trust Accounts.

but only before?

? (

Discussion is still needed on what constitutes an adequate reserve and how to penalize an association for failing to maintain an adequate reserve. --

Who does penalizing - it?



City of Milwaukee

Leo J. Ries
Deputy Commissioner

Dept. of Neighborhood Services

809 N. Broadway, 2nd Flr.
Milwaukee, WI 53202

Phone (414) 286-5600
FAX (414) 286-5447
lries@mkedcd.org

PROPOSED LEGISLATIVE AGENDA ON CONDOMINIUM REGULATIONS

GOVERNANCE

1. Require that condo boards be composed only of owner-occupants, or where that is not possible, require that there be a centralized management agent with authority to:
 - screen, approve and evict tenants
 - oversee the-association's trust fund
 - oversee day-to-day operations of the association.

2. Make explicit in state statute the right of condo associations to be completely owner-occupied (this provision already exists in Florida statutes..)

INFORMATION REQUIREMENTS

3. Expand language in Chapter 703 relative to the content of condominium declaration and by-laws to permit boards the authority to approve and evict tenants.
4. Modify Real Estate Condition Report (Wis. Stats. 709.02) to include additional information:

At present only Items B4 and C26 refer to condos and home associations. Expand the form to cover condo items such as the following:

C28 - The Association presently utilizes a professional property management firm: Yes ___ No S_e_l_e_c_t_i_v_e_l_y

C29 - The reserve amounts as of this date are approximately \$_____

C30 - Owners are aware of any pending litigation involving the association:
Y e_s No _____

c31 - Condo declaration permits units to be rented: Yes ___ N ___o

5. Modify Chapter 703.33(2) (a) relative to information which must be conveyed to purchasers of condo units to include - "Procedures and penalties relative to the rental units which have been approved by the Board of Directors of the Association".

COMPLIANCE/ENFORCEMENT ISSUES

6. Modify Chapter 704 relative landlord tenant relations to provide for the following where rentals are allowed:

- a) Explicitly give condo boards the authority to evict tenants (cross reference this with changes in Chapter 703 as described in item #3 above).
- b) Require that lease include a provision that the tenant acknowledges receipt of and agrees to abide by the Declaration, by-laws and Rules and Regulations of the Association.

5

condo bd selects agent

prohibiting rentals

in bylaws or dec?

(consequences)
any procedures or penalties
↓
eviction

rentals allowed

PROPOSED LEGISLATIVE AGENDA ON CONDOMINIUM REGULATIONS

GOVERNANCE

1. Require that condo boards be composed only of owner-occupants, or where that is not possible, require that there be a centralized management agent. (It is understood that the authority of the managing agent will need to be defined.)

703.15
(2)(a)
2. Make explicit in state statute the right of condo associations to be completely owner-occupied (this provision already exists in Florida statutes.)

INFORMATION REQUIREMENTS

- should not be unit owner if owner does not live there?* *is there a question about this?*
3. Review state-mandated minimum requirements for what needs to be in condominium documents and insert language relative to management of rental units.
4. Modify Real Estate Condition Report (Wis. Stats. 709.02) to include additional information as recommended by Roger Raasch.

At present only Items B4 and C26 refer to condos and home associations. Expand the form to cover condo items such as the following:

C28 - The Association presently utilizes a professional property management firm: Yes No Selectively

c29 - The reserve amounts as of this date are approximately \$_____

c30 - Owners must have any future tenants screened by the Board of Directors before taking occupancy. Yes No

c31 - Owners are aware of their liability of renting/leasing without Board approval. Yes No

And other statements in an effort to achieve our objectives.

5. Make it mandatory that the Board attach a copy of the clearance letter form which is submitted to the title companies regarding no outstanding amounts, liens, etc. This would require the cooperation of all title companies in the State.

COMPLIANCE/ENFORCEMENT ISSUES

RPN
6. Explicitly give condo boards the authority to evict tenants.

703.25
7. Expand language in Chapter 703 (which currently allows unit holders to sue associations) to include local municipalities. Include language which allows local municipalities to levy fines and to attach these fines to the Real Estate tax. Cross reference Section 823 which describes nuisance conditions.

as
over
of 3
over
is this
necessary?

MES
JK

8. Require all unit owners to pay fees regardless of whether the unit holder has a claim against the association.
9. Failure to make the annual reserve agent to DFI or to annually provide the name of the registered agent as required in 703.23(1) shall subject each unit holder to a fine of up to \$50/day until compliance (Since local municipalities would be given joint jurisdictions to enforce this clause, Chapter 605 will have to be modified giving municipalities the authority to attach a special tax for this purpose.) This clause would be implemented following adequate notice, as described in 605, in the form of personal service or certified letter to the unit holder.

on the
assoc?

DEVELOPER REGULATION

10. Develop legislation which formalizes the "transition event" - i.e. the point in time when control of the condominium is transferred from the developer to the association. (Chapter 718 of Florida statutes is a good model). Identify standards that a developer has to meet before being relieved responsibilities - i.e.:

- Financial statements and an audit.
- Conveyance-of association records.
- Condition of real estate - i.e. require a transition study.

11. Require a developer to post a bond, equal to 2-3% of development budget to guarantee condition of condo complex for at least one year after Transition.-

12. Changes to 703.16(3). The Declarant shall be liable for all assessments, or installments thereof, coming due on any unit owned by the declarant prior to the sale of any such unit to the initial purchaser commencing at the time that any unit in a given building receives a certificate of occupancy or the equivalent authorization issued by the governmental body having jurisdiction.

Does this
always
occur? →

See 823, 114(1)(d)

13. During the year following the Transition event, the maintenance and reserve budget will be reviewed. If annualized expenses were underfunded, than the association may have a claim against the developer's bond.

by
assoc? →

RESERVE REQUIREMENT

14. Require certain minimum reserves (this issue is still under discussion - see language proposed by John Poehlmann, et al. - attached).

15. Condo shall be required to submit a reserve report annually to the Department of Financial Institutions (DFI) specifying the:

- amount of money in fund at beginning of the year.
- amount of money added during the year.
- amount of money spent from the fund during the year and a description of activities that the fund was spent on.
- amount of money in fund at the end of the year.

- c) Require that the lease contain a provision that both the owner and the tenant are responsible for any damage caused by the tenant to property and/or violation by the tenant of Declaration, By-Laws, or Rules and Regulations.
 - d) Require that the lease indicate the address and telephone number of the owner, and the tenant, upon occupancy, shall immediately advise the Association of his or her telephone number.
7. Expand language in Chapter 703 (which currently allows unit holders to sue associations) to include the state or political subdivisions thereof. Include language which allows local municipalities to levy fines and to attach these fines to the Real Estate tax. Cross reference Section 823 which describes nuisance conditions.
8. Require all unit owners to pay fees regardless of whether the unit holder has a claim against the association. *monthly wa inter area fees* *s/b owner* *complaint*
9. Failure to make the annual reserve report to DFI or to annually provide the name of the registered agent as required in 703.23(l) shall subject each unit holder to a forfeiture of up to \$50/day until compliance (Since local municipalities would be given joint jurisdictions to enforce this clause, Chapter 66.05 will be followed to give municipalities the authority to attach a special tax for this purpose.) This clause would be implemented following adequate notice, as described, for example, in 66.05, in the form of personal service or certified letter to the unit holder.

DEVELOPER REGULATION

10. Develop legislation which formalizes the "transition event" - i.e. the point in time when control of the condominium is transferred from the developer to the association. (Chapter 718 of Florida statutes is a good model). Identify standards that a developer has to meet before being relieved responsibilities - i.e.:

- Provision of financial statements and an audit.
- Conveyance of association records.
- Condition report relative to real estate - i.e. require a transition study.

11. Developer will be required to post an irrevocable letter of credit equal to 5% of the development budget to guarantee that the condominium was designed and built without defect and that any defects identified at Transition have been cured. The letter of credit shall remain in effect for at least one year after Transition. Any claims against the letter of credit will be subject to mediation through a non-judicial dispute resolution process. *by association*

12. Changes to 703.16(3). Following Transition, the Declarant shall be liable for all assessments, or installments thereof, coming due on any unit owned by the declarant prior to the sale of any such unit to the initial purchaser commencing at the time that any unit in a given building receives a certificate of occupancy or the equivalent authorization issued by the governmental body having jurisdiction.

yes - always done in every municipality

total cost to build unit

?

$\frac{\$ \text{ paid by unit owner} \times \text{no. of units}}{12}$

13. At Transition, Declarant shall provide to the association a fee equal to at least 1/12 of the annual operating and capital budget for the association.

RESERVE REQUIREMENT

14. Condo shall be required to submit a reserve report annually to the Department of Financial Institutions (DFI) specifying the:
- amount of money in fund at beginning of the year.
 - amount of money added during the year.
 - amount of money spent from the fund during the year and a description of activities that the fund was spent on.
 - amount of money in fund at the end of the year.
15. Adopt legislation relative to "Budgeting and Maintaining Adequate Reserves" as proposed in attached memo from Berkowitz, Poehlmann and Salgado dated February 19, 1999 with two exceptions - i.e.:
- a) Insert language that Reserve Funds must be kept in a secured, no risk, interest bearing savings, certificate of deposit or money market account in a federally insured financial institution.
 - b) The section on Sanctions should be modified to conform with the penalties proposed in item #9 above.

Why would municipality care about this

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Proposed Legislation
Budgeting and Maintaining Adequate Reserves

February 19, 1999

Submitted by

Matthew Berkowitz, CPM, Bartlein & Company

John P. Poehlmann, Reserve Advisors, Inc.

Theodore J. Salgado, PE, Reserve Advisors, Inc.

8 Condominium associations within the State of Wisconsin shall be required to annually prepare and
9 distribute to all unit owners a detailed proposed annual budget **setting** forth with particularity all
10 anticipated common operating expenses, anticipated capital expenditures from reserves for capital
11 repair or replacement of property owned-in-common (common elements), contributions to
12 reserves, amount of existing reserves, the annual assessment, and other income.

13 To implement a policy to accumulate funds for major repairs and replacements, a Board of
14 Directors often needs to educate owners about the benefits of accumulating such funds in advance
15 through **regular** assessments and to understand that the systematic accumulation of funds is:

16 • A means of assuring that funds for major repairs and replacements will be available when
17 needed, thus **avoiding** special assessments.

18 • An equitable method of **charging** current rather than future owners with the cost of the
19 current use of common elements.

20 • A means of **preserving** the market value of individual units or shares in the cooperative.

21 Inadequate **funding** for future major repairs and replacements may adversely affect the ability of
22 owners to sell or refinance their units, because of the concerns of prospective buyers, or because
23 of the difficulty of obtaining mortgage financing. All budgets adopted by a Board of Directors on
24 or **after** July 1, 1999 shall provide for reasonable reserves for capital expenditures and deferred
25 maintenance for the repair or replacement of the common elements.

1 RESERVE RESPONSIBILITIES OF BOARD OF DIRECTORS

2 - Including Developer, who by definition comprises the initial board of directors

3 The board is responsible for **assessing** unit owners for reserve contributions into a reserve fund.

4 The funds contained in the reserve fund shall only be used for major repairs and replacement of
5 common elements.

6 The reserve fund shall not be used for normal routine budget expenditures such as: repairs and
7 maintenance, snow removal, services such as trash removal, utility bills, etc. Reserve funds and
8 any interest **accruing** thereon shall remain in the reserve account and shall be used only for capital
9 repairs and replacements unless their use for other purposes is approved in advance by a vote of
10 $\frac{3}{4}$ of the voting interests.

11 REQUIREMENTS FOR ~~THE~~ DEVELOPMENT OF A RESERVE PLAN

12 In **developing** a reserve plan the age and components of the common property must be
13 considered. The specific components of common property that an association may decide to
14 include in its funding plan depend on the kind of project, its construction and the **governing**
15 documents. Such components may include, but are not limited to: building exterior walls,
16 plumbing, roofs and related roofing assemblies, **painting**, heating and air conditioning systems,
17 roads, recreational facilities, and furniture and equipment owned or maintained by the **association**.

18 To determine the amount of reserves appropriate for an association, the board shall take the
19 following into consideration:

20 . Any independent professional Reserve Study by engineering specialists that the **association**
21 may obtain

- 1 • Identification of the major components which the association is obligated to repair, replace or
- 2 maintain that have a remaining **useful life** of less than 20 years

- 3 • The repair and **replacement** costs of the common elements

- 4 • The normal **useful** lives of the common elements

- 5 • Remaining lives of the common elements

- 6 • Inflation rate of materials and labor

- 7 • Interest or other earnings rates obtained **from** invested reserves

- 8 • An estimate of the total **annual** contribution necessary to **defray** the cost to repair, replace, or
- 9 maintain the components identified above

- 10 • **Amount** of **future** costs of repair and replacements as matched against existing reserves

11 BORROWING FROM RESERVE FUND

12 The reserve **fund** may be borrowed against by the Board of Directors of the **association** on behalf
13 of the association for common area and limited common. area expenditures which are not defined
14 under reserve fund expenditures, by adhering to the following repayment guidelines set forth. The

1 loan would have to include: the principle amount of loan, specified time period for repayment,
2 initial interest amount, and contain a monthly principle and interest payment schedule.

3 The interest rate would have to be adjustable, and twice the percentage of the prime interest rate,
4 to account for the lost earned interest income. The initial determined interest rate would be
5 adjusted on an annual basis from the initial start date of the loan. The time period for repayment
6 of the loan could be no longer than seven years **from** the initial start date of the loan. Only up to
7 40% **of the** total value of the reserve fund may be borrowed. No other loan may be taken against
8 the reserve **fund** while a loan **from the fund** is **outstanding**. Borrowing of reserve funds would
9 have to be voted upon at an annual meeting of the unit owners, by a 51% majority vote of 2/3 of
10 the eligible voters.

11 ENACTMENT

12 All existing condominium associations five years or older **from** the enactment of the statute would
13 be allowed **five years from** the date of the enactment of the statute to come into **full** compliance
14 with the statute. Any condominium association constructed within five years **from** the enactment
15 of the statute would be required to come into **full** compliance of the statute within one year **from**
16 the date of the enactment of the statute. **All** condominium associations constructed/formed after
17 the date of the enacted statute **shall** be supplied a Reserve Study **from** the developer and must
18 have the monthly reserve **fund** deduction incorporated into the first budget of the association.

19 SANCTIONS

20 Any association that has not complied with this law would be subject to a penalty/fine of no less
21 than \$25,000 and no more than \$100,000. This fine would be placed in the same **fund** with
22 interest earned on Real Estate Trust Accounts.

1 AUDIT

2 **A** unit owner or any potential unit owner may in writing, request an audit of the account, but the
3 requesting party would be responsible for the cost of the audit, unless the audit was requested in a
4 legal action, and then the final outcome of the judicial proceeding would determine who is
5 responsible for the cost of the audit.

6 DUTIES AND RESPONSIBILITIES OF THE DEVELOPER PRIOR TO ELECTION OF
7 INITIAL NON DEVELOPER CONTROLLED BOARD OF DIRECTORS

8 Until election of the initial non developer controlled Board of Directors, the same rights titles,
9 powers, **privileges**, trusts, duties and obligations vested in or imposed upon the Board of
10 Directors by the Wisconsin **Cóndominium** Act and in the declaration and bylaws shall be held and
11 performed by the developer. **The** developer shall be required to develop a reserve plan and
12 maintain appropriate reserves in a reserve account.

13 Within 60 days following the election of a majority of the Board of Directors other than the
14 developer, the developer shall deliver to the Board of Directors a detailed **accounting** by the
15 developer, **setting** forth the source and nature of receipts and expenditures in connection with the
16 management, maintenance and operation of the property. The developer will provide for reserve
17 **funds** into a reserve account that is equivalent to the percent of **future** repair and replacement
18 costs of the common elements while the association is under developer control.

19 FULL DISCLOSURE BEFORE SALE

- 1 In relation to the initial sale or offering for sale of any condominium unit, the seller must make full
2 disclosure of, and provide copies to the prospective buyer of, the following information relative to
3 the condominium project:
- 4 (a) the Declaration;
 - 5 (b) the Bylaws of the association;
 - 6 (c) a projected operating budget for the condominium unit to be sold to the
7 prospective buyer, including full details concerning the estimated monthly
8 payments for the condominium unit, estimated monthly charges for maintenance or
9 management of the condominium property, and monthly charges for the use of
10 recreational facilities; and
 - 11 (d) 2 floor plan of the apartment to be purchased by the prospective buyer and the
12 street address of the unit, if any, and if the unit has no unique street address, the
13 street address of the project.
 - 14 (e) in addition, any developer of a conversion condominium shall include the following
15 information:
- 16 (1) A specific statement of the amount of any initial or special condominium fee due
17 from the purchaser on or before settlement of the purchase contract and the basis
18 of such fee;
 - 19 (2) Information, if available, on the actual expenditures made on all repairs, maintenance,
20 operation, or upkeep of the subject building or buildings within the last 2 years, set forth
21 tabularly with the proposed budget of the condominium and cumulatively, broken down
22 on a per unit basis in proportion to the relative voting strengths allocated to the units by
23 the bylaws. If such building or buildings have not been occupied for a period of 3 years
24 then the information shall be set forth for the last 2 year period such building or buildings
25 have been occupied;
 - 26 (3) a description of any provisions made in the budget for reserves for capital expenditures
27 and an explanation of the basis for such reserves, or if no provision is made for such
28 reserves, a statement to that effect; and

1 (4) For developments of more than 6 units for which the notice of intent to convert is issued
2 after the effective date of this amendatory Act, an engineer's report furnished by the
3 developer as to the present condition of all structural components and major utility
4 installations in the condominium, which statement **shall** include the approximate dates of
5 construction, installation, major repairs and the expected useful life of such items, together
6 with the estimated cost (in current dollars) of replacing such items.

7 All of the information required by this Section which is available at the time shall be furnished to
8 the prospective buyer before execution of the contract for sale. Thereafter, no changes or
9 amendments may be made in any of the items furnished to the prospective buyer which would
10 materially **affect** the rights of the buyer or the value of the unit without obtaining the approval of
11 at least 75% of the buyers then owning interest in the condominium. If all of the information is not
12 available at the time of execution of the contract for sale, then the contract shall be voidable at
13 option of the buyer at any time up until 5 days after the last item of required information is
14 furnished to the prospective buyer, or until the closing of the sale, whichever is earlier. Failure on
15 the part of the seller to make full disclosure as required by this Section shall entitle the buyer to
16 rescind the contract for sale at any time before the closing of the contract and to receive a refund
17 of all deposit moneys paid with interest thereon at the rate then in effect for interest on **judgments**.

18 A sale is not an initial sale for the purposes of this Section if there is not a bona fide transfer of the
19 ownership and possession of the condominium unit for the purpose of occupancy of such unit as
20 the **result** of the sale or if the sale was entered into for the purpose of avoiding the requirements of
21 this Section. The buyer in the first bona fide sale of any condominium unit has the **rights** granted
22 to buyers under this Section. If the buyer in any sale of a condominium unit asserts that such sale
23 is the first bona fide sale of that unit, the seller has the burden of proving that his interest was
24 acquired through a bona fide sale.

25 RESALES - DISCLOSURES - FEES.

1 In the event of any resale of a condominium unit by a unit owner other than the developer such
2 owner shall obtain **from** the Board of Directors and shall make available for inspection to the
3 prospective purchaser, upon demand. the following:

- 4 (1) A copy of the Declaration, bylaws, other condominium instruments and any rules
5 and **regulations**.
- 6 (2) A statement of any liens, **including** a statement of the account of the unit setting
7 forth the amounts of unpaid assessments and other charges due.
- 8 (3) A statement of any capital expenditures anticipated by the unit owner's association
9 within the current or succeeding two fiscal years.
- 10 (4) A statement of the status and amount of the reserve for replacement fund and any
11 portion of such fund earmarked for any specified project by the Board of
12 Directors.
- 13 (5) A copy of the statement of financial condition of the unit owner's association for
14 the last fiscal year for which such statement is available.
- 15 (6) A statement of the status of any pending suits or **judgments** in which the unit
16 owner's association is a party.
- 17 (7) A statement setting forth what insurance coverage is provided for all unit owners
18 by the unit owner's association.
- 19 (8) A statement that any improvements or alterations made to the unit, or the limited
20 common elements assigned thereto, by the prior unit owner are in good faith
21 believed to be in compliance with the condominium instruments.
- 22 (9) The identity and **mailing** address of the principal officer of the unit owner's
23 association or of the other officer or **agent** as is specifically **designated** to receive
24 notices.

25 The principal officer of the unit owner's association or such other officer as is specifically
26 designated shall furnish the above information when requested to do so in writing and within 30
27 days of the request.

1 Within 15 days of the recording of a mortgage or trust deed against a unit ownership given by the
2 owner of that unit to securing debt, the owner shall **inform** the Board of Directors of the unit
3 owner's association of the identity of the lender **together** with a mailing address at which the
4 lender can receive notices **from** the association.

5 A reasonable fee covering the direct out-of-pocket cost of providing such information and
6 copying may be charged by the association or its Board of Directors to the unit seller for
7 providing such information.

Chapter 718

718.202 Sales or reservation deposits prior to closing.--

(1) If a developer contracts to sell a condominium parcel and the construction, **furnishing**, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing, the division director has the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. Default determinations and refund of deposits shall be governed by the escrow release provision of this subsection. Funds shall be released from escrow as follows:

(a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the **funds** shall be paid to the buyer together with any interest earned.

(b) If the buyer defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(c) If the contract does not provide for the payment of any interest earned on the escrowed funds, interest shall be paid to the developer at the closing of the transaction.

(d) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at the closing' of the transaction, unless prior to the-disbursement the escrow agent receives. **from** the buyer written notice of a dispute between the buyer and developer.

(2) All payments which are in excess of the 10 percent of the sale price described in subsection (1) and which have been received prior to completion of construction by the developer **from** the buyer on a contract for purchase of a condominium parcel shall be held in a special escrow account established as provided in subsection (1) and controlled by an escrow agent and may not be used by the developer prior to closing the transaction, except ~~as~~ provided in subsection (3) or except for refund to the buyer. If the money remains in this special account for more than 3 months and earns interest, the interest shall be paid as provided in subsection (1).

(3) If the contract for **sale** of the condominium unit so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price **from** the special account required by subsection (2) when the construction of improvements has **begun**. He or she may use the funds in the **actual** construction and development of the condominium property in which the unit to be sold is located. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons or for advertising purposes. A contract which permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for the signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

(4) The term "**completion** of construction" means issuance of a **certificate** of occupancy for the entire

building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and, in a jurisdiction where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvements according to the plans and specifications.

(5) The failure to comply with the provisions of this section renders the contract voidable by the buyer, and, if voided, all sums deposited or advanced under the contract shall be **refunded** with interest at the highest rate then being paid on savings accounts, excluding certificates of deposit, by savings and loan associations in the area in which the condominium property is located.

(6) If a developer enters into a reservation agreement, the developer shall pay into an escrow **account** all reservation deposit payments. Reservation deposits shall be payable to the escrow agent, who shall give to the prospective purchaser a receipt for the deposit, acknowledging that the deposit is being held pursuant to the requirements of this subsection. The funds may be placed in either interest-bearing or non-interest-bearing accounts, provided that the funds shall at all reasonable times be available for withdrawal in **full** by the escrow agent. The developer shall maintain separate records for each condominium or proposed condominium for which deposits are being accepted. Upon written request to the escrow agent by the prospective purchaser or developer, the funds shall be immediately and without qualification refunded in **full** to the prospective purchaser. Upon such refund, any interest shall be paid to the prospective purchaser, unless **otherwise** provided in the reservation agreement. A reservation deposit shall not be released directly to the developer except as a down payment on the purchase price simultaneously with or subsequent to the execution of a contract. Upon the execution of a purchase agreement for a unit, any funds paid by the purchaser as a deposit to reserve the unit pursuant to a reservation agreement, and any interest thereon, **shall** cease to be subject to the **provisions of this subsection and shall** instead be subject to the **provisions** of subsections (1)-(5).

(7) Any developer who **willfully** fails to comply with the provisions of this section concerning establishment of an escrow account, deposits of funds into escrow, and withdrawal of funds **from** escrow is **guilty** of a felony of the third degree, punishable as provided in s. 775.052, s. 775.083, or s. 775.084, or the successor **thereof**. **The** failure to establish an escrow account or to place funds in an escrow account is prima facie evidence of an intentional and purposeful violation of this section.

(8) Every **escrow** account required by this section shall be established with a bank; a savings and loan association; an attorney who is a member of The Florida **Bar**; a real estate broker registered under chapter 475; a title insurer authorized to do business in this state, acting through either its employees or a title insurance agent licensed under chapter 626; or any financial lending institution having a net worth in excess of \$5 million. The escrow agent shall not be located outside the state unless, pursuant to the escrow agreement, the escrow agent submits to the jurisdiction of the division and the courts of this state for any cause of action arising from the escrow. Every escrow agent shall be independent of the **developer**, and no developer or any officer, director, affiliate, subsidiary, or employee of a developer may serve as escrow agent. Escrow funds may be invested only in securities of the **United States** or an agency thereof or in accounts in institutions the deposits of which are insured by an **agency** of the United States.

(9) Any developer who is subject to the provisions of this section is not subject to the provisions of s. 501.1375.

(10) ~~Nothing in this section shall be construed to require any filing with the division in the case of~~
condominiums other than residential condominiums.

History—s. 1, ch 76-222; s. 7, ch. 79-314; s. 3, ch. 80-323; s. 3, ch. 81-185; s. 9, ch. 84-368; s. 5, ch 87-117; s. 14, ch. 90-151; s. 860, ch. 97-102.

7 15.203 Warranties.--

(1) The developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended as follows:

(a) As to each unit, a warranty for 3 years commencing with the completion of the building containing the unit.

(b) As to the personal property that is transferred with, or appurtenant to, each unit, a warranty which is for the same period as that provided by the manufacturer of the personal property, commencing with the date of closing of the purchase or the date of possession of the unit, whichever is earlier.

(c) As to **all** other improvements for the use of unit owners, a 3-year warranty commencing with the date of completion of the improvements.

(d) As to all other personal property for the use of unit owners, a warranty which shall be the same as that provided by the manufacturer of the personal property.

(e) **As** to the roof and structural components of a building or other improvements and as to mechanical, electrical, and plumbing elements serving improvements or a building, except mechanical elements serving only one unit, a warranty for a period beginning with the completion of construction of each building or improvement and continuing for 3 years thereafter or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(f) As to all other property which is conveyed with a unit, a **warranty to** the initial purchaser of each unit for a period of 1 year from the date of closing of the purchase or the, date of **possession**, whichever occurs first. .

(2) The contractor, and **all** subcontractors and suppliers, grant to the developer and to the purchaser of each unit implied warranties of fitness as to the work performed or materials supplied by them as follows:

(a) For a period of 3 years **from** the date of completion of construction of a building or improvement., a warranty as to the roof and structural components of the building or improvement and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit.

(b) For a period of 1 year after completion of all construction, a warranty as to all other improvements and materials.

(3) "Completion of a building or improvement" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and in jurisdictions where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

(4) These warranties are conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

3084

(5) The warranties provided by this section shall inure to the benefit of each owner and his or her successor owners and to the benefit of the developer.

(6) Nothing in this section affects a condominium as to which rights are established by contracts for sale of 10 percent or more of the units in the condominium by the developer to prospective unit owners prior to July 1, 1974, or as to condominium buildings on which construction has been commenced prior to July 1, 1974.

(7) Residential condominiums may be covered by **an** insured warranty program **underwritten** by a licensed insurance company registered in this state, provided that such warranty program meets the minimum requirements of this chapter; to the degree that such warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

History.--s. 1, ch 76-222; s. 1, **ch.** 77-221; s. 8, ch. 77-222; s. 3, **ch. 78-340**; s. 9, ch 79-314; s. 11, ch. 91-103; **s. 5**, ch. 9 1426; s. 8, **ch 92-49**; s. 86 **1**, ch **97-102**.

is the declarant a unit owner before the unit is sold?

is \$50/day penalty for not notifying DFI of res. agent?
(declarant is supposed to do it)

Reserves (for payment of future common expenses?)
703.15(3)(a)1.

what are all these funds/accounts mentioned?

Real Estate Trust account
reserve for replacement fund
reserves
reserve fund

who to call w/ Q's:

for additional info → incorporate
into index
o. 703.33(2)(b)

Kahler, Pam

From: LaFave, John
Sent: Monday, March 29, 1999 8:54 PM
To: Kahler, Pam
cc: Matthias, Mary
Subject: Written information that I sent to you in advance of Wednesday's meeting

For your information, there are a few errors in the packet that I sent to you. Also, the work group met last Friday and we made some more revisions, additions, deletions, and corrections. For example, on page 2 of the "Proposed Legislative Agenda" in point #9 is listed Chapter 605; it should be 666.05 (or so they said). I hope that didn't cause too much confusion if you looked at that section.

See you tomorrow.

Rep. *John La Fave*
Room 220-N
P.O. Box 8952
Madison, WI 53708-8952
Toll-free in Wis: 1-888-534-0023
Office: (608) 266-0486
Home: (414) 357-7432

Kahler. Pam

From: Marchant, Robert
Sent: Wednesday, October 27, 1999 11:21 AM
To: Kahler, Pam
Subject: Condominium draft

Hi, Pam--

In my opinion, it is sufficient to require the board to deposit the funds in an interest-bearing, federally-insured account at a bank, savings bank or savings and loan association or, if the board is otherwise eligible to make the deposit, at a credit union.

OR

Although it takes a lot more words, here is a hyper-accurate description of the permissible accounts:

". . . in an interest-bearing account at a bank, savings bank or savings and loan association or, if the board is otherwise eligible to make the deposit, at a credit union. Deposits required under this xxx shall be made in an account that is insured by the federal deposit insurance corporation or the board of the national credit union administration or by any other instrumentality of or corporation chartered by the united states that insures deposits held by a bank, savings bank, savings and loan association or credit union and that is supported by the full faith and credit of the federal government."

I hope this helps. Let me know if you have any other questions.

Robert J. Marchant
Legislative Attorney
State of Wisconsin Legislative Reference Bureau
robert.marchant@legis.state.wi.us

ask Rob about the a/c's is it redundant to

say int-bearing & then specify
S/ it just say int-bearing a/c or
just specify the 3 types?

Kahler. Pam

From: Matthias, Mary
Sent: Monday, September 27, 1999 12:18 PM
To: Kahler, Pam
Subject: FW:Condo draft

Hi Pam- here is one of the condo drafts mentioned on the **email** to Rep.LaFave which I cc'd you on.

Mary Matthias
Senior Staff Attorney
Wisconsin Legislative Council Staff
ph.: (608)266-0932; fax: (608)266-3830
mary.matthias@legis.state.wi.us

-----Original Message-----

From: Uselman, Tracey
Sent: Wednesday, September 08, 1999 2:29 PM
To: Matthias, Mary
Subject:



0196/1

Tracey Uselman
Wisconsin Legislative Council Staff
One East Main, Ste 401
Madison, WI 53701
(608) 266-7676
tracey.uselman@legis.state.wi.us

Subject: condos

I spoke with Marc Shovers and we need clarification on that remaining issue (municipal forfeitures etc) before he or I can draft it. I called and left a message for Halbrooks and I'll try to sort it out with him.

Mary Matthias
Senior Staff Attorney
Wisconsin Legislative Council Staff
ph.: (608)266-0932; fax: (608)266-3830
mary.matthias@legis.state.wi.us

From: John Poehlmann [john @ reserveadvisors.com]
Sent: Tuesday, September 14, 1999 9:59 AM
To: Mary Matthias; John LaFave
cc: Ted
Subject: Proposed Condo Legis.- Condo Reserve Accounts

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks for sending the condo drafts Mary. Great job putting our committee's thoughts into a form that is understandable and meaningful!! A few initial comments from Ted and myself regarding the Reserve Accounts language WLCS: 0196/1:

Page 2, Line 8, '2. The estimated cost of the capital repair or replacement.....' is preferable because we believe the word 'cost' is more clear than expense and do not want to mislead the reader with the use of the word 'maintenance'.
see s. 703.20(1)

Page 2 - Question at bottom. **Comment:** Should the draft provide a definition of "major components"?

NO, we do not believe the document should define major components. 'Major' could reasonably mean different things to different condominium associations. Asphalt pavement could be a major common element to a townhome development with 20,000 square feet of asphalt streets and parking lots, while asphalt might only comprise a short driveway at a high rise condominium and a minimal common element relative to other high rise common elements such as mechanical systems.

Page 3 - Comment - Suggest substituting the words "special meeting" for "annual meeting", which apparently is not required.

703.15(4)(c) → one all other regular?

Page 4 - Line 16, Audit. Suggest striking out 'or any potential unit owner' altogether. Potential unit owner is considered to be a prospective buyer of one or more units in the association.

Last, can you provide me with David Halbrooks email address and phone? I'd like to forward our thoughts and communicate with him directly. Thanks in advance.

Again, great job with the language. We're very excited about moving this legislation forward and helping condominium owners become better informed homeowners.

John

Kahler, Pam

From: Matthias, Mary
Sent: Monday, September 27, 1999 12:29 PM
To: Kahler, Pam
Subject: FW:the other one

Pam--Here's the other one.

As Rep. LaFave's email said, he'd like these drafted up by the experts (that's you, believe it or not!!) I took a shot at them--please revise them as necessary. Do you still have the written materials that were handed out at the meeting last Spring? That's what I based these on. I didn't do anything about that municipal for. issue because I'm not sure what they want and I'm not sure how to start drafting that one. David Halbrooks is the expert. Do you still have his number? He is hard to get a hold of- very busy. I haven't had any luck. The other guy, (Leo Ries) quit his job with the City of Mil. and isn't working on this any longer. I'd prefer if whoever is going to draft that part contact Halbrooks directly rather than me trying to pass the info on second hand.

Please keep me updated on this project and call me if you have any questions. Also, please incorporate the changes suggested by John Poehlmann in the email I sent earlier today.

Thanks!

Mary Matthias
Senior **Staff Attorney**
Wisconsin Legislative Council Staff
ph.: (608)266-0932; fax: (608)266-3830
mary.matthias@legis.state.wi.us

-----Original Message-----

From: Uselman, Tracey
Sent: Wednesday, September 08, 1999 2:30 PM
To: Matthias, Mary
Subject:



0120/1

Tracey Uselman
Wisconsin Legislative Council Staff
One East Main, Ste 401
Madison, WI 53701
(608) 266-7676
tracey.uselman@legis.state.wi.us

Kahler, Pam

From: Matthias, Mary
Sent: Monday, September 27, 1999 12:08 PM
To: LaFave, John
cc: Shovers, Marc; Kahler, Pam; Nelson, Robert P.
Subject: RE: Moving forward with condo legislation

Rep. La Fave:

I will forward the drafts to the LRB, with the changes suggested by John Poehlmann. David Halbrooks hasn't gotten back to me yet on the forfeiture issue.

Mary Matthias
Senior Staff Attorney
Wisconsin Legislative Council Staff
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-----Original Message-----

From: LaFave, John
Sent: Thursday, September 23, 1999 5:41 PM
To: Matthias, Mary
cc: Kelly, Judy; David Halbrooks; John La Fave; John Poehlmann, Reserve Advisors; Matthew Berkowitz (FAX); Morton M. Grodsky (FAX); Robert Leibsle; Scott L. Langlois, Attorney, Quarles & Brady; Wayne Parker; Wis Condominium Assoc. - Roger Raasch
Subject: Moving forward with condo legislation

Mary,

As per my voice mail message to you today, let's move ahead with the LRB drafting your two drafts. I would prefer that they be drafted as ONE bill. Have you clarified the information you need to move ahead on the portion of the legislation that you reference below regarding municipal forfeitures?

I have not heard back from any condo Workgroup members with comments or concerns, other than the suggestions made by John Poehlmann concerning reserve funds. I include John's comments below and they sound sensible to me. I'd appreciate your thoughts about them.

FYI --- I have talked to Joe Murray and Mike Theo from the Wisconsin Realtors Association. I told them that before this legislation is introduced that I will share it with them. They informed me that they have an attorney on their staff who is an 'expert' regarding condominiums. They will want her to look at this bill. I will look forward to their input and hope to gain their support for the final draft.

Sincerely,

Rep. *John La Fave*

Room 220-N
P.O. Box 8952
Madison, WI 53708-8952
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=====

-----Original Message-----

From: Matthias, Mary
Sent: Thursday, September 09, 1999 1:34 PM
To: LaFave, John

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

22
LRB-374 1/P1dn
PJK:....mrc
cmh

1. Because the response to the language prepared by Mary Matthias was so favorable, I worked from that prepared language rather than the instructions submitted back in March. You will have to let me know if there is anything else you need included in the draft. In addition to these drafter's notes, the draft contains a number of imbedded notes for you to respond to.

2. How do you want these provisions to apply to small residential condominiums (no more than four units)? You will need to review s. 703.365. Under current law, a declaration for a small residential condominium need not contain the information required under s. 703.09 (1) (g), which was amended in this bill to include rental restrictions. Do you want s. 703.10 (2g) to apply? (See especially s. 703.365 (3) (c).) Do you want s. 703.365 (8) to be amended to cross-reference s. 703.33 (1) (a) to *em*?

3. How do you want to handle the applicability of these new provision? See s. 703.38 by way of example;

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: Pam.Kahler@legis.state.wi.us

(9) 4. This version does not ^{yet} address the municipal forfeiture issue.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3741/P1

PJK:....mrc

cm. 1
r m. 102
ren

P2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- note
H-5 (if possible)

requirements, rental of units, budgets
and reserve

W.P.O.
please
run compare w/ statutes
program

condominium

regenerate

- 1 AN ACT to amend 703.09 (1) (g), 703.10 (3), 703.16 (3) and 703.24; to repeal and
- 2 recreate 703.33 (d); and to create 703.10 (2g), 703.165, 703.33 (cm) and (em),
- 3 704.17 (6) and 704.50 (1) of the statutes; relating to: the bylaws and board of
- 4 directors of a condominium/Reserve accounts maintained by a condominium
- 5 association.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided.

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

PREFATORY NOTE:

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

703.09 (1) (g) Statement of the purposes for which the building and each of the units are intended and restricted as to use including: any restriction on or prohibition against the rental of units and, if applicable, a statement describing the authority of the board of directors to ~~exercise the power~~ of any tenant,

or a person under contract with the board of directors under s. 703.10 (2g), with respect

terminating the tenancy

plain period

Insert 2-1

1 SECTION 2. 703.10 (2g) of the statutes is created to read:

2 703.10 (2g) RESIDENCY REQUIREMENTS FOR BOARD OF DIRECTORS (a) The bylaws
3 may provide that a unit owner may not serve as a director unless he or she resides
4 in his or her unit. The bylaws shall provide that if a majority of the directors are not
5 residents of the condominium, the board of directors shall enter into a contract for
6 the management of all units in which the owner of the unit does not reside.

7 (b) If the board enters into a management contract under par. (a), a unit owner
8 may not contract directly with any person for the rental or lease of the owner's unit.
9 The person with whom the board contracts under par. (a) shall have all the rights and
10 duties of a landlord set forth in ch. 704 with respect to units offered for rent or lease
11 and shall do all of the following:

- 12 1. Manage the rental and lease of units.
- 13 2. Oversee the association trust fund under s. _____.

14 SECTION 3. 703.10 (3) of the statutes is amended to read:

15 703.10 (3) PERMISSIBLE ADDITIONAL PROVISIONS. The bylaws also may contain
16 any other provision regarding the management and operation of the condominium,
17 including any restriction on or requirement respecting the use and maintenance of
18 the units and the common elements. The bylaws may place restrictions on the rental
19 or lease of units including prohibiting the rental or lease of units. limiting the
20 number or percentage of units that may be rented or leased, or requiring the prior
21 approval of the board before entering into an agreement for the rental or lease of a
22 unit.

23 SECTION 4. 703.16 (3) of the statutes is amended to read:

24 703.16 (3) LIABILITY FOR ASSESSMENTS. A unit owner shall be liable for all
25 assessments, or instalments thereof, coming due while owning a unit, including any

Unit owners who reside in their units

Insert 2-6

Insert 2-13

plain period

or

is

1 assessments coming due during the pendency of any claim by the unit owner against
 2 the association ~~and~~ during any period when the unit ~~has been~~ leased or rented to any
 3 other person) In a voluntary grant, the grantee shall be jointly and severally liable
 4 with the grantor for all unpaid assessments against the grantor for his or her share
 5 of the common expenses up to the time of the voluntary grant for which a statement
 6 of condominium lien is recorded, without prejudice to the rights of the grantee to
 7 recover from the grantor the amounts paid by the grantee for such assessments.
 8 Liability for assessments may not be avoided by waiver of the use or enjoyment of any
 9 common element or by abandonment of the unit for which the assessments are made.

SECTION 5. 703.165 of the statutes is created to read:

703.165 Budget and Reserve Requirements. (1) ANNUAL BUDGET. The

board of directors shall annually prepare and distribute to all unit owners a detailed annual budget setting forth the following:

- (a) All anticipated common expenses and common surpluses.
- (b) The amount and purpose of each anticipated expenditure from reserves.
- (c) The amount and source of all anticipated contributions to the reserve account.
- (d) The amount in the reserve account.
- (e) The total amount of assessments to be levied against owners.
- (f) The amount and source of any other income of the association.
- (g) The amount and purpose of any other anticipated expenditure by the association.

(2) RESERVE ACCOUNT; BUDGETING AND RESERVE PLAN. (a) An annual budget

adopted by a board of directors on or after ~~1/1/99~~ shall provide for adequate

1 funds in the reserve account for the purposes specified in sub. (3). The board shall
2 assess unit owners for contributions to be placed into the reserve account.

3 (b) All funds in the reserve account shall be held in ~~a secured~~ ^{an} interest-
4 bearing savings, certificate of deposit ~~or~~ ^{higher} money market account in a federally insured
5 financial institution, as defined in S. 705.01(3)

6 (c) The board of directors shall develop and annually evaluate and revise, as
7 necessary, a long-range reserve account plan. In accordance with this plan, the
8 board of directors shall annually determine the amount ~~which~~ ^{that} is necessary to be
9 contributed to the reserve account for the needs of the condominium. In developing
10 and evaluating the long-range reserve plan, the board of directors shall take into
11 consideration all of the following:

12 1. The results of any independent professional reserve study conducted on
13 behalf of the association.

14 2. The estimated ~~costs~~ ^{cost} of the ~~repair or replacement~~ repair or replacement of all
15 major components that have a remaining useful life of less than 20 years and ~~when~~ ^{that}
16 the association has the duty to repair ~~or~~ ^{or} replace ~~or maintain~~ ^{maintain}

17 3. The estimated repair and replacement costs of all other common elements.

18 4. The length of the normal useful life and the estimated remaining useful life
19 of all other common elements.

20 5. The estimated costs of materials and labor necessary to repair ~~maintain~~ ^{maintain} and
21 replace, as necessary, the common elements.

22 6. The amount of interest or other earnings attributable to the reserve account.

23 7. An estimate of the total annual contribution to the reserve account ~~necessary~~ ^{that is}
24 to meet the obligations of the association to ~~maintain~~ ^{maintain} repair and replace common
25 elements.

Insert 4-5

including accrued interest,

1 8. A comparison of the anticipated costs to ~~maintain~~ repair and replace, as
2 necessary, the common elements to the amounts held in the reserve account.

3 (3) USE OF RESERVE ACCOUNT. (a) Except as provided in par. (b), the ~~amounts~~ ^{funds}
4 ~~amounts~~ in the reserve account ~~shall~~ ^{may} be used only for major repairs and
5 replacement of common elements. ~~amounts~~ ^{Funds} in the reserve account ~~shall~~ ^{may} not be used
6 for routine expenditures such as normal or routine repair ~~and~~ maintenance of
7 common elements or customary services such as snow ~~and~~ trash removal.

8 (b) ~~amounts~~ ^{Funds} in the reserve account may be used for a purpose other than those
9 specified in par. (a) if the use of reserve funds for a specific purpose and in a specific:
10 amount is approved by the affirmative vote of unit owners having 75% or more of the
11 votes.

12 (c) ~~All amounts~~ in the reserve account ~~and any interest accruing on those~~
13 ~~amounts shall remain in the reserve account unless expended in accordance with~~
14 pars. (a) or (b).

15 (4) BORROWING FROM RESERVE ACCOUNT. The board of directors may borrow
16 ~~amounts~~ from the reserve account if all of the following ^{are met:} ^{conditions}

17 (a) The amount and specific purpose of the loan from the reserve account is
18 approved by the affirmative vote of at least 51% of unit owners having 66% or more
19 of the votes. ^{at a special meeting of the association}

20 (b) The amounts borrowed are expended for repair or replacement of common
21 elements.

22 (c) The board of directors executes a loan agreement ^{which} ^{specifies} the
23 principal amount of the loan, the time period for repayment of the loan ^{and} the initial
24 rate of interest on the loan ^{and} contains a schedule of monthly ^{principal and interest}
25 ^{payments} ^{on the loan} ^{that} ^{the payment of}

Insert 5-21

amounts for the
repayment of loan

the payment of

lending

2

1 (d) The rate of interest on the loan is equal to at least ~~two~~ times the prime
2 ~~interest~~ rate and is adjusted annually. *as reported by the federal*

3 (e) The term of the loan is ~~not~~ *not longer* than 7 years. *reserve board in*

4 (f) The amount of the loan is ~~not~~ *not* greater than 40% of the total value of the reserve
5 *at the time the loan is approved under* account *par. (a)*

H. § 15, 4

6 (g) There is no other loan from the reserve account outstanding.

Insert 6-6

7 (5) REPORTING REQUIREMENTS. (a) Every association shall annually provide to
8 the department of financial institutions and to each unit owner a report on the
9 reserve account of the association setting forth all of the following:

Insert 6-7

10 1. A statement of the amount held in the reserve account at the beginning and
11 at the close of the previous one-year period.

12 2. The amount and source of funds added to the reserve account during the
13 previous one-year period.

14 3. The amounts expended from the reserve account during the previous
15 one-year period and a description of the purposes for which all amounts were
16 expended.

Insert 6-19

17 (b) Failure of the association to submit the report to the department of financial
18 institutions as required under *par.* (a) shall subject each unit *owner* ~~holder~~ to a forfeiture of \$50
19 for each day of violation.

Insert 6-23

20 (6) AUDIT. Upon the written request of any unit owner ~~or any unit owner~~
21 *by* the board of directors shall conduct an audit of the reserve account and provide
22 the results of the audit to the requesting party. The board of directors may require
23 the requesting party to pay the reasonable costs of the audit.

24 SECTION 6. 703.24 of the statutes is amended to read:

if any

703.24 Remedies for violation by unit owner or tenant of a unit owner.

If any unit owner fails to comply with this chapter, the declaration or bylaws, ~~or~~ ^a tenant of ~~the~~ unit owner violates any rule or bylaw of the association or any condition or restriction set forth in the condominium declaration, the unit owner may be sued for damages caused by the failure or the violation or for injunctive relief, or both, by the association or by any other unit owner.

Insert 7-6

SECTION 7. 703.33 (cm) ~~of the statutes~~ ⁽¹⁾ ~~is~~ created to read:

~~703.33~~ (cm) A statement of the rights of the purchaser regarding the lease or rental of the unit, including any restrictions or conditions on the lease or rental of units, together with a reference to any provision in the declaration, bylaws or rules and regulations that pertain to the lease or rental of units by unit owners.

Insert 7-11

~~703.33~~ (cm) A statement as to whether the seller is aware of any pending litigation involving the association along with a reasonably detailed description of the nature of the litigation.

SECTION 8. 703.33 (d) of the statutes is repealed and recreated to read:

~~703.33~~ (d) A copy of the projected annual operating budget for the condominium setting forth all anticipated common operating expenses, anticipated capital expenditures from reserves for capital repair or replacement of common elements, anticipated contributions to reserves, the amount of existing reserves, 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.

Insert 7-24

SECTION 9. 704.17 (6) of the statutes is created to read:

704.17 (6) CONDOMINIUMS. In this section, ~~whenever~~ ^{if} the premises are part of a condominium, (a) "covenant or condition of the tenant's agreement" includes any rule or bylaw of a condominium association or any condition or restriction set forth

1 in a condominium declaration, which is included in an agreement for the rental of
2 a condominium unit; (b) "landlord" includes the board of directors of the
3 condominium association.

4 (B) SECTION 10. 704.50 of the statutes is created to read:
5 704.50 ~~of the statutes~~ **Condominiums.** In this section, "association" has the meaning
6 given specified in s. 703.02 (1m) and "condominium" has the meaning given specified in s. 703.02 (4) and
7 (c) "declaration" has the meaning given specified in s. 703.02 (8) and "unit" has the meaning
8 given specified in s. 703.02 (15). (e) "Unit owner" has the meaning given in s. 703.02 (17).

9 (b) Every agreement for the rental or lease of a condominium unit shall be in
10 writing and shall contain all of the following:

11 (a) A statement that the owner, the board of directors of the association or an
12 agent of the board of directors may terminate the tenancy if the tenant violates any
13 rule or bylaw of the association or any condition or restriction set forth in the
14 declaration. *provision of*

15 (b) An appendix containing the rules and bylaws of the association and ~~the~~
16 conditions or restrictions set forth in the declaration to which the tenant is subject. *condominium*

17 (c) A provision stating that the tenant acknowledges receipt of and agrees to
18 abide by the association rules and bylaws and the conditions and restrictions set
19 forth in the declaration to which the tenant is subject in any *provisions of*

20 (d) The address and telephone number of the owner. *unit*

21 (3) Within 5 business days after entering into an agreement for the rental or
22 lease of a unit, the owner shall provide a copy of the agreement to the association. The
23 association shall keep a copy of the agreement on file while the agreement is in effect. *the unit*
any rental or lease

Unless 4.703.10(2g)(b) applies,

provisions of

Inset 8-23 →

1

(4) A tenant shall provide the association with his or her telephone number as

2

soon as possible after the tenant ~~takes up residence in~~ the unit and shall notify the

3

association if the telephone number changes.

4

(END)

enters into possession of

D. note

INSERT 2-1

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

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

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

8 SECTION 2. 703.10 (2) (e) of the statutes is amended to read:

9 703.10 (2) (e) The manner of assessing against and collecting from unit owners
10 their respective shares of the common expenses. including amounts for deposit in the
11 reserve account under s. 703.165 (2).

History: 1971 c. 407; 1987 a. 262; 1991 a. 29.5; 1995 a. 27.

****NOTE: I assume the reserve account and the purposes for which it may be used are "common expenses". However, see s. 703.16 (2), in which common expenses and reserves for the payment of future common expenses are mentioned separately. Perhaps the "and" should be changed to "including" in s. 703.16 (2).

See s. 703.16 (6) (ink.). Do you want nonpayment of sums assessed for reserves specifically added for purposes of constituting a lien? I'm not sure why reserves are left out of that section but mentioned separately in s. 703.16 (2).

(END OF INSERT Z-1)

INSERT 2-6

****NOTE: How do you want to reconcile this provision with the requirement under s. 703.1072) (d)? If the bylaws provide that a unit owner may not serve as a director unless he or she resides in his or her unit, it may be impossible to elect a board of directors with only one or none who is not a unit owner. Do you want the requirement that only unit owners who reside in their units may be directors to supersede the requirement under s. 703.10 (2) (d) so that more than one person who is not unit owner may be on the board?

(END OF INSERT 2-6)

INSERT 2-13



****NOTE: I'm not sure what is meant. by the association trust fund. Is it the reserve account? ✓

(END OF INSERT 2-13)

INSERT 4-2 ← 4-5

1 **703.165 Budget and reserve requirements. (1) ANNUAL BUDGET.** (a) The
2 board of directors shall annually prepare and distribute to all unit owners a detailed
3 annual budget setting forth all of the following:

- 4 1. All anticipated common expenses and common surpluses.
- 5 2. The amount and purpose of each anticipated expenditure from reserves.
- 6 3. The amount and source of all anticipated contributions to the reserve
- 7 account.
- 8 4. The amount in the reserve account.

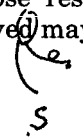
****NOTE: Is the "reserve account" under subds. 3. and 4. the same as "reserves" under subd. 2.? See my note after sub. (2) (a). ✓

- 9 5. The total amount of assessments to be levied against unit owners.
- 10 6. The amount and source of any other income of the association.
- 11 7. The amount and purpose of any other anticipated expenditure by the
- 12 association.

13 (b) An annual budget adopted by a board of directors on or after the effective
14 date of this paragraph . . . [revisor inserts date], shall provide for adequate funds in
15 the reserve account established under sub. (2) for the purposes specified in sub. (3). ✓

16 (2) **RESERVE ACCOUNT; BUDGETING AND RESERVE PLAN.** (a) The board of directors
17 shall establish a reserve account for the association and shall assess unit owners for
18 contributions to be placed into the reserve account.

****NOTE: I'm confused on the relationship between this reserve account and "reserves" under current, law, which under s. 703.16 (2) are to be used for future common expenses? Is this reserve account different from those "reserves" or is it intended to hold all those "reserves"? If the latter, then I assume you want to limit how, under current law, reserved may be used.



1 (b) All funds in the reserve account shall be held in an interest-bearing,
2 federally insured account at a bank, savings bank, savings and loan association or
3 credit union.

(END OF INSERT 4-2)

INSERT 5-21

****NOTE: Under sub. (3) (a), the only acceptable use of the reserve account funds, unless approved by the unit owners, is for repairs and replacement of common elements. Why would the board have to borrow from the reserve account under this subsection to use reserve funds for the only acceptable use, the repair or replacement of common elements?

(END OF INSERT 5-21)

INSERT 6-6

****NOTE: Do you want to specify how the board repays the loan? I assume it would be with assessments against unit owners. Does it make sense for the unit owners to approve a loan to the board that they have to pay back themselves, with interest (especially considering that the loan seems to be for the same purpose as under sub. (3) (a), for which the board does not need to obtain a loan, and considering that the unit owners may also under sub. (3) (b) approve the use of the reserve fund for other purposes without a loan). Maybe I'm missing something here but, unless loans can be used for purposes other than the purposes authorized under sub. (3) (a) anyway, why even authorize loans?

(END OF INSERT 6-6)

INSERT 6-9

****NOTE: Would it be better to require the board of directors to provide this information on behalf of the association? Also, do you want to require that the report be provided by a certain date? This would make it easier to determine whether an association was in compliance with this requirement.

(END OF INSERT 6-9)

INSERT 6-19

****NOTE: Who do you want to enforce this forfeiture requirement? Without explicit language, it is not clear that DFI would have the responsibility or authority to do so. Under s. 978.05 (2), enforcement of the penalty would appear to be the responsibility of the county DA. A suggestion was made that it might be more appropriate to file (or

i



record) the report with the county register of deeds. The report would certainly be more accessible and other condominium documents are recorded with the register of deeds.

(END OF INSERT 6-19)

INSERT 6-23

****NOTE: Do you think that the board should conduct the audit itself, since the board has control over the withdrawal of funds out of the account, or should the board be required to contract with a third party to have an audit done?

(END OF INSERT 6-23)

INSERT 7-6

(END OF INSERT 7-6)

1 SECTION 3. 703.315 of the statutes is created to read:

2 **703.315 Lease or rental agreements.** Any agreement for the lease or rental
3 of a unit shall comply with s. 704.50 (2).

INSERT 7-11

****NOTE: The declaration includes this information and the purchaser receives a copy of the declaration under par. (a). Do you want to require the seller to provide this information twice? No harm, of course, in providing it twice.

4 SECTION 4. 703.33 (1) (d) of the statutes is amended to read:

5 703.33 (1) (d) A copy of the projected annual operating budget for the
6 condominium ~~including reasonable details concerning~~ setting forth all anticipated
7 common operating exnenses. anticipated exnenditures from reserves for renair or
8 replacement of common elements? the amount of existing: reserves, the estimated
9 monthly payments by the purchaser for assessments, including anticipated
10 contributions bv the purchaser to reserves, and the estimated monthly charges for
11 the use, rental or lease of any facilities not part of the condominium.

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

****NOTE: Are these "reserves" the reserve account? (See my note after s. 703.165 (2)(a).)



1 **SECTION 5.** 703.33 (1) (em) of the statutes is created to read:

(END OF INSERT 7-11)

INSERT 7-24

2 **SECTION 6.** 703.33 (2) (b) (form) 2. of the statutes is amended to read:

3 **703.33** (2) (b) (form) 2. **Bylaws.** The bylaws contain rules ~~which~~ that govern the
4 condominium and ~~effect~~ affect the rights and responsibilities of unit owners. The
5 bylaws begin on page

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

6 **SECTION 7.** 703.33 (2) (b) (form) 4m. of the statutes is created to read:

7 **703.33** (2) (b) (form) 4m. **Rental rights**.[✓] The right of a condominium unit owner
8 to rent or lease the unit to a tenant may be subject to certain restrictions or
9 conditions. Any such restrictions or conditions begin on page

10 **SECTION 8.** 703.33 (2) (b) (form) 6m. of the statutes is created to read:

11 703.33 (2) (b) (form) 6m. **Pending litigation**.[✓] A condominium association may
12 sue or be sued. A description of any pending litigation involving the association
13 begins on page

14 **SECTION 9.** 704.02[✓] of the statutes is created to read:

15 **704.02 Special provisions for condominiums.** In this chapter, if the
16 premises are part of a condominium, all of the following apply:

17 **(1)** Any reference to a “condition”, “covenant” or “provision” of a tenant’s “lease”
18 or “agreement” includes any rule or bylaw of the condominium association and any
19 provision of the condominium declaration.



1 (2) Any reference to "landlord" includes the board of directors of the
2 condominium association and any person who has entered into a management
3 contract with the board of directors under s. 703.10 (2g).

(END OF INSERT 7-24)

INSERT 8-23

****NOTE: Ifs. 703.10 (2g) (b) applies and the agent of the board managing the rental of units enters into the lease, do you want the owner to receive a copy of the lease within 5 business days?

(END OF INSERT 8-23)



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3741/P2dn
PJK:cmh:mrc

November 4, 1999

1. Because the response to the language prepared by Mary Matthias was so favorable, I worked from that prepared language rather than the instructions submitted back in March. You will have to let me know if there is anything else you need included in the draft. In addition to these drafter's notes, the draft contains a number of imbedded notes for you to respond to.

2. How do you want these provisions to apply to small residential condominiums (no more than four units)? You will need to review s. 703.365. Under current law, a declaration for a small residential condominium need not contain the information required under s. 703.09 (1) (g), which was amended in this bill to include rental restrictions. Do you want s. 703.10 (2g) to apply? (See especially s. 703.365 (3) (c).) Do you want s. 703.365 (8) to be amended to cross-reference s. 703.33 (1) (a) to **(em)**?

3. How do you want to handle the applicability of these new provision? See s. 703.38 by way of example.

4. This version does not yet address the municipal forfeiture issue.

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