



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Wbd  
of  
Thurs

regenerate ↓

1 **AN ACT to amend 703.09 (1) (g), 703.10 (2) (d), 703.10 (2) (e), 703.10 (3), 703.16**  
2 **(3) and 703.24; and to create 703.10(2g), 703.165, 703.315, 703.33 (1) (cm) and**  
3 **704.50 of the statutes; relating to: condominium bylaws, board of directors**  
4 **requirements, rental of units, budgets and reserve accounts.**

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.

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

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  
7 units are intended and restricted as to use, including any restriction on or prohibition  
8 against the rental of units and, if applicable, a statement describing the authority  
9 of the board of directors, or a person under a management contract with the board  
10 of directors under s. 703.10 (2g), with respect to terminating the tenancy of any  
11 tenant.

1 SECTION 2. 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 SECTION 3. 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).

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

12 SECTION 4. 703.10 (2g) of the statutes is created to read:

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

\*\*\*\*NOTE: How do you want to reconcile this provision with the requirement under s. 703.10 (2) (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?

1 (b) If the board enters into a management contract under par. (a), a unit owner  
2 may not contract directly with any person for the rental or lease of the owner's unit.  
3 The person with whom the board contracts under par. (a) has all the rights and duties  
4 of a landlord set forth in ch. 704 with respect to units offered for rent or lease and  
5 shall ~~do all of the following?~~

6 with 1. Manage the rental and lease of units.

7 2. Oversee the association trust fund under s.

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

8 SECTION 5. 703.10 (3) of the statutes is amended to read:

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

17 SECTION 6. 703.16 (3) of the statutes is amended to read:

18 703.16 (3) LIABILITY FOR ASSESSMENTS. A unit owner shall be liable for all  
19 assessments, or instalments thereof, coming due while owning a unit.. including: any  
20 assessments coming: due during the pendency of any claim by the unit owner against  
21 the association or during any period when the unit is leased or rented to any other  
22 person voluntary grant, the grantee shall be jointly and severally liable with  
23 the grantor for all unpaid assessments against the grantor for his or her share of the

Insert 3-16

1 common expenses up to the time of the voluntary grant for which a statement of  
2 condominium lien is recorded, without prejudice to the rights of the grantee to  
3 recover from the grantor the amounts paid by the grantee for such assessments.  
4 Liability for assessments may not be avoided by waiver of the use or enjoyment of any  
5 common element or by abandonment of the unit for which the assessments are made.

6 SECTION 7. 703.165 of the statutes is created to read:

7 **703.165 Budget and reserve requirements. (1)** ANNUAL BUDGET. (a) The  
8 board of directors shall annually prepare and distribute to all unit owners a detailed  
9 annual budget setting forth all of the following:

- 10 1. All anticipated common expenses and common surpluses.
- 11 2. The amount and purpose of each anticipated expenditure from reserves.
- 12 3. The amount and source of all anticipated contributions to ~~the~~ reserve <sup>✓</sup>
- 13 ~~account~~
- 14 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).~~

- 15 5. The total amount of assessments to be levied against unit owners.
- 16 6. The amount and source of any other income of the association.
- 17 7. The amount and purpose of any other anticipated expenditure by the  
18 association.

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

*to hold all reserves*

1 (2) RESERVE ACCOUNT; BUDGETING AND RESERVE PLAN. (a) The board of directors  
2 shall establish a reserve account for the association and shall assess unit owners for  
3 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, reserves may be used.

4 (b) ~~All funds in the~~ *The* reserve account shall be ~~held in~~ *established under this subsection* an interest-bearing,  
5 federally insured account at a bank, savings bank, savings and loan association or  
6 credit union.

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

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

15 2. The estimated cost of the repair or replacement of all major components that  
16 have a remaining useful life of less than 20 years and that the association has the  
17 duty to repair or replace.

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

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

21 5. The estimated costs of materials and labor necessary to repair and replace,  
22 as necessary, the common elements.

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

2           7. An estimate of the total annual contribution, to the reserve account that is  
3 necessary to meet the obligations of the association to repair and replace common  
4 elements.

5           8. A comparison of the anticipated costs to repair and replace, as necessary, the  
6 common elements to the amounts held in the reserve account.

7           (3) **USE OF RESERVE ACCOUNT.** (a) Except as provided in par. (b), the funds in the  
8 reserve account, including accrued interest, may be used only for major repairs and  
9 replacement of common elements. Funds in the reserve account may not be used for  
10 routine expenditures such as normal or routine repair or maintenance of common  
11 elements or customary services such as snow or trash removal.

12           (b) Funds in the reserve account may be used for a purpose other than those  
13 specified in par. (a) if the use of reserve funds for a specific purpose and in a specific  
14 amount is approved at a special meeting of the association by the affirmative vote  
15 of unit owners having 75% or more of the votes.

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

18           (a) The amount and specific purpose of the loan from the reserve account is  
19 approved at a special meeting of the association by the affirmative vote of at least  
20 51% of unit owners having 66% or more of the votes.

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

**\*\*\*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?

1 (c) The board of directors executes a loan agreement that specifies the principal  
2 amount of the loan, the time period for repayment of the loan and the initial rate of  
3 interest on the loan and that contains a schedule of monthly amounts for the  
4 repayment of loan principal and the payment of interest on the loan.

5 (d) The rate of interest on the loan is equal to at least 2 times the prime lending  
6 rate, as reported by the federal reserve board in federal reserve statistical release H.  
7 15, and is adjusted annually.

8 (e) The term of the loan is not longer than 7 years.

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

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

\*\*\*\*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?

*on behalf of the*

12 (5) **REPORTING REQUIREMENTS.** (a) ~~Every~~ *The board of directors, on behalf of the* association shall annually provide to  
13 the department of financial institutions and to each unit owner a report on the  
14 reserve account of the association setting forth all of the following:

\*\*\*\*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.

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

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

*, no later than March 1,*

1           3. The amounts expended from the reserve account during the previous  
2 one-year period and a description of the purposes for which ~~at~~<sup>the</sup> amounts were  
3 expended.

4           (b) Failure of the association to submit the report to the department of financial  
5 institutions as required under par. (a) shall subject each unit owner to a forfeiture  
6 of \$50 for each day of violation.

      \*\*\*\*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 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.

7           (6) **AUDIT** Upon the written request of any unit owner, the board of directors  
8 shall ~~conduct~~ audit <sup>of</sup> the reserve account and provide the results of the audit to  
9 the requesting party. The board of directors may require the requesting party to pay  
10 the reasonable costs of the audit.

      \*\*\*\*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?

11           **SECTION 8.** 703.24 of the statutes is amended to read:

12           **703.24 Remedies for violation by unit owner or tenant of a unit owner.**

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

18           **SECTION 9.** 703.315 of the statutes is created to read:

19           **703.315 Lease or rental agreements.** Any agreement for the lease or rental

20 of a unit shall comply with s. 704.50 (2).

contract with an independent certified accountant to



1 SECTION 10. 703.33 (1) (cm) of the statutes is created to read:

2 703.33 (1) (cm) A statement of the rights of the purchaser regarding the lease  
3 or rental of the unit, including any restrictions or conditions on the lease or rental  
4 of units, together with a reference to any provision in the declaration, bylaws or rules  
5 and regulations that pertain to the lease or rental of units by unit owners.

\*\*\*\*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.

6 SECTION 11. 703.33 (1) (d) of the statutes is amended to read:

7 703.33 (1) (d) A copy of the projected annual operating budget for the  
8 condominium ~~including reasonable details concerning setting forth all anticipated~~  
9 common operating expenses, anticipated expenditures from <sup>the</sup> reserves <sup>a</sup> for repair or <sup>account</sup>  
10 replacement of common elements, the amount ~~in the~~ <sup>in the</sup> reserves, the estimated  
11 monthly payments by the purchaser for assessments, including: anticipated  
12 contributions by the purchaser to reserves, and the estimated monthly charges for  
13 the use, rental or lease of any facilities not part of the condominium.

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

14 SECTION 12. 703.33 (1) (em) of the statutes is created to read:

15 703.33 (1) (em) A statement as to whether the seller is aware of any pending  
16 litigation involving the association along with a reasonably detailed description of  
17 the nature of the litigation.

18 SECTION 13. 703.33 (2) (b) (form) 2. of the statutes is amended to read:

19 703.33 (2) (b) (form) 2. *Bylaws.* The bylaws contain rules ~~which~~ that govern  
20 the condominium and ~~effect~~ affect the rights and responsibilities of unit owners. e  
21 bylaws begin on page . . . . .

22 SECTION 14. 703.33 (2) (b) (form) 4m. of the statutes is created to read:

1           703.33 (2) (b) (form) 4m. *Rental rights*. The right of a condominium unit owner  
2 to rent or lease the unit to a tenant may be subject to certain restrictions or  
3 conditions. Any such restrictions or conditions begin on page . . . . .

4           **SECTION 15.** 703.33 (2) (b) (form) 6m. of the statutes is created to read:

5           703.33 (2) (b) (form) 6m. *Pending litigation*. A condominium association may  
6 sue or be sued. A description of any pending litigation involving the association  
7 begins on page . . . . .

8           **SECTION 16.** 704.02 of the statutes is created to read:

9           **704.02 Special provisions for condominiums.** In this chapter, if the  
10 premises are part of a condominium, all of the following apply:

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

14           (2) Any reference to “landlord” includes the board of directors of the  
15 condominium association and any person who has entered into a management  
16 contract with the board of directors under s. 703.10 (2g).

17           **SECTION 17.** 704.50 of the statutes is created to read:

18           **704.50 Condominiums. (1)** In this section:

19           (a) “Association” has the meaning given in s. 703.02 (1m).

20           (b) “Condominium” has the meaning given in s. 703.02 (4).

21           (c) “Declaration” has the meaning given in s. 703.02 (8).

22           (d) “Unit” has the meaning given in s. 703.02 (15).

23           (e) “Unit owner” has the meaning given in s. 703.02 (17).

24           (2) Every agreement for the rental or lease of a condominium unit shall be in  
25 writing and shall contain all of the following:

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(a) A statement that the unit owner, the board of directors of the association or an agent of the board of directors may terminate the tenancy if the tenant violates any rule or bylaw of the association or any provision of the declaration.

(b) An appendix containing the rules and bylaws of the association and the condominium declaration.

(c) A provision stating that the tenant acknowledges receipt of and agrees to abide by the association rules and bylaws and the provisions of the declaration.

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

(3) Unless s. 703.10 (2g) (b) applies, within 5 business days after entering into an agreement for the rental or lease of a unit, the unit owner shall provide a copy of the agreement to the association. *insert 11-11 ✓*  
**The association shall keep a copy of any rental or lease agreement on file while the agreement is in effect.**

**\*\*\*\*NOTE: If s. 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?**

**(4) A tenant shall provide the association with his or her telephone number as soon as possible after the tenant enters into possession of the unit and shall notify the association if the telephone number changes.**

**(END)**

*note*



Insert 3-16

Section #. 703.16 (2) of the statutes is amended to read:

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

History: ~~1977 c. 407; 1991 a. 39; 1993 a. 453; 1995 a. 224, 227; 1997 a. 27, 250.~~

including ✓

INSERT 11-11

- 1 Ifs. 703.10 (2g) (b) applies<sup>✓</sup>, within 5 business days after entering into an agreement
- 2 for the rental or lease of a unit, the person under the management contract with the
- 3 board of directors shall provide a copy of the agreement to the unit owner.

(END OF INSERT 11-11)

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3741/P2dn 3

PJK:cmh:arc

jlg + cmh

November 4, 1999

new date

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.

1. ← 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)**?

2. ← 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.~~

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





**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3741/P3dn  
PJK:cmh&jlg:mrc

November 29, 1999

1. 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)?
2. 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

**Matthias, Mary**

**From:** LaFave, John  
**Sent:** Tuesday, January 11, 2000 7:47 PM  
**To:** Matthias, Mary; Kelly, Judy  
**Subject:** FW: Condominium Legislation

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

**From:** Mike Theo [mailto:mtheo@wra.org]  
**Sent:** Tuesday, January 11, 2000 6:43 PM  
**To:** LaFave, John  
**Cc:** Debbie Conrad; Bill Malkasian  
**Subject:** Re: Condominium Legislation

**John:**  
**Thanks for soliciting and considering our input. We would certainly support your request for a study. Let me know when the time is right. Thanks.**

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

**From:** LaFave, John <John.LaFave@legis.state.wi.us>  
**To:** 'jmurray@wra.org' <jmurray@wra.org>; 'mtheo@wra.org' <mtheo@wra.org>; 'rikstaff@wra.org' <rikstaff@wra.org>  
**Cc:** Kelly, Judy <Judy.Kelly@legis.state.wi.us>  
**Date:** Tuesday, January 11, 2000 5:39 PM  
**Subject:** Condominium Legislation

>I want to express my gratitude for the commentary that Debra Conrad provided  
>concerning my 'preliminary bill draft' on Condominium Law Revisions. I  
>found her comments to be very comprehensive and helpful. I take note that  
>from the Realtors perspective there are some very worthwhile items in my  
>bill draft, others that should be modified, and some that should be  
>deleted.  
>  
>As you might know, with the input of others, I've been pursuing this project  
>for a year now. It continues to be a very complex undertaking. I will  
>certainly consider modifications to the bill following Ms. Conrad's  
>suggestions.  
>  
>It is late in the '99-'00 session. I conclude that there is not sufficient  
>time to continue to refine this bill and introduce it and move it through  
>the legislative process successfully by the end of March. I have decided  
>not to introduce this bill at this time.  
>  
>When the Joint Legislative Council requests legislator's ideas for  
>Legislative Council Special Study Committees this spring, I will be making  
>a request for a Study to Revise the Condominium Statutes. I would  
>appreciate it if at that time the WRA would write a letter in support of  
>such a study. If a condominium study is selected, I will do my part to

>insure that the Realtors voice is heard. Maybe a person such as Debra  
>Conrad could serve on the study committee.  
>  
>If a condominium study is not chosen, then I will continue to work on this  
>legislation and would introduce it as soon as it is ready to go in 2001.  
>  
>Thank you for your assistance.  
>  
Sincerely,  
>  
>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  
>Rep.LaFave@legis.state.wi.us

**Matthias, Mary**

**From:** LaFave, John  
**Sent:** Thursday, January 13, 2000 4:44 PM  
**To:** 'dconrad @ wra.org'  
**cc:** Matthias, Mary  
**Subject:** FW: It is a GO for a bill concerning Condominium Budget & Reserve requirements  
**Importance:** High

Debbie,

I took the liberty of telling John Poehlmann to give you a phone call after 11:00 a.m. Friday if he hasn't heard from you by that time. -- John La Fave

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

**From:** LaFave, John  
**Sent:** Thursday, January 13, 2000 4:40 PM  
**To:** **John Poehlmann, Reserve Advisors; Ted --- Reserve Advisors**  
**Subject:** It is a GO for a bill concerning Condominium Budget & Reserve requirements  
**Importance:** High

Dear John Poehlmann & Ted Salgado,

The Wisconsin Realtors Association (W.R.A.) has agreed to move forward with me on a bill regarding Condominium Budget & Reserve requirements.

I have included an attachment of a FAX from Debra Conrad of the W.R.A. that contains her comments concerning my preliminary bill draft. On pages 2 and 3 of her letter you will see her comments regarding reserves (titled Section 8 - Budget & Reserve requirements). Please review her comments and questions. She is supposed to call you tomorrow (Friday, 1/14). You might even consider preparing written responses to her commentary that you can e-mail to her before, during or after your phone call.

(I will also be e-mailing to you separately a scanned document containing two pages from Attorney Jonathan Levine's comments about the 'reserve' portion of the preliminary bill draft. Please take into consideration his comments.)

As I mentioned, we need to move quickly on this. I'm hopefully optimistic that a suggested bill draft could be on its way to our Legislative Reference Bureau for bill drafting by the end of next week.

Thank you for your valuable contributions to this effort.

FYI --- Debra Conrad, WRA Director of Legal Services, phone 1-800-279-1972, e-mail: [dconrad@wra.org](mailto:dconrad@wra.org), FAX: 608-241-2901. Call her after 11:00 a.m.

Sincerely,

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  
[Rep.LaFave@legis.state.wi.us](mailto:Rep.LaFave@legis.state.wi.us)

01/13/2000

**John La Fave**  
State Representative  
23rd Assembly District



Date: 13-22-99  
TO: Mary Matthias  
FROM: John La Fave  
RE: CONDO draft

Cl In response to your recent request.

~~X~~ I thought you might be interested in the enclosed materials.

---

Capitol Office  
Post Office Box 8952  
Madison, WI 53708

Phone (608) 266-0486  
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E-Mail: [Rep.Lafave@legis.state.wi.us](mailto:Rep.Lafave@legis.state.wi.us)

# JOHN LA FAVE



---

**STATE** REPRESENTATIVE  
23RD ASSEMBLY DISTRICT

December 22, 1999

Debbie Conrad  
Wisconsin Realtors Association  
4801 Forest Run Rd., Suite 201  
Madison, WI 53704-7337

Dear Debbie:

Per our phone conversation, I am sharing with you a preliminary draft of legislation pertaining to changes to Wisconsin condominium statutes. Also, I am including a memo about the bill written by Mary Matthias, Senior Staff Attorney with the Legislative Council. One of our condominium Workgroup members, Attorney Morton Grodsky, has already sent me a letter sharing his comments about the bill draft. I'm including a copy of his letter.

I look forward to seeing your comments about this bill draft. It would be great if you could send your comments to me by January 6<sup>th</sup>. Feel free to speak with Mary Matthias about any aspects of the bill or her memo. She can be reached at 266-0932.

Sincerely,

John La Fave  
State Representative  
23rd Assembly District

JLF/jk

**MORTON M. GRODSKY**

ATTORNEY AT LAW

9001 NORTH 76TH STREET . SUITE 303

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December 17, 1999

State Representative John Lafave  
P.O. Box 8952  
Madison, WI 53708

In re: Condominium Legislation

Dear Representative Lafave:

I am in receipt of your most recent materials respecting the proposed Amendments to Chapter 703, and thank you for your time and effort, as well as that of the Legislative Council.

I do have a number of comments to make. I am not providing a copy of this, because I presume you are most likely hearing from other people and will in some fashion organize any comments or materials that you deem appropriate.

First of all, I do believe that the Rules should also reference small, residential condominiums; except in such sections where this a reference to percentage voting requirements such as in proposed 703.165.'

I do have several other comments with respect to the proposed legislation. I do believe that the question submitted by the Legislative Council with respect to 703.165(3) and (4) is appropriate. My suggestion might be to delete 4b which indicates that any amounts borrowed are for repair or replacement. With respect to the reporting requirements of that section, I think it is a good suggestion that perhaps these documents may be recorded in the local Register of Deeds office. I question whether the District Attorney will have the time or desire to become involved as a collector. Furthermore, I have many questions as to the appropriateness of penalizing unit owners for the failure of a Board of Directors. To me, this might have some constitutional overtones, but apparently the Legislative Council did not reference this issue. Also, it would seem to be somewhat of a difficult task for the appropriate party to obtain the names and addresses of all unit owners. It may be more

Page 2  
December 17, 1999

appropriate and perhaps easier as a potential alternative to set up a separate system where the District Attorney, should the District Attorney be involved, would schedule a hearing for the Association whereby the officers or directors of the Association would have to appear relative to compliance. If in fact there was no compliance, perhaps the Association would be required to advise all unit owners that the Association was not in compliance. Then rather than holding the unit owners responsible, the unit owners would obviously be pushing the Association to comply.

I have major problems with subsection 6 and the audit requirement. I do not remember discussing this item, but it seems incredulous that the request of one unit owner could require a certified audit of a reserve account. I would think that if an audit is required, that perhaps it be required by a majority vote of the owners and that in addition, that perhaps the audit need not be certified so that the extra expense of a certified audit may not be required.

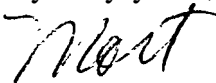
I am also very confused at section 10 and 11 wherein there is a discussion of a lease or rental agreement, and there is mention that the statement of the rights of the purchaser regarding a lease for the unit be included. A person who is leasing or renting is not purchasing. If you are talking about a deed to the unit, then this might be a different story, but I do not understand why a lease or rental agreement should discuss the rights of the purchaser of the property.

*(Purchaser right to lease or rent -)*

Should you wish to discuss this with me further, or desire to set up a meeting of the Committee again to discuss any outstanding issues, I will make myself available.

Thank you for all of your time and considerations.

Very truly yours,



Morton M. Grodsky  
MMG:rjr



# GODFREY, NESHEK, WORTH, LEIBSLE & CONOVER, S.C.

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January 12, 2000

Ms. Pamela J. Kahler  
Senior Legislative Attorney  
Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037

## Re: Wisconsin Condominium Act Bill

Dear Ms. Kahler:

Thank you for forwarding me the material and information you requested in regard to the above matter.

As a member of the original group studying this problem, I appreciate your keeping me involved in the legislative process.

In response to your questions concerning the applicability of the proposed Bill to small residential condominiums in accordance with sec. 703.365, Wis. Stats., I am of the view that the nature of this Bill should apply mainly to large condominium projects. Many of the features of the proposed Bill, relating to such things as providing for capital reserves to insure improvements and upkeep of building and structures and like, restrictions on non-owner occupants of units, and other similar versions are, in my view, meant to apply mainly to the larger condominium type developments. I would recommend that we hold off on applying these proposed regulations to condominiums to small residential tenants until such time as we see how it works and its affect on the larger units. If all goes well (and of course we are hoping it will) then that will provide some sampling and testing to determine if the legislation can be modified to apply to small residential condominium as well.

**GODFREY, NESHEK, WORTH, LEIBSLE & CONOVER, S.C.**  
ATTORNEYS AT LAW

Page -2-  
January 12, 2000

If you have any questions concerning this matter or my comments, please don't hesitate to contact me.

Very truly yours,

GODFREY, NESHEK, WORTH,  
LEIBSLE & CONOVER, S.C.

By: 

Robert C. Leibsle

RCL:cs

cc: Representative John La Fave ✓

**John La Fave**  
State Representative  
23rd Assembly District



Date: 1-13-00  
TO: Mary Matthias  
FROM: John J.  
RE: Condo comments

In response to your recent request.

I thought you might be interested in the enclosed materials.  
Page 6 → of Atty.  
Lemine's letter  
COMMON RESERVE issues

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# Jonathan B. Levine

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JONATHAN B. LEVINE  
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DIANE M. STARK  
LEGAL ASSISTANT

January 11, 2000

State Representative John La Fave  
23<sup>rd</sup> Assembly District  
P.O. Box 8952  
Madison, WI 53708

Re: Preliminary Draft of Condominium Legislation

Dear John:

As you know, I did not participate in the ad hoc committee which proposed to you certain amendments to Chapters 703 and 704 of Wisconsin Statutes, and I have had only a brief opportunity to review the preliminary draft which was attached to the Legislative Reference Bureau note of November 29, 1999. But I am glad to give you my own preliminary comments. As to each of the amendments, I tried to use this analytical framework, more or less: Does the amendment improve condominium homeownership by enhancing property values, or protecting homeowner rights, or making condominium governance easier? Does the amendment treat condominium homeowners different from other property owners, and if the answer is yes, is there a justification for doing so?

Part of my concern in addressing these issues is that there has not, to my knowledge, been a clear exposition, yet, of the problems which this legislation seeks to remedy. I am aware that there are problems in some parts of the City of Milwaukee, and possibly elsewhere, where condominium units have been unable to maintain their values; some units, moreover, are primarily occupied by an aging population which cannot afford to move out because of negative equity in their

homes and their inability to “pay in” for a closing; and there is the demonstrated issue of absentee ownership, which sometimes results in the “milking” of property, as opposed to the investing and maintenance of a property. These problems contribute to the deterioration of the condominium, and the social fabric of its neighborhood. There are, of course, many more Associations which are well run and I wonder how much legislation should be imposed on all of them to attempt to remedy the problems of the fewer deteriorating Associations. Hard cases make bad law. And, though there are never guarantees, what is the likelihood that the remedy will work?

### *Section 1.*

My comment is procedural: This section is a notice requirement. It requires the Declaration of Condominium to state restrictions on rentals and the authority of the Board or the management company to terminate the tenancy of a unit.

This section makes it harder to restrict rentals, not easier.

The bylaws are the proper place to contain a restriction on rental units and indeed, Section 5 of the draft of bill states that rental restrictions may be placed in the bylaws.

A Declaration of Condominium is substantially harder to amend than the bylaws. In some Associations, it requires a higher percentage vote. In all Associations, the ballot must be in writing, and the written consent is not effective unless the homeowner’s mortgagee also approves. Section 703 .09(2), Stats. It makes no sense to encourage a restriction in the bylaws and a much more difficult-to-accomplish notice requirement in the Declaration. And as for notice, if a purchaser does not read the bylaws, he or she is not going to read the Declaration.

Section 15 of the draft of bill provides that restrictions on rental will be set forth in the Section 703.33 disclosure materials which every potential condominium homeowner receives just before or after signing the Offer to Purchase. That is where the notice belongs, not in the Declaration, where providing the notice will be a substantial difficulty for no corresponding gain.

As to this section and most of the others, there are a number of constitutional, common law and fairness issues regarding implementation date of the rule and retroactivity. For example, if this section were to remain, I would certainly hope that an Association that has already amended its bylaws would not have to go back and amend its Declaration.

#### ***Section 4.***

Section 4 creates a new Section 703.10(2)(g) of the statutes which would provide, among other things, the following:

- The bylaws may prevent non-owner occupants from serving as directors.
- The bylaws *shall* provide that if a majority of directors are not owner occupants, the Board of Directors *shall* enter into a contract for the management of all units in which an owner does not reside; and
- The unit owner loses his or her right to rent or lease a unit; instead, the management company stands in the shoes of the owner to rent or lease.

This section has an attitude. The attitude is that absentee owners of condominium units have less rights than absentee owners of other rental units. Moreover, they cannot be trusted to rent out their own units. The attitude also is that a management company will do better. The amendment also assumes that if there is a problem with a landlord owner, a management company is better equipped than the Board to deal with the problem.

My experience is there are good landlords and good management companies, and there are bad ones. (Some management companies are like new restaurants. You think you have a good recipe, so you open a restaurant. You manage your own unit for rentals, so you open a management company.) Also, some owners will discriminate in areas where the law says you cannot discriminate (race, lawful source of income, family status) and some management companies discriminate, too.

I know of condominium associations in Walworth, Door and Vilas Counties, for example, which are specifically marketed to provide that a homeowner will live in the unit only part of the time, and rent it out the balance of the time. While the rental is most typically performed by a management company, I do not think that requirement should be imposed by law. And if I bought a unit in Vilas County near where I fish, I would not want the legislature to take away my opportunity to serve on the Board.

I want to emphasize that I believe that Associations that substantially limit non-owner occupancy are doing very well for their future health. But this section is anti-owner more than it is anti-rental. It says that the absentee owner can be forbidden from serving on the Board, or even leasing his or her own unit; this does not empower an Association to take care of its health. Rather, it passes the buck to a management company (and then only for those units which are not owner-occupied: I have never seen a condominium association which is part management-run and part owner-run.)

I do believe it is appropriate to empower the Board of Directors (which can, in turn, delegate the responsibility to a management company *if it chooses*) to screen rentals if they are permitted, and to require as a matter of law that all leases in the condominium are subject to the condo governing documents; in my own practice I have my client Associations require that the lease allow the Association to stand in the shoes of the landlord for enforcement and eviction purposes **and** to seek attorney fees from the tenant **and** the unit owner for violation; a statutory amendment should also specifically give the Association standing in court to sue the tenant based on the lease. This is important because the Association may not otherwise have a direct contractual relationship with the tenant.

#### Section 5.

Section 5 provides that the bylaws may place restrictions on the rental or lease of units, including prohibiting the rental or lease of units, limiting the number or percentage of units that may be rented or leased or requiring Board approval before entering into an agreement for rental or lease. I think the general premise is excellent. That premise is to empower Associations to manage their own affairs and, if they democratically choose to do so, to substantially restrict non-owner

State Representative John La Fave  
January 11, 2000  
Page 5

occupancy and absentee ownership. But I have some tactical and related problems to this particular draft.

First, Section 703.10(3) already provides that condominium associations may restrict the use and maintenance of units and common elements.

I pose this question, not sure of the answer: Why should the power of the Association to prevent rentals be singled out now? If it does not pass the legislature, have we created a legislative history that an Association can *not* prohibit rental or lease of units? Many Associations have already taken this step, and I am aware of no situation in Wisconsin where the provision has been overturned by the courts. On the other hand, the Wisconsin courts have upheld rental restrictions, *Le Febvre v. Osterndorf*, 87 Wis.2d 525, 275 N.W.2d 154 (Wis. App. 1979) and generally the power to amend condo documents. *Newport Condominium Association, Inc. v. Concord-Wisconsin, Inc.*, 205 Wis.2d 570, 556 N.W.2d 775 (Wis. App. 1996.)

A reasonable basis for including this provision might be to educate or lead homeowners toward the desired result of enacting rental restrictions, even though that power is already found in the statutes, though more obliquely. Again, I pose this question, unsure of the answer: Does this create more problems or less problems?

For example, does the statute say that a Board may prohibit a grandmother moving to Florida from renting the unit to her son? I think the language does state that, but this was not the evil sought to be remedied. Will mortgagees and Fannie Mae and Freddie Mac continue to finance if they are not made specific exceptions to the no rental requirement? And should not the Association itself be an exception to any no rental requirement in the event it takes a unit by foreclosure? Will conventional financing be available if these traditional sources of money see rental restrictions applying to them in the bylaws?

Moreover, may a Board impose the requirements on units currently under lease, either requiring eviction immediately or forbidding the use of rentals after the current tenant moves out? None of these questions are answered, though the statute purports to empower a Board to make a simple across-the-board limitation.



Wisconsin law is very clear that no restriction on real estate will be enforced by the court, irrespective of what the bylaws say, unless it is reasonable under the circumstances. ***Le Febvre v. Osterndorf, supra.***

I am quite certain an Association cannot come along and **kick out** the current tenants on the strength of a bylaw amendment. But ***perhaps***, the Association could **prohibit *future*** rentals by the current owner based on a bylaw amendment; even as to this, the law is unclear, but if it passes constitutional scrutiny, why not empower the Association with this specific provision?

### ***Section 7.***

I believe the intent of this amendment can be more clearly stated: A unit owner's obligation for assessments or installments thereof is an independent covenant, running with the land, not subject to offset or counterclaim by the unit owner, unless said offset or counterclaim is reduced to judgment or admitted.

### ***Section 8.***

Section 8 mandates the creation of a reserve account and, among other things, requires the Board of Directors to go through an annual eight-point evaluation including long-range planning and requires an annual detailed accounting to the Department of Financial Institutions; it also imposes restrictions on the ability of the Board in using reserve funds.

I wonder how much study has gone into this issue. I am aware of one nationwide review of state requirements on reserve funds. Forty-one states (including Washington, D.C.) were looked at. Only twelve of them, less than one-third, had any reserve requirement. A number of the states that do have reserve funding requirements allow the Association to opt out, e.g., Illinois and Florida. Others require reserve studies but not funding.

At least one state, Illinois, apparently has imposed on the developer/declarant the requirement of starting a reserve account, a vital point if you are going to mandate a fund.

State Representative John La Fave

January 11, 2000

Page 7

Also, I know what some of my clients will say: Why are they not treated like other homeowners? A single family homeowner who has to rebuild his/her roof has two ways to finance: Dip into the rainy day reserve fund, or go out and borrow the money. Why shouldn't an Association have this option? Why should an Association be saddled with onerous reporting requirements, and even confiscatory forfeitures? I have a problem with penalizing Board members for late reporting. Boards of Directors are comprised of lay people who normally bought condominiums to avoid hassles, and they undoubtedly have ended up with more hassles, by agreeing to serve without compensation in their homeowner associations. The idea that the government would fine them for late reporting is unpleasant.

What about the Association that perceives that it cannot afford a reserve fund? Or the Association that has 150 families and sets aside \$5,000.00 per year. Is this worth the reporting requirement? What is the appropriate formula for a fund? And what obligation is there to replenish it? How do you enforce any requirement beyond fines against volunteers?

When I assist a client in purchasing a condominium unit, I review the budget, and the absence of adequate reserve funding is always a red flag worthy of more discussion. Reserve fund financing is prudent financing. But I think more study is required to determine whether the reserve requirement should have an opt out and whether the reporting requirement is anything more valuable than a bureaucratic overlay. I would like to see the experience of some of the states which currently have reserve fund mandates.

Also, there may be other approaches for problem condominiums. For example, it is undoubtedly the fiduciary duty of a Board of Directors to provide for the physical upkeep and safety of its Association. In that regard, its duties are analogous to that of a landlord. If those duties are not discharged, a homeowner or a municipality can use the courts to require the duty to be discharged. Thus, I have seen owners sue Associations to effect capital improvements and I have seen the City of Milwaukee attempt to hold an Association responsible for the deterioration of the condominium physical plant. I also noted that these efforts were not necessarily easy or successful or well executed and it may be a good idea to have legislation which empowers derivative actions (by homeowners against their

State Representative John La Fave  
January 11, 2000  
Page 8

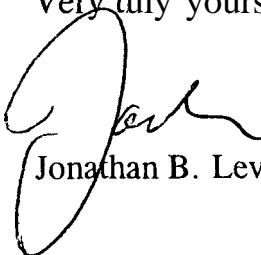
Boards) and direct actions by municipalities, subject to due process limitations.

I have one additional concern regarding the condominium draft. That concern is that it is not likely that we will be able to get the attention of the legislature with respect to improvements of Chapter 703 on numerous occasions. If amendments are offered, I would propose a consideration of issues that affect condominium homeowners on a statewide basis. Additional issues might include the relationship between the developer/declarant and the homeowner Association during the period that the developer/declarant runs the Association and later; liability for financial accounting and construction quality defects; reporting requirements on resales; the ability of the Association to secure police assistance in enforcing parking restrictions (this is particularly an issue in your assembly district, and I will be contacting you on this separately); and a big issue, nationwide, referred to as "load shedding": To what extent can the developer and the municipality, negotiating a development agreement, agree between themselves to require the homeowner Association to assume certain municipal service obligations which would otherwise be performed by the municipality, such as snowplowing, garbage removal, and even police services? To what extent may the municipality demand of the developer a lesser quality, say, of roads, than it demands for other developments?

I am not suggesting these issues are urgent, but I do think the opportunity to look at revisions to Chapter 703 might be considered more broadly.

I hope I will have the opportunity to study and be of further assistance to you in your effort to enhance condominium homeownership. Thank you for your inquiry.

Very truly yours,



Jonathan B. Levine

JBL/dms/1102000926.wpd  
cc: Mr. Roger Raasch

**Matthias, Mary**

---

**From:** LaFave, John  
**Sent:** Wednesday, January 05, 2000 9:05 PM  
**To:** Matthias, Mary  
**Subject:** FW: Condo Legislation

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

**From:** John Poehlmann [mailto:john@reserveadvisors.com]  
**Sent:** Wednesday, January 05, 2000 6:08 PM  
**To:** John LaFave  
**Subject:** Condo Legislation

Hi John:

Here are Ted and my comments to the suggested legislation.

Drafters Note: 1st note, page 6, between lines 11 and 12. She's absolutely right. It doesn't make sense. Point (b) on line 10 should be removed. The borrowing would certainly be for a purpose *other* than reserve purposes or they wouldn't be borrowing it.

Top of page 7: I don't think we need to specify how the board repays the loan. it could be from normal monthly assessments or some combination of assessments and bank loan or a one time special assessment. I think the unit owners should be involved in the process because the board is taking the unusual step of using reserve funds for purposes other than for which those funds were intended.

Re: 3rd note found beneath line 14 of page 7: No strong opinion on this. It seems to make more sense that the county DA enforce the penalty, I'm clearly not knowledgeable about this.

Regarding the Memorandum: Page 4, point b. Suggest change language to state, "...of all major components subject to repair or replacement before the entire development wears out". Reason is that some common elements have longer lives than 20 years but need to be included in the reserve study, i.e. cedar shake roofs, which last 30-35 years or concrete sidewalks that can last up to 60 years but often need partial replacements where the walks are shifting and settling.

Page 4, point c: suggest deleting the word 'other'. Other than what? I don't understand. Perhaps it should say "...of all common elements subject to repair or replacement during the life of the development."

Page 4, point e is redundant of point c. Suggest delete point e.

That's it, all my comments. Thanks for the opportunity to respond. We're happy to discuss further. Ted and I look forward to hearing more as we move forward with this very beneficial legislation.

Regards,  
John



WISCONSIN REALTORS® ASSOCIATION  
4801 Forest Run Road, Suite 201  
Madison, WI 53704-7337

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TO: State Rep. John Gorfane

DATE: 1/6/00

Fax No.: 266-7038

FROM: VVRA legal Services Staff:

	Rick Staff, General Counsel	Comments:
X	Debbi Conrad, Director	Comments on draft of
	Tom Larson, Staff Attorney	condo bill.
	Tracy Rucka, Staff Attorney	
	Dave Sayas, Attorney at Law	
	Debbie McNelly, Admin. Assistant	
	*** Legal Hotline ***	

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January 6, 2000

**State Representative John LaFave**  
P.O. Box 8952  
Madison, WI 53708  
BY FAX

Re: Condominium Law Revisions - Preliminary **Draft**

---

Dear Representative **LaFave**:

Thank you so much for the opportunity to review the **preliminary draft of the** condominium law revision legislation. We can see that a lot of **time** and effort must have gone into formulating this initial **draft**. The Wisconsin **REALTORS®** Association (**WRA**) is happy to see the provisions regarding the reserve fund requirements. **We** do, however, have some observations and questions we thought we might share with you.

Small Residential Condominiums. The small **residential** condominiums should definitely be subject to the reserve and budget requirements and the disclosure of any rental restrictions.

Applicability- **It** seems **that** all condominiums, both present and future, should be subject to the budget and **reserve** requirements as soon as possible. The rental restrictions, on the other hand, would seem **better implemented** only in a way that gives unit owners and purchasers plenty of advance notice and **due process**, and gives existing condominiums plenty of time to amend their documents to **incorporate these provisions**, should they choose to do so. All new condominiums, on the other hand, may **incorporate the** appropriate provisions in their initial documentation.

SECTION 1. § 703.09(1)(g) Restrictions Regarding the Rental and Lease of Units. We certainly **agree** that any **restrictions** on a unit owner's ability to rent his or her unit should be disclosed, but as is set out below, we disagree about how far those **rental restrictions** should go. For instance, having the condominium board of directors **assume** the role of the unit landlord may bring extreme liability and financial risks to the condominium association.

SECTION 2. § 703.10(2)(d) Managers. We believe that the **existing** reference to a "**manager or managing agent**" was intended to refer to a **manager** for the association and the **common** elements, while the reference to **(2g)(a)** is with regard to a rental property manager for nonresident unit owners. **The draft language suggests** that this is the same thing and it is not - perhaps this needs to be **tweaked** to clarify the meaning.

SECTION 4, § 703.10(2g) Residency Requirements for Board of Directors & Use of a Unit Manager. Permitting condominiums to limit directors to unit owners who reside in their units is fine. **Permitting** condominiums to **have** a bylaw provision requiring the retention of a rental property manager for nonresident unit owners **is** also acceptable, but mandating such a provision, we think, is going too **far**.

While we are sympathetic to the concerns **with** absentee **unit** owner-landlords in some **Milwaukee** area condominium projects, those concerns certainly do not exist statewide in residential condominiums. We also imagine that such provisions would be **totally unacceptable** in a commercial condominium, a dockominium

project., a vacation-home condominium [units are not permanent residences of most unit owners], or a condominium **project** designed to be a residential rental project from its inception [unit **owners** buy **however** many units or buildings that **they** want for **rental** proper&y - they either personally **manage** or retain their own **property** managers].

This draft **indicates** that the unit manager steps into the shoes of the unit owner-landlord. This would include all responsibilities for everything pertaining to the unit such as lead-based paint disclosures, testing and abatement; electric problems; furnace problems; etc. We **assume** that this **service** will be **expensive**. And who is going to pay for this unit manager - **all** unit owners or just the **nonresident** unit owners?

Who is going to dictate the terms **and** conditions of **this** unit **manager** contract, and who will set the rents, choose what kind of tenancy to have and what type of rental agreement or lease form to use, determine **policies** for late **payments**, determine the **length** of the lease term and any extensions, decide if the tenant can hang pictures **on the wall**, **make sure that the tenants don't** cause disturbances, **establish** screening policies for **handling** rental applicants in an even manner so as to avoid fair housing discrimination complaints, **make** sure that the carpets get cleaned, etc.

So **if there** is a unit manager, which depends upon **the** number of directors who **reside** in their units beyond my control], then **the board** is going to **enter** into a property management contract for any units that are rented. If, for **whatever reason**, whether **deliberate** or random or beyond my control, I decide to rent my **unit**, I forfeit all of my rights with respect to the unit while it is a **rental unit**, **with the** unit manager taking over **all** of my **rights** and responsibilities and liabilities. I did not **contract** with this unit manager so I have no input about **any** terms or conditions or the amount of the rent, assuming I'm still entitled to receive my rent My only "crime" is that **I** choose to rent my unit While this may seem reasonable to the unit owners in those **projects** having such **terrible** difficulties with absent unit owner-landlords, WC **are** concerned **that the** rest of the state may think this apparent nullification of private property rights is a **case** of overkill.

Perhaps it would be more reasonable **to** permit condominiums, on an optional basis, to adopt some sort of system that allows all directors who **reside** in their units, or all unit owners who reside in their units, to decide **whether** to enter into a contract with a unit **manager**. **Unfortunately**, that still **does not address the problem of** the unit **owner** losing all control **over** the **terms** and **conditions** and **implementation** of any lease or rental **agreement**.

**SECTION 5. § 703.10(3) Restrictions Regarding the Rental and Lease of Units.** Having such rental restrictions and prohibitions as optional bylaw provisions is acceptable.

**SECTION 8. § 703.165 Budget and Reserve Requirements.** We applaud the inclusion of these **provisions** in this proposed **legislation** because projects without **adequate future** planning **and** reserves hurt everyone involved. One comment the **WRA** has in this section pertains to the language **used** in § 703.165 (2)(c). We are not **certain** what the distinctions are between the items I -5, and why such distinctions are being made. Why are major components **with** a remaining useful life of less than 20 years that **the** association has the duty to repair or replace being separated out **from** all other common elements? Why not just list **all** common element components, their remaining useful lives, and **the** repair/replacement costs? Are there supposed to be **any** common element components (with the **possible** exception of some **limited** common elements) that the association is not responsible for maintaining? This section seems a bit confusing.

With respect to the borrowing **from reserve** funds provisions, we are not certain whether these provisions are necessary. We **understand** that the unit owners might, upon occasion, want to use the money **in** the reserves for a different purpose **but not have** a sufficient vote for the 75% required in the draft § 703.165(3)(b), so they go to the borrowing provisions that only require a 51% vote. Borrowing may be a good concept because it clearly signifies that the different use of the money is short-term and has a cost associated with **it**. It also could be helpful if **there** is a shortfall in the operating budget due to, for example, excessive snowfalls, such that the unit owners want to **borrow** from **the reserves** to pay for February snow removal, and will repay the reserves with money to be recouped in the next **budget cycle**. But who is paying interest to whom on such a loan? It seems that the unit **owners ultimately** pay. Wouldn't it be simpler for the unit owners to vote **to** use

**part of the reserve funds (75% vote) for a different purpose, or** have the board of directors levy a special assessment **against the** unit owners to **cover** the snow removal bill (**making** sure that next year's budget **includes additional operating funds or reserves** for snow removal).

With respect to the reserve fund reporting requirements, we **tend** to **agree** with Attorney Grodsky that filing with the Department of Financial Institutions and **enforcement** through the District Attorney arc not practical, and a recording **with the** Register of **Deeds** may make better sense. We also agree that fining **unit owners** for **the** neglect of the board of directors is inappropriate - what immediate control do **the** unit owners have over the board and do we want to **encourage** unit owners to interject **themselves** into the workings of **the** board?

On the other hand, **any** provisions encouraging audits would **seem** to be beneficial. If **the** unit owner wants to pay for an audit, let **them** have the power to request it.

SECTION 9. §703.24 Unit Owner Responsible for Actions of Tenants. It seems reasonable to hold **the** unit owner-landlord responsible if a tenant **violates** any **condominium rules**, bylaws, or declaration **provisions**, as long as compliance with **those** rules **is** made part of the rental agreement and as long as it is **the** unit owner-landlord and not unit manager or board of directors who is **responsible** for the tenancy. It **would be grossly** unfair (if not illegal) to hold the unit **owner** responsible **if the** unit manager has assumed all of the duties, responsibilities, and liabilities of the unit owner-landlord under the **draft** unit manager provisions [**§703.10(2g)**].

SECTION 10. §703.315 Leases and Rental Agreements. We would advocate placing all provisions relating to rental agreement and lease requirements in this section and not putting **them** in Wis. Stat. **Chapter** 704.

SECTION 17. § 704.02 Landlord-Tenant Definitions. We have commented above about **the** difficulties we foresee in having the unit manager step into the shoes of the unit owner-landlord. We **find** it even more difficult to **imagine** why any condominium association would want to take over all of **the** duties, responsibilities, and liabilities of being a landlord.

With **respect** to these definitions, **is** the board of directors always **the** landlord along with any unit manager, or **only** if **there** isn't a unit manager? Is the board of directors a landlord along with the unit owner? So **there** would **always** be at least two parties **with** the **full** and complete authority to act as landlord? Sounds like trouble and a lot of potential liability!

**Although this** may be an extreme example, we would **imagine** that the attorney for **the** child with lead poisoning would **be** delighted to **find** that **he or she can sue not only the unit owner-landlord, but also the** unit manager and **the** condominium board of directors. **Does anybody really want to have associations take on the** job of being unit landlord or property manager? We suggest that **this** section be deleted.

SECTION 18. § 704.50 Landlord-tenant Provisions for Condominium Units. We would also suggest that **this section be deleted and that any provisions of this nature appear in § 703.15. It would be fine if condominiums were given the option to include requirements in their documents requiring a written rental agreement or written lease. And it makes sense to require a rental agreement or lease provision requiring the** tenant to abide by all applicable condominium rules, bylaws, and declaration provisions, and to require that **the tenant be furnished with a copy of those documents. But to say that the association board of directors can** terminate **the** tenancy, regardless of whether **the** unit owner is a local responsible **landlord** or whether the unit owner has a responsible local property manager, **seems like** overreaching, as we have pointed out **above**.

A provision for the unit **owner** to provide the association with a copy **of any** rental agreement or lease seems **reasonable, but asking for the telephone number sounds like a privacy rights infringement – there is no law requiring any tenants in any other situations to provide their telephonenumber.**

We can't help but **think that** there must be a way to address the existing problems for the trouble-spot **projects** without overburdening **the** rest of Wisconsin's condominiums. It would be **desirable to avoid any mandatory** provisions **that** won't be of any **benefit** and may have negative consequences in unintended ways. The



controls and the **remedies** should be aimed at the bad actors **and** not the innocent bystanders who may be pulled in while painting with such a broad brush. Might there be some way to set up a procedure where if there have been documented problems with tenants violating condominium rules etc. that the resident unit owners be **allowed** to take some action: if upon notice to **the** unit owner, the unit owner does not take action, then notice to terminate tenancy is filed **if necessary** to protect **the** condominium and/or the other unit owners. This would have to be strictly limited, and the resident unit owners may want some type of immunity that would have to be conditioned upon their acting within some **narrowly** drawn boundaries.

Proposal Regarding Unavailability of Disclosure Documents. We have enclosed herein, for your consideration, a proposal for an amendment to § 703.33 that addresses problems frequently encountered in condominium **unit** sales transactions. **Specifically**, this **proposal addresses** the **scenario** where the unit seller **and/or the** condominium association cannot produce the **required** disclosure materials on a **timely** basis, or they cannot produce **them** at all.

**Under current** law, **the** purchaser's right to rescind arguably is **triggered only** upon the receipt of **all** required **disclosure** documents [**§703.33(4)**], which causes a great deal of confusion **if** the purchaser has not **received** all of the documents. The purchaser may be put in a corner where his or her **right to rescind** is in doubt, **even** though he or she has not received **the** required documentation. The purchaser may **then** proceed to close without ever having his or her rights enforced or may be forced to find another way to get out **of the** transaction. Many REALTORS' report that that condominium unit **sellers often** do not **have all** of the required disclosure documents and the condominium association either does not have them or is unable to produce them in a timely **manner**. This tends **to** happen more often in smaller projects where the association is only loosely administered by the unit owners.

This proposal **changes** the bold-faced **warnings** on the cover sheet to **the** disclosure materials to list the **required** condominium disclosure documents so that a unit purchaser will be more readily aware of exactly what documents he or she is supposed to receive. The unit purchaser is **also** advised that he or she will have the **chance** to **request** any missing documents. A new provision is proposed [draft **§703.33(3)**] that gives a **unit** purchaser who has **not** received all of the required **disclosure** documents 5 days in which to give the unit **seller** notice **requesting** the missing documents. The seller, in turn, has 5 days to supply the missing documents. The unit purchaser then has **5** business days **from** the earlier of the receipt of the missing documents or the seller's deadline for providing the missing documents in which to give a notice of rescission. This gives the unit purchaser the ability to **decide** whether **he** or she **will** proceed if any document is missing instead of being left **in** a quandary over rescission rights and **the** ability to receive required documents.

We have also enclosed, for your reference, a copy of the **WRA's Legal Update** publication **from** December 1999, which discusses recent revisions to the condominium unit listing contract and offer to purchase forms, as well as other condominium issues of concern to real estate agents.

Please do not take **any** of **these** comments **as** an **official WRA** policy stance-this is only a bill draft and we are only offering feedback at this time. These aren't easy issues to address! We would be happy to discuss any of our concerns with this **draft** with you at your **convenience**.

Sincerely,



Debra **P**eterson Conrad  
WRA Director of Legal Services

**Enclosures**

**70333 Disclosure requirements.**

**(1) Material to be furnished by seller to purchaser before closing.** Not later than 15 days prior to the closing of the sale of a unit to a member of the public, the seller shall furnish to the purchaser the following:

(a) A copy of the proposed or existing declaration, bylaws and any rules or regulations, together with an index of the contents.

(b) A copy of the proposed or existing articles of incorporation of the association, if it is or is to be incorporated.

(c) A copy of any proposed or existing management contract, employment contract or other contract affecting the use, maintenance or access of all or part of the condominium to which it is anticipated the unit owners or the association will be a party following closing.

(d) A copy of the projected annual operating budget for the condominium including reasonable details concerning the estimated monthly payments by the purchaser for assessments, and monthly charges for the use, rental or lease of any facilities not part of the condominium.

(e) A copy of any lease to which it is anticipated the unit owners or the association will be a party following closing.

(f) A description of any contemplated expansion of the condominium with a general description of each stage of expansion and the maximum number of units that can be added to the condominium.

(g) A copy of the floor plan of the unit together with the information that is necessary to show the location of the common elements and other facilities to be used by the unit owners and indicating which facilities will be part of the condominium and which facilities will be owned by others.

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

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

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

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

~~3. YOU MAY AT ANY TIME WITHIN 5 BUSINESS DAYS FOLLOWING RECEIPT OF THESE DOCUMENTS, OR FOLLOWING NOTICE OF ANY MATERIAL CHANGES IN THESE DOCUMENTS, CANCEL IN WRITING THE CONTRACT OF SALE AND RECEIVE A FULL~~

REFUND OF ANY DEPOSITS MADE.3. THE SELLER'S CONDOMINIUM DISCLOSURE DUTIES CAN BE FOUND AT WIS. STAT. § 703.33, WHICH STATES THAT:703.33 Disclosure requirements.

(1) Material to be furnished by seller to purchaser before closing. Not later than 15 days prior to the closing of the sale of a unit to a member of the public, the seller shall furnish to the purchaser the following:

(a) A copy of the proposed or existing declaration, bylaws and any rules or regulations, together with an index of the contents.

(b) A copy of the proposed or existing articles of incorporation of the association, if it is or is to be incorporated.

(c) A copy of any proposed or existing management contract, employment contract or other contract affecting the use, maintenance or access of all or part of the condominium to which it is anticipated the unit owners or the association will be a party following closing.

(d) A copy of the project's annual operating budget for the condominium, including reasonable details concerning the estimated monthly payments by the purchaser for assessments, and monthly charges for the use, rental or lease of any facilities not part of the condominium.

(e) A copy of any lease to which it is anticipated the unit owners or the association will be a party following closing.

(f) A description of any contemplated expansion of the condominium with a general description of each stage of expansion and the maximum number of units that can be added to the condominium.

(g) A copy of the floor plan of the unit together with the information that is necessary to show the location of the common elements and other facilities to be used by the unit owners and indicating which facilities will be part of the condominium and which facilities will be owned by others.

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

YOU MAY AT ANY TIME WITHIN 5 BUSINESS DAYS FOLLOWING RECEIPT OF ALL AVAILABLE THESE DOCUMENTS, OR FOLLOWING NOTICE OF ANY MATERIAL CHANGES IN THESE DOCUMENTS, CANCEL IN WRITING THE CONTRACT OF SALE AND RECEIVE A FULL REFUND OF ANY DEPOSITS MADE, IF SELLER DELIVERS LESS THAN ALL OF THE DOCUMENTS REQUIRED. YOU SHALL HAVE 5 DAYS FOLLOWING RECEIPT OF THE DOCUMENTS TO DELIVER A REQUEST FOR ANY MISSING DOCUMENTS YOU ARE ENTITLED TO REVIEW. THE SELLER SHALL PROVIDE ANY REQUESTED DOCUMENTS WITHIN 5 DAYS OF RECEIPT OF YOUR REQUEST. YOU MAY, AT ANY TIME WITHIN 5 BUSINESS DAYS OF THE EARLIER OF THE RECEIPT OF THE REQUESTED DOCUMENTS OR THE DEADLINE FOR DELIVERY, CANCEL IN WRITING THE CONTRACT OF SALE AND RECEIVE A FULL REFUND OF ANY DEPOSITS MADE.

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

following **the** cover sheet and continue on subsequent **pages**. An index shall be in substantially the **following** form:

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

1. Declaration. The declaration establishes and **describes** the condominium, the units and the **common** areas. The declaration begins on page . . . . .
2. **Bylaws**. The bylaws contain rules which govern **the** condominium and effect the rights and responsibilities of unit owners. The bylaws begin on **page** . . . . .
3. Articles of incorporation. The operation of a **condominium** is governed **by** the association, of which **each unit owner is a member. Powers, duties, and operation of an** association **are specified** in its articles of incorporation. The articles of incorporation begin on **page** . . . . .
4. Management or employment contracts. Certain services **are provided** to **the** condominium through contracts with individuals or private firms. These **contracts** begin on page . . . . .
5. Annual operating budget. **The** association **incurs** expenses for the operation of the condominium which are assessed to the unit owners. **The** operating budget is an estimate of those charges which are **in** addition to mortgage and utility payments. The budget begins on **page** . . . . .
6. Leases. Units in this condominium are sold subject to one or **more** leases of **property** or facilities which are not a part of the condominium. **These leases** begin **on** page . . . . .
7. Expansion plans. **The declarant** has reserved **the** right to expand the condominium in **the future**. A description of the plans for expansion and **its effect on** unit owners begins on page . . . . .
8. Floor plan and map. **The seller** has provided a floor plan of the unit being offered for sale and a map of the condominium which **shows** the location of the unit you are considering and all **facilities** and common areas which **are** part of the condominium. The floor plan and map begin on **page** . . . . .

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

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

1. A statement 'by **the declarant**, based on a report **prepared** by an independent architect or engineer, describing **the** present condition of those structural components and mechanical and electrical installations that are material to the use and enjoyment of the building.
2. A statement by the **declarant** of the expected useful life of each item reported on in subd. 1. or a **statement** that no representations are made in that regard

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

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

**(3)** Delivery of **Incomplete Set** of Disclosure Materials. Should **the** seller deliver disclosure materials which do not include all of the information required under sub. (1) but which do **fully** comply with the cover sheet requirements in sub. (Z)(a), purchaser shall have 5 days **from** receipt of the disclosure materials to request any documents that were required to be delivered under sub. **(1)**, but that were not timely delivered. Seller shall have five days **from** receipt of purchaser's notice to deliver the **requested** documents to purchaser.

**(34)** Change in **material following** delivery to **purchaser**. Any material furnished under sub. **(1)** may not be changed or amended following delivery to a purchaser, if the change or amendment would affect **materially** the rights of the purchaser, **without first obtaining approval of** the purchaser. A copy of amendments shall be delivered promptly **to** the purchaser.

**(45)** **Purchaser's right to rescind contract of sale.**

**(a)** Any purchaser **may** at any time within 5 business days following receipt of **all** information required under sub. (1) and within 5 business days following **receipt** of all information **required under** sub. **(34)**, rescind in writing a **contract** of sale without stating any reason and without any liability on **his or her part**, ~~and the purchaser is entitled to the return of any deposits made in account of the contract.~~

**(b)** If the disclosure **materials delivered** by seller comply with the requirements of sub. (2)(a) but do not fully comply with the requirements of sub. **(1)**, any purchaser may rescind in writing a contract of sale **without** stating any reason and without any liability on his or her part as follows: 1) if purchaser does not **give** notice requesting missing documents under sub. **(3)**, purchaser may **rescind within 5 business days from** receipt of the partial disclosure materials; 2) if purchaser gives notice requesting missing documents under sub. **(3)**, purchaser may rescind within 5 business days of the earlier of receipt of the **requested** documents or the deadlii for seller's delivery of the requested missing documents.

**(c)** Earnest Money and Other Deposits. Any purchaser who timely rescinds pursuant to subs. (a) or **(b)** shall be entitled to the return of any deposits made in account of the contract.

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

**(67)** **Waiver of purchaser's right.** **Rights** of purchasers under this section may not be waived in the contract of sale and any attempt **to** waiver is void. Should purchaser fail **to** timely rescind, **purchaser's** right **to** rescind is terminated at **the** end of the rescission period. ~~However, if~~ Should the purchaser proceed to closing **before** the purchaser's right to rescind has expired, the purchaser's right under this section to rescind is terminated **upon closing**.

**(78)** **Sale of unit for nonresidential** purposes. Requirements of this section do not apply to a sale of any unit which is primarily intended to be occupied **and used** for **nonresidential purposes**.

**(89)** **Location of condominium immaterial.** Requirements of this section shall apply to a **sale** of any unit offered for **sale** in this state without regard to the location of a condominium.



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1 board of directors shall annually determine the amount that is necessary to be  
2 contributed to the reserve account for the needs of the condominium. In developing  
3 and evaluating the long-range reserve plan, the board of directors shall take into  
4 consideration all of the following:

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

7 2. The estimated cost of the repair or replacement of all major components that  
8 have a remaining useful life of less than 20 years and that the association has the  
9 duty to repair or replace,

*common elements*

10 ~~Delete X The estimated repair and replacement costs of all other common elements.~~

11 ~~3. The length of the normal useful life and the estimated remaining useful life~~  
12 ~~of all other common elements.~~

13 ~~Delete X The estimated costs of materials and labor necessary to repair and replace,~~  
14 ~~as necessary, the common elements.~~

15 4. The amount of interest or other earnings attributable to the reserve account.

16 5. An estimate of the total annual contribution to the reserve account that is  
17 necessary to meet the obligations of the association to repair and replace common  
18 elements.

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

21 (8) USE OF RESERVE ACCOUNT. Except as provided in par. (4), the funds in the  
22 reserve account, including accrued interest, may be used only for major repairs and  
23 replacement of common elements. Funds in the reserve account may not be used for  
24 routine expenditures such as normal or routine repair or maintenance of common  
25 elements or customary services such as snow or trash removal.

Funds in the reserve account may be used for a purpose other than those specified in par. (3)

1995-2000 Legislature  
SECTION 8

~~(b) Funds in the reserve account may be used for a purpose other than those specified in par. (a) if the use of reserve funds for a specific purpose and in a specific amount is approved at a special meeting of the association by the affirmative vote of unit owners having 70% or more of the votes.~~

~~(4) <sup>TRANSFER</sup> Borrowing from reserve account. The board of directors may borrow from the reserve account if all of the following conditions are met:~~

(a) The amount and <sup>transfer</sup> specific purpose of the ~~loan~~ from the reserve account is approved at a special meeting of the association by the affirmative vote of at least 61% of unit owners having 66% or more of the votes.

~~(b) The amounts borrowed are \_\_\_\_\_ elements.~~

---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?

(c) The board of directors <sup>creates a repayment schedule</sup> ~~creates a loan agreement~~ that specifies the <sup>transfer</sup> principal amount of the ~~loan~~, the time period for repayment of the ~~loan~~ and the <sup>transfer</sup> initial rate of interest on the ~~loan~~ and <sup>periodic</sup> that contains a schedule of ~~monthly~~ amounts for the repayment of <sup>the transfer.</sup> ~~loan, principal and the payment of interest on the loan.~~ <sup>OK</sup>

~~(d) The rate of interest on the loan is equal to at least 2 times the prime lending rate, as reported by the federal reserve board in federal reserve statistical release H-15, and is adjusted annually.~~ <sup>repayment schedule</sup>

(d) ~~The term of the loan is not longer than 7 years.~~

(e) ~~The amount of the loan is not greater than 40% of the total value of the reserve account at the time the loan is approved under par. (a).~~ <sup>transfer</sup>

(f) ~~There is no other loan from the reserve account outstanding.~~ <sup>transfer</sup>





# State of Wisconsin

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FAX Number: 242-2279

MESSAGE: Thanks, Debbi. I liked your  
proposed changes to the draft. Following  
are my marked-up changes to p. 6 and  
a couple of other questions I had.

FROM: Pam Kahle 266-2682

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**THANK YOU**

Special withdrawals or transfers

1 (b) Funds in the reserve account may be used for a purpose other than those  
2 specified in par. (a) if the use of reserve funds for a specific purpose and in a specific  
3 amount is approved at a special meeting of the association by the affirmative vote  
4 of unit owners having 75% or more of the votes.

withdraw or transfer funds

5 (4) ~~Borrowing~~ FROM RESERVE ACCOUNT. The board of directors may ~~draw~~ from  
6 the reserve account <sup>for a purpose other than those specified in sub. (3)</sup> if all of the following conditions are met:

7 (a) The amount and specific purpose of the ~~loan~~ from the reserve account is  
8 approved at a special meeting of the association by the affirmative vote of at least  
9 51% of unit owners having 66% or more of the votes.

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

\*\*\*\*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?

creates a repayment schedule

12 (b) ~~The board of directors~~ <sup>creates a loan agreement</sup> that specifies ~~the principal~~  
13 ~~amount of the loan~~ the time period for repayment of the ~~loan~~ <sup>with the initial rate of</sup>  
14 ~~interest on the loan~~ and that contains a schedule of ~~payments~~ <sup>periodic</sup> amounts for the  
15 repayment of ~~the principal and the payment of interest on the loan.~~ <sup>the</sup>

16 (d) The rate of interest on the loan is equal to at least 2 times the prime lending  
17 rate, as reported by the federal reserve board in federal reserve statistical release H.  
18 15, and is adjusted annually. <sup>repayment schedule</sup>

19 (c) ~~The term of the loan~~ is not longer than 7 years.

20 (d) ~~The amount of the loan~~ is not greater than 40% of the total value of the  
21 reserve account at the time the ~~loan~~ is approved under par. (a).

22 (e) ~~There is no other loan~~ from the reserve account <sup>is</sup> outstanding.

withdrawal or transfer

Debbi:

1. Are the changes <sup>I</sup> made on p. 6 okay -  
or do you want the language limited to  
transfers (i.e., <sup>no</sup> withdrawals)? five

2. Take a look at SECTION 3 of the  
draft - amendment to s. 703.10(2)(e). Was the  
<sup>proposed</sup> removal of that SECTION intended or inadvertent?

3. On p. 5, lines 7 and 12, <sup>in proposed changes</sup> references are  
made to "major" common elements. Is this  
the usual terminology? ~~See attached~~ Note  
that it is the "repairs" that are called major  
on p. 5, line 22.

Please give me a call after you've  
had a ~~chance~~ chance to review. Thanks!

Pam

266-2682



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-3741/18  
PJK:cmh&jlg:mrc

*r m is run*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Wed or  
by Thursday  
D-note*

*regenerate*

1 **AN ACT to amend** 703.09 (1) (g), 703.10 (2) (d), 703.10 (2) (e), 703.10 (3), 703.16  
2 (2), 703.16 (3), 703.24, 703.33 (1) (d) and 703.33 (2) (b) (form) 2.; and to create  
3 703.10 (2g), 703.165, 703.315, 703.33 (1) (cm), 703.33 (1) (em), 703.33 (2) (b)  
4 (form) 4m., 703.33 (2) (b) (form) 6m., 704.02 and 704.50 of the statutes; **relating**  
5 to: condominium ~~boards, board directors requirements, rental of units,~~  
6 budgets and reserve accounts.

*Insert  
A*

**Analysis by the Legislative Reference Bureau**

*This is a preliminary draft. An analysis will be provided in a later version.*

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

7 **SECTION 1.** 703.09 (1) (g) of the statutes is amended to read:  
8 703.09 (1) (g) Statement of the purposes for which the building and each of the  
9 units are intended and restricted as to use, including any restriction on or prohibition  
10 against the rental of units and, if applicable, a statement describing the authority

1 of the board of directors, or a person under a management contract with the board  
 2 of directors under s. 703.10 (2g), with respect to terminating the tenancy of any  
 3 tenant.

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

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

11 SECTION 3. 703.10 (2) (e) of the statutes is amended to read:

12 703.10 (2) (e) The manner of assessing against and collecting from unit owners  
 13 their respective shares of the common expenses, including amounts for denosit in the  
 14 reserve account under s. 703.165 (2).

15 SECTION 4. 703.10 (2g) of the statutes is created to read:

16 703.10 (2g) RESIDENCY REQUIREMENTS FOR BOARD OF DIRECTORS. (a) The bylaws  
 17 may provide that a unit owner may not serve as a director unless he or she resides  
 18 in his or her unit. The bylaws shall provide that if a majority of the directors are not  
 19 unit owners who reside in their units, the board of directors shall enter into a contract  
 20 for the management of all units in which the owner of the unit does not reside.

21 (b) If the board enters into a management contract under par. (a), a unit owner  
 22 may not contract directly with any person for the rental or lease of the owner's unit.  
 23 The person with whom the board contracts under par. (a) has all the rights and duties  
 24 of a landlord set forth in ch. 704 with respect to units offered for rent or lease and  
 25 all manage the rental and lease of units.

Recap ↓

1           **SECTION 5.** 703.10 (3) of the statutes is amended to read:

2           ~~703.10 (3) PERMISSIBLE ADDITIONAL PROVISIONS. The bylaws also may contain~~  
3 ~~any other provision regarding the management and operation of the condominium,~~  
4 ~~including any restriction on or requirement respecting the use and maintenance of~~  
5 ~~the units and the common elements. The bylaws may place restrictions on the rental~~  
6 ~~or lease of units, including prohibiting the rental or lease of units, limiting the~~  
7 ~~number or percentage of units that may be rented or leased or requiring the prior~~  
8 ~~approval of the board before entering into an agreement for the rental or lease of a~~  
9 ~~unit.~~

10           **SECTION 6.** 703.16 (2) of the statutes is amended to read:

11           **703.16 (2)**       FUNDS FOR PAYMENT OF COMMON EXPENSES OBTAINED BY ASSESSMENTS.  
12 Funds for the payment of common expenses ~~and for, including~~ the creation of  
13 reserves ~~for the payment of future common expenses,~~ shall be obtained by  
14 assessments against the unit owners in proportion to their percentage interests in  
15 the common elements or as otherwise provided in the declaration.

16           **SECTION 7.** 703.16 (3) of the statutes is amended to read:

17           ~~703.16 (3) LIABILITY FOR ASSESSMENTS, A unit owner shall be liable for all~~  
18 ~~assessments, or instalments thereof, coming due while owning a unit, including any~~  
19 ~~assessments coming due during the pendency of any claim by the unit owner against~~  
20 ~~the association or during any period when the unit is leased or rented to any other~~  
21 ~~person. In a voluntary grant, the grantee shall be jointly and severally liable with~~  
22 ~~the grantor for all unpaid assessments against the grantor for his or her share of the~~  
23 ~~common expenses up to the time of the voluntary grant for which a statement of~~  
24 ~~condominium lien is recorded, without prejudice to the rights of the grantee to~~  
25 ~~recover from the grantor the amounts paid by the grantee for such assessments.~~

1 Liability for assessments may not be avoided by waiver of the use or enjoyment of any  
2 common element or by abandonment of the unit for which the assessments are made.

3 SECTION 8. 703.165 of the statutes is created to read:

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

- 7 1. All anticipated common expenses and common surpluses.
- 8 2. The amount and purpose of each anticipated expenditure from reserves.
- 9 3. The amount and source of all anticipated contributions to reserves.
- 10 4. The amount in the reserve account.,
- 11 5. The total amount of assessments to be levied against unit owners.
- 12 6. The amount and source of any other income of the association.
- 13 7. The amount and purpose of any other anticipated expenditure by the  
14 association.

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

18 (2) **RESERVE ACCOUNT; BUDGETING AND RESERVE PLAN.** (a) Theboardofdirectors  
19 shall establish a reserve account for the association, to hold all reserves, and shall  
20 assess unit owners for contributions to be placed into the reserve account.

21 (b) The reserve account established under this subsection shall be an  
22 interest-bearing, federally insured account at a bank, savings bank, savings and  
23 loan association or credit union.

24 (c) The board of directors shall develop and annually evaluate and revise, as  
25 necessary, a long-range reserve account plan. In accordance with this plan, the

1 board of directors shall annually determine the amount that is necessary to be  
2 contributed to the reserve account for the needs of the condominium. In developing  
3 and evaluating the long-range reserve plan, the board of directors shall take into  
4 consideration all of the following:

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

7 2. The estimated cost of the repair or replacement of all major ~~components~~ <sup>✓ common elements</sup> that  
8 have a remaining useful life of less than 20 years and that the association has the  
9 duty to repair or replace.

~~10 3. The estimated repair and replacement costs of all other common elements.~~

11 3. ~~The length of the normal useful life of the~~ <sup>✓</sup> estimated remaining useful life  
12 of all ~~other~~ <sup>major</sup> common elements.

~~13 5. The estimated costs of materials and labor necessary to repair and replace,  
14 as necessary, the common elements.~~

15 4. ~~The~~ <sup>✓</sup> amount of interest or other earnings attributable to the reserve account.

16 5. ~~An~~ <sup>✓</sup> estimate of the total annual contribution to the reserve account that is  
17 necessary to meet the obligations of the association to repair and replace common  
18 elements.

19 6. ~~A comparison of~~ <sup>insert 5-19 ✓</sup> the anticipated costs to repair and replace, as necessary, the  
20 common elements ~~to the amount to be deposited in the reserve account.~~ <sup>✓ sub. (4)</sup>

21 (3) USE OF RESERVE ACCOUNT. ~~Except~~ <sup>✓</sup> as provided in ~~the~~ <sup>sub. (4)</sup> funds in the  
22 reserve account, including accrued interest, may be used only for major repairs and  
23 replacement of common elements. Funds in the reserve account may not be used for  
24 routine expenditures such as normal or routine repair or maintenance of common  
25 elements or customary services such as snow or trash removal.



SECTION 8

CS

Special withdrawals or transfers

1 (b) Funds in the reserve account may be used for a purpose other than those  
2 specified in par. (a) if the use of reserve funds for a specific purpose and in a specific  
3 amount is approved at a special meeting of the association by the affirmative vote  
4 of unit owners having 75% or more of the votes.

withdraw or transfer funds

5 (4) ~~Borrowed~~ FROM RESERVE ACCOUNT. The board of directors may ~~withdraw~~ from  
6 the reserve account if all of the following conditions are met:

for a purpose other than those specified in sub. (3)  
withdrawal or transfer

7 (a) The amount and specific purpose of the ~~loan~~ from the reserve account is  
8 approved at a special meeting of the association by the affirmative vote of at least  
9 51% of unit owners having 66% or more of the votes.

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

\*\*\*\*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?

creates a repayment schedule

12 (b) ~~The board of directors~~ that specifies ~~the principal~~

13 ~~the time period for repayment of the~~

14 ~~and that contains a schedule of~~ amounts for the

15 repayment of ~~the principal and the payment of interest on the loan~~

16 (d) The rate of interest on the loan is equal to at least 2 times the prime lending  
17 rate, as reported by the federal reserve board in federal reserve statistical release H.  
18 15, and is adjusted annually.

repayment schedule

19 (c) ~~The term of the~~ is not longer than 7 years.

20 (d) ~~The amount of the~~ is not greater than 40% of the total value of the  
21 reserve account at the time the ~~loan~~ is approved under par. (a).

22 (e) ~~There is~~ no other ~~loan~~ from the reserve account ~~is~~ outstanding.

withdrawal or transfer

\*\*\*\*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?

1

(5) REPORTING REQUIREMENTS. ~~With~~ The board of directors, on behalf of the

2

association, shall annually, no later than March 1, ~~submit to the department of~~

3

~~financial institutions and the agency which~~ <sup>insert 7-3</sup> a report on the reserve account of the

4

association setting forth all of the following:

5

(a) ~~is~~ A statement of the amount <sup>held</sup> in the reserve account at the beginning and

6

at the close of the previous one-year period.

7

(b) ~~is~~ The amount <sup>and source</sup> of funds added to the reserve account during the

8

previous one-year period.

9

(c) ~~is~~ The amounts expended from the reserve account during the previous

10

one-year period and a description of the purposes for which the amounts were

11

expended.

12

(b) Failure of the association to submit the report to the department of financial

13

institutions as required under par. (a) shall subject each unit owner to a forfeiture

14

of \$50 for each day of violation.

\*\*\*\*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 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.

15

(6) AUDIT. Upon the written request of any unit owner, the board of directors

16

shall contract with an independent certified accountant to audit the reserve account

1 and provide the results of the audit to the requesting party. The board of directors  
2 may require the requesting party to pay the reasonable costs of the audit.

3 **SECTION 9. 703.24** of the statutes is amended to read:

4 **703.24 Remedies for violation by unit owner or tenant of a unit owner,**

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

10 **SECTION 10. 703.315** of the statutes is created to read:

11 **703.315 Lease or rental agreements.** Any agreement for the lease or rental  
12 of a unit shall comply with s. 704.50 (2).

13 **SECTION 11. 703.33 (1) (cm)** of the statutes is created to read:

14 **703.33 (1) (cm)** A statement of the rights of the purchaser regarding the lease  
15 or rental of the unit, including any restrictions or conditions on the lease or rental  
16 of units, together with a reference to any provision in the declaration, bylaws or rules  
17 and regulations that pertain to the lease or rental of units by unit owners.

18 **SECTION 12. 703.33 (1) (d)** of the statutes is amended to read:

19 **703.33 (1) (d)** A copy of the projected annual operating budget for the  
20 condominium ~~including reasonable details concerning~~ setting forth all anticipated  
21 ~~common operating expenses, anticipated expenditures from the reserve account for~~  
22 renair or replacement of common elements. the amount in the. reserve accnt the  
23 estimated monthly payments by the purchaser for assessments, including  
24 anticipated contributions by the purchaser to reserves, and the estimated monthly  
25 charges for the use, rental or lease of any facilities not part of the condominium.

\* (WPO - delete the remainder of 3741 / P3) D-note  
\* Just 8-25 →

**INSERT A**

Current law contains various provisions related to condominiums, such as the procedure that must be followed to create a condominium, the ownership interest of a person purchasing a condominium unit, requirements for bylaws governing the administration of a condominium, rights and responsibilities of a condominium association, how expenses of the condominium are to be paid and disclosures that must be made by a condominium unit seller to a prospective purchaser. This bill adds requirements for a reserve account and an annual budget.

Under current law, the expenses of a condominium as a whole, as opposed to the expenses of the individually owned units in a condominium, are called "common expenses". Common expenses are paid through assessments against the individual unit owners. Assessments that are collected for future common expenses are called "reserves". The bill requires the board of directors (board) of a condominium association to establish a reserve account, for the purpose of holding reserves, as an interest-bearing, federally insured account at a bank, savings bank, savings and loan association or credit union. The board must develop, and annually evaluate, a long-range reserve account plan to determine the amount that must be contributed to reserves each year by the unit owners. In developing and evaluating this plan, the board must consider such things as the estimated remaining useful life of the major common elements, the estimated cost of repairing or replacing the major common elements that have a remaining useful life of less than 20 years, the interest or other earnings that will accrue to the reserve account and the total annual contribution that will be required to meet the obligations of the association to repair and replace common elements. The bill specifies that funds in the reserve account may be used only for repair and replacement of common elements and may not be used for routine expenditures, such as normal or routine repair or maintenance of common elements, or for customary services, such as snow or trash removal. The board may, however, make withdrawals or transfers from the reserve account for purposes other than repair or replacement of common elements if at least 51% of the unit owners having 66% or more of the votes approve of the withdrawal or transfer at a special meeting of the association. The board must repay such an approved withdrawal or transfer over a period of not more than seven years, and, when approved, the amount of the withdrawal or transfer may not exceed 40% of the total amount in the reserve account and there may be no other outstanding withdrawals or transfers.


The bill requires the board annually to record a reserve account report in its minutes and with the county register of deeds. The report must include the beginning and ending balances in the reserve account for the reporting period, the amounts and sources of all funds added to the account during the period and the amounts and purposes of all expenditures from the reserve account during the period. The bill provides that if a unit owner requests an audit of the reserve account, the board must contract with an independent certified accountant for an audit and provide the results to the requesting party. The board may, however, require the requesting party to pay the cost of the audit. The bill requires a person selling a unit in a condominium to disclose to prospective purchasers information about reserves

and the reserve account, such as the amount in the reserve account, anticipated expenditures from the reserve account for repairing or replacing common elements and anticipated contributions to reserves by the purchaser.

The bill also requires the board to prepare and distribute to all unit owners a detailed annual budget. The budget must include all anticipated common expenses and surpluses, the amount in the reserve account, the anticipated expenditures from and contributions to the reserve account, the total amount of the assessments to be levied against the unit owners, any other sources of income to the association and any other anticipated expenditure by the association.


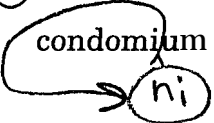
( ENDOFINsertA )

**INSERT 5-19**

 between the amounts held in the reserve account and

( END OF INSERT 5-19 )

**INSERT 7-3**

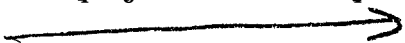
 record in its minutes and with the register of deeds of the county where the  
condominium is located  


( ENDOFINsert7-3 )

**INSERT 8-25**

**SECTION 1. Initial applicability.**

(1) The treatment of section 703.33 (1) (d)<sup>✓</sup> of the statutes first applies to copies of the projected annual operating budget furnished on July 1, 2000.

 **(END)**  
( END OF INSERT 8-25 )

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3741/1dn  
PJK:jjl&jlg:mrc

Notice the initial applicability for the change to the section that requires a copy of the projected annual operating budget for the condominium to be furnished to a prospective purchaser. I just took a guess at how long it might take associations' boards of directors to establish reserve accounts and have information to provide to unit owners who are selling. Let me know if you want something different.

We do not establish any time requirements in this draft, such as by when boards must have budgets prepared and distributed or by when reserve accounts must be established. The one date we do have in the bill is March 1 for the reserve account report (see s. 703.165(5) (intro.)), but I am assuming the first report would be required by March 1, 2001. Let me know if you want to require budgets or reserve accounts to be accomplished by a certain date.

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



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3741/1dn  
PJK:jl:gjf

January 26, 2000

Notice the initial applicability for the change to the section that requires a copy of the projected annual operating budget for the condominium to be furnished to a prospective purchaser. I just took a guess at how long it might take associations' boards of directors to establish reserve accounts and have information to provide to unit owners who are selling. Let me know if you want something different.

We do not establish any time requirements in this draft, such as by when boards must have budgets prepared and distributed or by when reserve accounts must be established. The one date we do have in the bill is March 1 for the reserve account report (see s. 703.165 (5) (intro.>>), but I am assuming the first report would be required by March 1, 2001. Let me know if you want to require budgets or reserve accounts to be accomplished by a certain date.

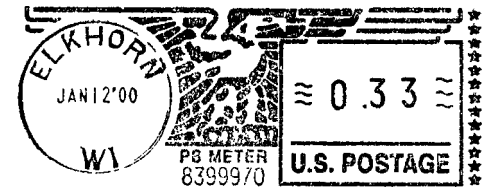
Pamela J. Kahler  
Senior Legislative Attorney  
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January 12, 2000

Ms. Pamela J. Kahler  
 Senior Legislative Attorney  
 Legislative Reference Bureau  
 P.O. Box 2037  
 Madison, WI 53701-2037

**Re: Wisconsin Condominium Act Bill**

Dear Ms. Kahler:

, 'Thank you for forwarding me the material and information you requested in regard to the above matter.-

As a member of the original group studying this problem, I appreciate your keeping me involved in the legislative process.

In response to your questions concerning the applicability of the proposed Bill to small residential condominiums in accordance with sec. 703.365, Wis. Stats., I am of the view that the nature of this Bill should apply mainly to large condominium projects. Many of the features of the proposed Bill, relating to such things as providing for capital reserves to insure improvements and upkeep of building and structures and like, restrictions on non-owner occupants of units, and other similar versions are, in my view, meant to apply mainly to the larger condominium type developments. I would recommend that we hold off on applying these proposed regulations to condominiums to small residential tenants until such time as we see how it works and its affect on the larger units. If all goes well (and of course we are hoping it will) then that will provide some sampling and testing to determine if the legislation can be modified to apply to small residential condominium as well.

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Page -2-  
January 12, 2000

If you have any questions concerning this matter or my comments, please don't hesitate to contact me.

Very truly yours,

GODFREY, NESHEK, WORTH,  
LEIBSLE & CONOVER, S.C.

By: 

Robert C. Leibsle

RCL:cs

cc: Representative John La Fave



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: December 7, 1999

TO: REPRESENTATIVE JOHN LA FAVE

FROM: Mary Matthias, Senior Staff Attorney

SUBJECT: **LRB-3741/P3**, Relating to Condominium Bylaws, Board of Directors' Requirements, Rental of Units, Budgets and Reserve Accounts

This memorandum, prepared at your request, describes **LRB-3741/P3**, draft legislation relating to condominium bylaws, board of directors' requirements, rental of condominium units, condominium budgets and reserve accounts. In this memorandum, "unit" refers to a condominium unit. A condominium unit is a part of the condominium intended for any type of independent use.

### A. CONDOMINIUM DECLARATION

A condominium declaration is the instrument by which property becomes subject to ch. 703, relating to condominiums. The condominium declaration contains all vital information about a condominium and must be recorded with the register of deeds.

The draft provides that a condominium declaration must include a statement of any restriction on or prohibition against the rental of units and, if applicable, a statement describing the authority of the board of directors, or a person under a management contract with the board of directors, with respect to terminating the tenancy of any tenants. [s. 703.09 (1) (g), Stats.]

### B. CONDOMINIUM BYLAWS

The condominium bylaws govern administration of the condominium, and every unit owner must comply with the condominium bylaws. The statute sets forth various items which must be included in the condominium bylaws as well as additional permissible bylaw provisions.

The draft creates several provisions related to condominium bylaws, described below.

### **1. Restrictions Regarding the Rental and Lease of Units**

The draft specifies that condominium bylaws may place restrictions on the rental and lease of units, including prohibiting the rental or lease of units, limiting the number or percentage of units that may be rented or leased or requiring the prior approval of the condominium board of directors before entering into an agreement for the rental or lease of a unit. [s. 703.10 (3), Stats.]

### **2. Utilization of a Unit Manager for the Rental and Lease of Units**

The draft provides that condominium bylaws *must* provide that if the majority of the members of the board of directors are not unit owners who reside in their unit, the board of directors *must* enter into a contract for the management of all units in which the owner of the unit does not reside. The person with whom the board of directors contracts for the management of all units is referred to in this memorandum as the “unit manager.” [s. 703.10 (2g) (a), Stats.]

If a condominium board hires a unit manager, a unit owner may not contract directly with any person for the rental or lease of their unit. Rather, the unit manager has all the rights and duties of a landlord with respect to units offered for rent or lease and must manage the rental and lease of those units. [s. 703.10 (2g) (b), Stats.]

### **3. Residency Requirements for Board of Directors**

Under current law, the bylaws of a condominium association must provide for the election of a board of directors by the unit owners. Only one of the members of the board of directors may be a person who does not own a unit in the condominium. The draft specifies that condominium bylaws *may* provide that a unit owner may not serve as a director unless he or she resides in his or her unit. [s. 703.10 (2g), Stats.]

### **4. Clarification Regarding “Common Expenses”**

Current law provides that condominium bylaws must express the manner of assessing and collecting from unit owners their respective shares of the “common expenses” of the condominium association. The draft clarifies that in this provision, the term “common expenses,” includes amounts assessed and collected for deposit in the condominium reserve account, as created under the draft. [ss. 703.10 (2) (a) and 703.16 (2), Stats.]

## **C. ASSESSMENTS**

As described above, the draft clarifies that assessments made against condominium unit owners includes assessments for amounts to be placed in the reserve fund. The draft further specifies that a unit owner is liable for all assessments, or installments thereof, which come due while the person owns a unit, including any assessments coming due during the **pendency** of any claim by the unit owner against the association or during any period when the unit is leased or rented to any other person. [s. 703.16 (3), Stats.]

## **D. BUDGET AND RESERVE REQUIREMENTS**

Current law states that funds for the creation of reserves for the payment of future common expenses shall be obtained by assessments against the unit owners. [s. 703.16 (2), Stats.]. However, current law does not clearly require the establishment and maintenance of a reserve fund and does not specify a method to determine the appropriate amount to be maintained in reserve. Current law also fails to specify the purposes for which the amounts in the reserve fund may be used.

The draft creates a new section in ch. 703, Stats., regarding budget and reserve requirements for condominium associations, which contains the provisions described below.

### **1. Annual Budget**

The draft requires the board of directors of a condominium association to annually prepare and distribute to all unit owners a detailed annual budget setting forth all of 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 reserves.
- d. The amount in the reserve account.
- e. The total amount of assessments to be levied against unit 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 condominium association.

The draft further specifies that an annual budget adopted by a board of directors on or after the effective date of the draft must provide for adequate funds in the reserve account described in section 2., below, for the purposes specified in section 4., below. [s. 703.165 (1), Stats.]

### **2. Establishment of a Reserve Account**

The draft requires the board of directors to establish a reserve account for the condominium association to hold all reserves and must assess unit owners for contributions to be placed in the reserve account. The reserve account must be held in an interest-bearing, federally insured account at a bank, savings bank, savings and loan association or credit union. [s. 703.165 (2) (a) and (b), Stats.]

### **3. Long-Range Reserve Account Plan**

The draft requires the board of directors to develop a long-range reserve account plan. The board of directors must annually evaluate the plan and revise it as necessary. In accordance with that plan, the board of directors must annually determine the necessary amount to be contributed to the reserve account to meet the needs of the condominium.

In developing and evaluating the long-range reserve plan, the board of directors must take into consideration all of the following:

- a. The results of any independent professional reserve study conducted on behalf of the association.
- b. The estimated cost of the repair or replacement of all major components that have a remaining useful life of less than 20 years and that the association has the duty to repair or replace.
- c. The estimated repair and replacement costs of all other common elements.
- d. The length of the normal useful life and the estimated remaining useful life of all other common elements.
- e. The estimated costs of materials and labor necessary to repair and replace, as necessary, the common elements.
- f. The amount of interest or other earnings attributable to the reserve account.
- g. An estimate of the total annual contribution to the reserve account that is necessary to meet the obligations of the association to repair and replace common elements.
- h. A comparison of the anticipated costs to repair and replace, as necessary, the common elements to the amounts held in the reserve account.

[s. 703.165 (2) (c), Stats.]

### **4. Use of Reserve Funds**

The draft specifies that, except as provided below, all amounts in the reserve account, including any accrued interest, may be used only for major repairs and replacement of common elements. Funds in the reserve account may not be used for routine expenditures such as normal or routine repair or maintenance of common elements or customary services such as snow or trash removal.

The draft states that funds in the reserve account may be used for a purpose other than those set forth above if the use of reserve funds for a specific purpose and in a specific amount is approved at a special meeting of the association, by the affirmative vote of unit owners having 75% or more of the votes. [s. 703.165 (3), Stats.]



**5. Borrowing From the Reserve Account**

The draft provides that the board of directors may borrow from the reserve account if all of the following conditions are met:

- a. The amount and specific purpose of the loan from the reserve account is approved at a special meeting of the association by the affirmative vote of at least 51% of unit owners having 66% or more of the votes.
- b. The amounts borrowed are expended for repair or replacement of common elements.
- c. The board of directors executes a loan agreement that specifies the principal amount of the loan, the time period for repayment of the loan and the initial rate of interest on the loan and that contains a schedule of monthly amounts for the repayment of loan principal and the payment of interest on the loan.
- d. The rate of interest on the loan is equal to at least two times the prime lending rate.
- e. The term of the loan is not longer than seven years.
- f. The amount of the loan is not greater than 40% of the total value of the reserve account at the time the loan is approved.
- g. There is no other loan from the reserve account outstanding.

[s. 703.165 (4), Stats.]

**6. Reporting Requirements**

The draft requires the board of directors, on behalf of the association, to annually provide to the Department of Financial Institutions (DFI) and to each unit owner a report on the reserve account of the association. The report must set forth all of the following:

- a. A statement of the amounts held in the reserve account at the beginning and at the close of the previous one-year period.
- b. The amount and source of funds added to the reserve account during the previous one-year period.
- c. The amounts expended from the reserve account during the previous one-year period and a description of the purposes for which the amounts were expended.

The draft provides that if the association fails to submit the report to DFI as required, each unit owner shall be subject to a forfeiture of \$50 for each day of violation.. [s. 703.165 (5), Stats.]

7. Audit to be Completed Upon **Request**

The draft provides that upon the written request of a unit owner, the board of directors must contract with an independent certified accountant to audit the reserve account and must provide the results of the audit to the requesting party. The board of directors may require the requesting party to pay the reasonable costs of the audit. [s. 703.165 (6), Stats.]

E. UNIT OWNER RESPONSIBLE FOR ACTIONS OF THEIR TENANTS

Current law provides that if a unit owner fails to comply with ch. 703, Stats., relating to condominiums, or with the declaration or bylaws of the condominium association, the unit owner may be sued for damages caused by the failure or for injunctive relief, or both, by the association or by any other unit owner. The draft expands this provision to provide that if a tenant of the unit owner violates any rule or bylaws of the condominium association or any condition or restriction set forth in the condominium declaration, the unit owner may be sued for damages caused by the tenant's violation or for injunctive relief, or both, by the association or by any other unit owner. [s. 703.24, Stats.]

F. DISCLOSURE REQUIREMENTS RELATED TO THE SALE OF A CONDOMINIUM UNIT

Current law sets forth a list of items and information which must be provided to the purchaser of a condominium unit no later than 15 days prior to the closing of the sale of the unit. The draft adds the following items to that list:

1. 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 condominium declaration, bylaws or rules and regulations that pertain to the lease or rental of units by unit owners. [s. 703.33 (1) (cm), Stats.]

2. 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 litigation. [s. 703.33 (1) (em), Stats.]

The draft also expands the information which must be disclosed regarding the operating budget of the condominium. The draft specifies that the disclosure must set forth all anticipated common operating expenses, anticipated expenditures from the reserve account for repair or replacement of common elements, the amount in the reserve account, and the anticipated amount of contribution to the reserve account by the purchaser. [s. 703.33 (1) (d), Stats.]

G. SPECIAL PROVISIONS APPLICABLE TO CONDOMINIUMS ADDED TO CH. 704 GOVERNING LANDLORDS AND TENANTS

Currently, ch. 704, Stats., which governs landlord-tenant law, does not contain any special provisions relating to condominiums.

The draft creates several new provisions within ch. 704, Stats., which pertain specifically to the rental and lease of condominium units.

**1. Tenant Subject to Rules and Bylaws of the Condominium Association**

The draft provides that within ch. 704, Stats., if the premises which are covered by a lease are part of a condominium, any reference to a “condition,” “covenant” or “provision” of the tenant’s “lease” or “agreement” includes any rule or bylaw of the condominium association and any provision of the condominium declaration. [s. 704.02 (1), Stats.]

**2. “Landlord” Includes the Board of Directors and the Unit Manager**

The draft provides that within ch. 704, Stats., if the premises which are covered by a lease are part of a condominium, any reference to “landlord” includes the board of directors of the condominium association and the unit manager, if any. [s. 704.02 (2), Stats.]

**3. Items Required to be Included in the Lease**

The draft provides that every agreement for the rental or lease of a condominium unit must be in writing and must contain all of the following:

- a. A statement that the unit owner, the board of directors of the association or an agent of the board of directors may terminate the tenancy if the tenant violates any rule or bylaw of the association or any provision of the condominium declaration.
- b. An appendix containing the rules and bylaws of the association and the condominium declaration.
- c. A provision stating that the tenant acknowledges receipt of and agrees to abide by the association rules and bylaws and the provisions of the condominium declaration.
- d. The address and telephone number of the unit owner.

[s. 704.50 (2), Stats.]

**4. Copy of the Lease Must be Provided to the Association**

The draft provides that a unit owner or a unit manager, must, within five business days after entering into an agreement for the rental or lease of a unit, provide a copy of the agreement to the condominium association. The association must keep a copy of any rental or lease agreement on file while the agreement is in effect. [s. 704.50 (3), Stats.]

**5. Tenant Must Provide Telephone Number to the Association**

The draft provides that a tenant of the condominium unit must provide his or her telephone number to the condominium association as soon as possible after the tenant enters into



# 1999 BILL

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1 **AN ACT to amend** 703.10 (2) (e), 703.16 (2) and 703.33 (1) (d); and to create  
2 703.165 of the statutes; **relating to:** condominium budgets and reserve  
3 accounts.

### **Analysis by the Legislative Reference Bureau**

Current law contains various provisions related to condominiums, such as the procedure that must be followed to create a condominium, the ownership interest of a person purchasing a condominium unit, requirements for bylaws governing the administration of a condominium, rights and responsibilities of a condominium association, how expenses of the condominium are to be paid and disclosures that must be made by a condominium unit seller to a prospective purchaser. This bill adds requirements for a reserve account and an annual budget.

Under current law, the expenses of a condominium as a whole, as opposed to the expenses of the individually owned units in a condominium, are called "common expenses". Common expenses are paid through assessments against the individual unit owners. Assessments that are collected for future common expenses are called "reserves". The bill requires the board of directors (board) of a condominium association to establish a reserve account, for the purpose of holding reserves, as an interest-bearing, federally insured account at a bank, savings bank, savings and loan association or credit union. The board must develop, and annually evaluate, a long-range reserve account plan to determine the amount that must be contributed to reserves each year by the unit owners. In developing and evaluating this plan, the board must consider such things as the estimated remaining useful life of the major

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, such as capital repairs and replacements,

**BILL**

common elements, the estimated cost of repairing or replacing the major common elements that have a remaining useful life of less than 20 years, the interest or other earnings that will accrue to the reserve account and the total annual contribution that will be required to meet the obligations of the association to repair and replace common elements. The bill specifies that funds in the reserve account may be used only for repair and replacement of common elements and may not be used for routine expenditures, such as normal or routine repair or maintenance of common elements, or for customary services, such as snow or trash removal. The board may, however, make withdrawals or transfers from the reserve account for purposes other than repair or replacement of common elements if at least 51% of the unit owners having 66% or more of the votes approve of the withdrawal or transfer at a special meeting of the association. The board must repay such an approved withdrawal or transfer over a period of not more than seven years, and, when approved, the amount of the withdrawal or transfer may not exceed 40% of the total amount in the reserve account and there may be no other outstanding withdrawals or transfers.

The bill requires the board annually to record a reserve account report in its minutes and with the county register of deeds. The report must include the beginning and ending balances in the reserve account for the reporting period, the amounts and sources of all funds added to the account during the period and the amounts and purposes of all expenditures from the reserve account during the period. The bill provides that, if a unit owner requests an audit of the reserve account, the board must contract with an independent certified accountant for an audit and provide the results to the requesting party. The board may, however, require the requesting party to pay the cost of the audit. The bill requires a person selling a unit in a condominium to disclose to prospective purchasers information about reserves and the reserve account, such as the amount in the reserve account, anticipated expenditures from the reserve account for repairing or replacing common elements and anticipated contributions to reserves by the purchaser.

The bill also requires the board to prepare and distribute to all unit owners a detailed annual budget. The budget must include all anticipated common expenses and surpluses, the amount in the reserve account, the anticipated expenditures from and contributions to the reserve account, the total amount of the assessments to be levied against the unit owners, any other sources of income to the association and any other anticipated expenditure by the association.

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

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

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

**BILL**

1 SECTION 2. 703.16 (2) of the statutes is amended to read:

2 703.16 (2) FUNDS FOR PAYMENT OF COMMON EXPENSES OBTAINED BY ASSESSMENTS.

3 Funds for the payment of common expenses ~~and for, including~~ the creation of  
4 reserves ~~for the payment of future common expenses~~, shall be obtained by  
5 assessments against the unit owners in proportion to their percentage interests in  
6 the common elements or as otherwise provided in the declaration.

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

8 **703.165 Budget and reserve requirements. (1) ANNUAL BUDGET.** (a) ~~The~~  
9 board of directors shall ~~prepare~~ prepare and distribute to all unit owners a detailed  
10 annual budget setting forth all of the following:

- 11 1. All anticipated common expenses and common surpluses.
- 12 2. The amount and purpose of each anticipated expenditure from reserves.
- 13 3. The amount and source of all anticipated, contributions to reserves.
- 14 4. The amount in the reserve account.
- 15 5. The total amount of assessments to be levied against unit owners.
- 16 6. The amount and source of any other income of the association.
- 17 7. The amount and purpose of any other anticipated expenditure by the  
18 association.

19 (b) An annual budget adopted by a board of directors ~~on or after the effective~~  
20 ~~date of this paragraph~~ ~~..~~ ~~Revisors inserts date~~ shall provide for ~~adequate funds~~  
21 the reserve account established under sub. (2) ~~for the purposes specified in sub. (2)~~

22 (2) RESERVE ACCOUNT BUDGETING AND RESERVE PLAN. (a) ~~The~~ <sup>ens. 3-22</sup> board of directors  
23 shall establish a reserve account for the association, to hold all reserves, and shall  
24 assess unit owners for contributions to be placed into the reserve account.

Insert 3-8

reasonable reserves

## BILL

## SECTION 3

1 (b) The reserve account established under this subsection shall be an  
2 interest-bearing, federally insured account at a bank, savings bank, savings and  
3 loan association or credit union.

4 (c) The board of directors shall develop and annually evaluate and revise, as  
5 necessary, a long-range reserve account plan. In accordance with this plan, the  
6 board of directors shall annually determine the amount that is necessary to be  
7 contributed to the reserve account for the needs of the condominium. In developing  
8 and evaluating the long-range reserve plan, <sup>ens 4-8</sup> the board of directors shall take into  
9 consideration all of the following:

10 1. The results of any independent professional reserve study conducted on  
11 behalf of the association.

12 2. The estimated cost of the repair or replacement of all major common  
13 elements that have a remaining useful life of less than 20 years and that the  
14 association has the duty to repair or replace.

15 3. The estimated remaining useful life of all major common elements.

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

17 5. An estimate of the total annual contribution to the reserve account that is  
18 necessary to meet the obligations of the association to repair and replace common  
19 elements.

20 6. A comparison between the amounts held in the reserve account and the  
21 anticipated costs to repair and replace, as necessary, the common elements.

22 **(3) USE OF RESERVE ACCOUNT.** Except as provided in sub. (4), the funds in the  
23 reserve account, including accrued interest, may be used only for major repairs and  
24 replacement of common elements. Funds in the reserve account may not be used for

## BILL

1 routine expenditures such as normal or routine repair or maintenance of common  
2 elements or customary services such as snow or trash removal.

3 (4) **SPECIAL WITHDRAWALS OR TRANSFERS FROM RESERVE ACCOUNT.** The board of  
4 directors may withdraw or transfer funds from the reserve account for a purpose  
5 other than those specified in sub. (3) if all of the following conditions are met:

6 (a) The amount and specific purpose of the withdrawal or transfer from the  
7 reserve account is approved at a special meeting of the association by the affirmative  
8 vote of at least 51% of unit owners having 66% or more of the votes.

9 (b) The board of directors creates a repayment schedule that specifies the time  
10 period for repayment of the withdrawal or transfer and that contains a schedule of  
11 periodic amounts for the repayment of the withdrawal or transfer.

12 (c) The term of the repayment schedule is not longer than 7 years.

13 (d) The amount of the withdrawal or transfer is not greater than 40% of the  
14 total value of the reserve account at the time the withdrawal or transfer is approved  
15 under par. (a).

16 (e) No other withdrawal or transfer from the reserve account is outstanding.

17 (5) **REPORTING REQUIREMENTS.** ~~The~~ <sup>Beginning in 2001, the</sup> board of directors, on behalf of the  
18 association, shall annually, no later than March <sup>31</sup> ~~15~~ record in its minutes and with the  
19 register of deeds of the county where the condominium is located a report on the  
20 reserve account of the association setting forth all of the following:

21 (a) A statement of the amounts held in the reserve account at the beginning and  
22 at the close of the previous one-year period.

23 (b) The amounts and sources of funds added to the reserve account during the  
24 previous one-year period.



**BILL**

1 (c) The amounts expended from the reserve account during the previous  
2 one-year period and a description of the purposes for which the amounts were  
3 expended.

4 (6) AUDIT. Upon the written request of any unit owner, the board of directors  
5 shall contract with an independent certified accountant to audit the reserve account  
6 and provide the results of the audit to the requesting party. The board of directors  
7 may require the requesting party to pay the reasonable costs of the audit.

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

9 703.33 (1) (d) A copy of the projected annual operating budget for the  
10 condominium ~~including reasonable details concerning~~ setting forth all anticipated  
11 common operating expenses, anticipated expenditures from the reserve account for  
12 repair or replacement of common elements, the amount in the reserve account, the  
13 estimated monthly payments by the purchaser for assessments, including  
14 anticipated contributions by the purchaser to reserves, and the estimated monthly  
15 charges for the use, rental or lease of any facilities not part of the condominium.

16 SECTION 5. Initial applicability.

17 (1) The treatment of section 703.33 (1) (d) of the statutes first applies to copies  
18 of the projected annual operating budget furnished on ~~01/12/2000~~

19 (END)

D-note

the first day of the  
5th month beginning  
after the effective date  
of this subsection

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

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**INSERT 3-8**

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No later than the first day of the 5th month beginning after the effective date of this paragraph . . . . [revisor inserts date], and annually thereafter, each

' (ENDOFINSERT3-8)

**INSERT 3-22**

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No later than the first day of the 3rd month beginning after the effective date of this paragraph . . . . [revisor inserts date], the

(END OF INSERT 3-22)

**INSERT 4-8**

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and in providing for reasonable reserves under sub. (1) (b)

(ENDOFINSERT4-3)

**DRAFTERS NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3741/2dn  
PJK:cmh&jlg:jf

✓  
Representative La Fave:

This redraft is based on a conversation I had with John Poehlman, who was sent a copy of the draft and drafter's note by Debbi Conrad; so these changes should be the final ones, as far as I know. Mr. Poehlman thought that it would be reasonable to require compliance with the requirement to prepare and distribute a budget within 120 days after the effective date (thus, the first day of the 5th month beginning after publication), and compliance with the requirement to establish a reserve account within 60 days after the effective date (thus, the first day of the 3rd month beginning after publication). Let me know if you have any questions about this bill draft.

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

(his name ends  
w/ 2 n's)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3741/2dn  
PJK:cmh&jlg:jf

January 28, 2000

Representative La Fave:

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**Pamela J. Kahler**

Senior Legislative Attorney

Phone: (608) 266-2682

E-mail: [Pam.Kahler@legis.state.wi.us](mailto:Pam.Kahler@legis.state.wi.us)



1999 BILL

Very soon  
(1-31)  
D. W. J.

reserv  
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1 AN ACT to amend 703.10 (2) (e), 703.16 (2) and 703.33 (1) (d); and to create  
2 703.165 of the statutes; relating to: condominium budgets and reserve  
3 accounts.

**Analysis by the Legislative Reference Bureau**

Current law contains various provisions related to condominiums, such as the procedure that must be followed to create a condominium, the ownership interest of a person purchasing a condominium unit, requirements for bylaws governing the administration of a condominium, rights and responsibilities of a condominium association, how expenses of the condominium are to be paid and disclosures that must be made by a condominium unit seller to a prospective purchaser. This bill adds requirements for a reserve account and an annual budget.

Under current law, the expenses of a condominium as a whole, as opposed to the expenses of the individually owned units in a condominium, are called "common expenses". Common expenses are paid through assessments against the individual unit owners. Assessments that are collected for certain future common expenses, such as capital repairs and replacements, are called "reserves". The bill requires the board of directors (board) of a condominium association to establish a reserve account, for the purpose of holding reserves, as an interest-bearing, federally insured account at a bank, savings bank, savings and loan association or credit union. The board must develop, and annually evaluate, a long-range reserve account plan to determine the amount that must be contributed to reserves each year by the unit owners. In developing and evaluating this plan, the board must consider

**BILL**

such things as the estimated remaining useful life of the major common elements, the estimated cost of repairing or replacing the major common elements that have a remaining useful life of less than 20 years, the interest or other earnings that will accrue to the reserve account and the total annual contribution that will be required to meet the obligations of the association to repair and replace common elements. The bill specifies that funds in the reserve account may be used only for repair and replacement of common elements and may not be used for routine expenditures, such as normal or routine repair or maintenance of common elements, or for customary services, such as snow or trash removal. The board may, however, make withdrawals or transfers from the reserve account for purposes other than repair or replacement of common elements if at least 51% of the unit owners having 66% or more of the votes approve of the withdrawal or transfer at a special meeting of the association. The board must repay such an approved withdrawal or transfer over a period of not more than seven years, and, when approved, the amount of the withdrawal or transfer may not exceed 40% of the total amount in the reserve account and there may be no other outstanding withdrawals or transfers.

The bill requires the board annually to record a reserve account report in its minutes and with the county register of deeds. The report must include the beginning and ending balances in the reserve account for the reporting period, the amounts and sources of all funds added to the account during the period and the amounts and purposes of all expenditures from the reserve account during the period. The bill provides that, if a unit owner requests an audit of the reserve account, the board must contract with an independent certified accountant for an audit and provide the results to the requesting party. The board may, however, require the requesting party to pay the cost of the audit. The bill requires a person selling a unit in a condominium to disclose to prospective purchasers information about reserves and the reserve account, such as the amount in the reserve account, anticipated expenditures from the reserve account for repairing or replacing common elements and anticipated contributions to reserves by the purchaser.

The bill also requires the board to prepare and distribute to all unit owners a detailed annual budget. The budget must include all anticipated common expenses and surpluses, the amount in the reserve account, the anticipated expenditures from and contributions to the reserve account, the total amount of the assessments to be levied against the unit owners, any other sources of income to the association and any other anticipated expenditure by the association.

---

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

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

**BILL**

1           703.10 (2) (e) The manner of assessing against and collecting from unit owners  
2 their respective shares of the common expenses, including amounts for denosit in the  
3 reserve account under s. 703.165 (2).

4           **SECTION 2.** 703.16 (2) of the statutes is amended to read:

5           **703.16 (2) FUNDS FOR PAYMENT OF COMMON EXPENSES OBTAINED BY ASSESSMENTS.**

6 Funds for the payment of common expenses ~~and for, including~~ the creation of  
7 reserves ~~for the payment of future common expenses~~, shall be obtained by  
8 assessments against the unit owners in proportion to their percentage interests in  
9 the common elements or as otherwise provided in the declaration.

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

11          **703.165 Budget and reserve requirements. (1) ANNUAL BUDGET.** (a) No

12 later than the first day of the <sup>6</sup>th month beginning after the effective date of this  
13 paragraph . . . . [revisor inserts date], and annually thereafter, each board of directors  
14 shall prepare and distribute to all unit owners a detailed annual budget setting forth  
15 all of the following:

- 16           1. All anticipated common expenses and common surpluses.
- 17           2. The amount and purpose of each anticipated expenditure from reserves.
- 18           3. The amount and source of all anticipated contributions to reserves.
- 19           4. The amount in the reserve account.
- 20           5. The total amount of assessments to be levied against unit owners.
- 21           6. The amount and source of any other income of the association.
- 22           7. The amount and purpose of any other anticipated expenditure by the  
23 association.

24          (b) An annual budget adopted by a board of directors under par. (a) shall  
25 provide for reasonable reserves in the reserve account ~~established under sub. (2)~~

*in accordance with the long-range reserve account  
plan under sub. (2) (b)*

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(2) RESERVE ACCOUNT, BUDGETING AND RESERVE PLAN. (a) No later than the first day of the ~~3rd~~ month beginning after the effective date of this paragraph . . . [revisor

inserts date], the board of directors shall establish a reserve account for the association, to hold all reserves ~~and shall assess unit owners for contributions to be placed into the reserve account~~

**no 4** The reserve account ~~established under this subsection~~ shall be an interest-bearing, federally insured account at a bank, savings bank, savings and loan association or credit union.

**b** The board of directors shall develop and annually evaluate and revise, as necessary, a long-range <sup>✓</sup>reserve account plan. In accordance with this plan, the board of directors shall annually determine the amount that is necessary to be

contributed to the reserve account for the needs of the condominium. **In developing** and evaluating the long-range reserve plan and in providing for reasonable reserves under sub. (1) (b), the board of directors shall take into consideration all of the following:

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

2. The estimated cost of the repair or replacement of all major common elements that have a remaining useful life of less than 20 years and that the association has the duty to repair or replace.

3. The estimated remaining useful life of all major common elements.

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

5. An estimate of the total annual contribution to the reserve account that is necessary to meet the obligations of the association to repair and replace common elements.

4-12



**BILL**

1           6. A comparison between the amounts held in the reserve account and the  
2 anticipated costs to repair and replace, as necessary, the common elements.

3           (3) **USE OF RESERVE ACCOUNT.** Except as provided in sub. (4), the funds in the  
4 reserve account, including accrued interest, may be used only for major repairs and  
5 replacement of common elements. Funds in the reserve account may not be used for  
6 routine expenditures such as normal or routine repair or maintenance of common  
7 elements or customary services such as snow or trash removal.

8           (4) **SPECIAL WITHDRAWALS OR TRANSFERS FROM RESERVE ACCOUNT.** The board of  
9 directors may withdraw or transfer funds from the reserve account for a purpose  
10 other than those specified in sub. (3) if all of the following conditions are met:

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

14           (b) The board of directors creates a repayment schedule that specifies the time  
15 period for repayment of the withdrawal or transfer and that contains a schedule of  
16 periodic amounts for the repayment of the withdrawal or transfer.

17           (c) The term of the repayment schedule is not longer than 7 years.

18           (d) The amount of the withdrawal or transfer is not greater than 40% of the  
19 total value of the reserve account at the time the withdrawal or transfer is approved  
20 under par. (a).

21           (e) No other withdrawal or transfer from the reserve account is outstanding.

22           (5) **REPORTING REQUIREMENTS.** Beginning in 2001, the board of directors, on  
23 behalf of the association, shall annually, no later than March 31, record in its minutes  
24 and with the register of deeds of the county where the condominium is located a  
25 report on the reserve account of the association setting forth all of the following:

**BILL**

1 (a) A statement of the amounts held in the reserve account at the beginning and  
2 at the close of the previous one-year period.

3 (b) The amounts and sources of funds added to the reserve account during the  
4 previous one-year period.

5 (c) The amounts expended from the reserve account during the previous  
6 one-year period and a description of the purposes for which the amounts were  
7 expended.

8 **(6) AUDIT.** Upon the written request of any unit owner, the board of directors  
9 shall contract with an independent certified accountant to audit the reserve account  
10 and provide the results of the audit to the requesting party. The board of directors  
11 may require the requesting party to pay the reasonable costs of the audit.

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

13 703.33 **(1)** (d) A copy of the projected annual operating budget for the  
14 condominium ~~including reasonable details concerning~~ setting forth all anticipated  
15 common operating expenses, anticipated expenditures from the reserve account for  
16 repairment of common elements, the amount in the reserve account, the  
17 estimated monthly payments by the purchaser for assessments, including  
18 anticipated contributions by the purchaser to reserves, and the estimated monthly  
19 charges for the use, rental or lease of any facilities not part of the condominium.

20 **SECTION 5. Initial applicability.**

21 (1) The treatment of section 703.33 (1) (d) of the statutes first applies to copies  
22 of the projected annual operating budget furnished on the first day of the 6<sup>th</sup> month  
23 beginning after the effective date of this subsection.

24 (END)

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D - note

**1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

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**INSERT 4-12**

no 9

, assess unit owners a sufficient amount for contributions to reserves and deposit the assessments collected into the reserve account

**(END OF INSERT 4-12)**

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3741/3dn  
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*Representative LaFave:*

As we discussed, I changed the date by which a budget must be prepared and distributed to the first day of the 6th month, which would give boards of directors at least five months to prepare for and accomplish this.

I changed the date by which reserve accounts must be established to the first day of the 4th month, which gives boards of directors at least three months to accomplish this.

I made two additional changes, as a result of my conversation with Mary Matthias, that are not related to a two-month phase in, but which make more or less technical changes that, I think, improve the draft. The first is at the bottom of page 3, in s. 703.165 (1) (b). I tied the "reasonable reserves" to the long-range reserve account plan. I think it makes more sense to have this stated connection between the annual budget and the long-range reserve account plan.

The second change is on page 4, in s. 703.165 (2). I collapsed "old" pars. (a) and (b) into one par. (a) and changed "old" par. (c) to par. (b). From "old" par. (a), I took out the reference to assessing for contributions to be placed into the reserve account. Instead, in new par. (b), I required the board to assess for contributions to reserves and to deposit the contributions collected into the reserve account. The language has not been removed, just moved to a more appropriate location.

If you would prefer, however, that the language be returned to its original state, let me know.

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

*Also as we discussed,*

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3741/3dn  
PJK:cmh&jlg:km

February 1, 2000

Representative La Fave:

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Also as we discussed, I changed the date by which reserve accounts must be established to the first day of the 4th month, which gives boards of directors at least three months to accomplish this.

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

**SUBMITTAL  
'FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

**Date:** 02/01/2000

**To:** Representative La Fave

**Relating to LRB drafting number:** LRB-3741

**Topic**

Various additions to the condominium laws

**Subject(s)**

Real Estate - condominiums

1. **JACKET** the draft for introduction \_\_\_\_\_  
**in the Senate** OR **the Assembly**  (check only one). Only the requester under whose name the  
drafting request is entered in the **LRB's** drafting records may authorize the draft to be submitted. Please  
allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_  
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_  
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or  
increases or decreases existing appropriations or state or general local government fiscal liability or  
revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to  
introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon  
introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to  
introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-356 1. If you have any questions  
relating to the attached draft, please feel free to call me.

Pamela J. Kahler, Senior Legislative Attorney  
Telephone: (608) 266-2682