



WISCONSIN LEGISLATIVE COUNCIL  
REPORT TO THE LEGISLATURE

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SPECIAL COMMITTEE ON  
CONDOMINIUM  
LAW REVIEW

April 24, 2003

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**SPECIAL COMMITTEE ON CONDOMINIUM LAW REVIEW  
REPORT TO THE LEGISLATURE**

Prepared by:  
Don Dyke, Senior Staff Attorney  
April 24, 2003

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## PART I

### KEY PROVISIONS OF COMMITTEE RECOMMENDATION

#### 2003 ASSEMBLY BILL 254, RELATING TO REVISIONS AND ADDITIONS TO CONDOMINIUM LAW

##### Disclosure to Condominium Unit Purchases

- Requires an executive summary, highlighting important disclosure items or indicating where in the other disclosure materials the items may be found, to be included in the disclosure materials that must be furnished by a seller of a condominium unit to a buyer.
- Requires a condominium unit owner who is transferring ownership to include specified information pertaining to the condominium unit in an addendum to the real estate condition report currently required under ch. 709, Stats.

##### Reserve Requirement

- Requires a declarant (condominium developer) or condominium association to establish a "statutory reserve account" to fully or partially fund repairs and replacements of common elements other than routine maintenance, unless the declarant or association elects not to establish an account pursuant to specified procedures. The provisions generally apply only to exclusively residential condominiums, other than small condominiums. Small condominiums and mixed-use condominiums (residential and nonresidential units) may choose to be governed by the provisions.

##### Annual Budget Requirement

- Requires condominiums that include at least one residential unit to adopt and distribute to all unit owners an annual budget setting forth specified information.

##### Rental of Condominium Units

- For rentals or leases of residential condominium units of more than one month or periodic residential tenancies of more than one month:
  - Provides as a matter of law that the tenant agrees to comply with the statutes governing condominiums, the rules and bylaws of the association, and the provisions of the condominium declaration.
  - Requires written rental agreements to be provided to the association and provides a means of contacting or giving notice to a tenant or unit owner who is party to a rental agreement or tenancy.

- Authorizes the condominium declaration to permit the condominium association, under specified circumstances, to bring an eviction action against a tenant who fails to comply with the declaration, bylaws, or association rules or who commits any act or omission that is grounds for eviction under current law.
- Requires the declaration to include requirements or restrictions on the rental of residential units (or reference to any requirements or restrictions in the bylaws) and requires the executive summary of disclosure materials for buyers of units to indicate whether unit owners may rent their units and any restrictions on the rental (or reference where the restrictions may be found).
- Allows the bylaws to prohibit a unit owner from serving as a director of the condominium association unless the owner occupies the unit or to specify the proportion of nonoccupant unit owners who may serve as directors.

#### **Unit Owner and Tenant Liability for Certain Violations**

- Makes unit owners and tenants of condominium units liable for any charges, fines or assessments imposed pursuant to association bylaws or rules for failure to comply with the statutes governing condominiums, the declaration, the bylaws, or the association rules. If the association gives notice to the unit owner of a tenant's violation, the unit owner is liable for charges, fines, or assessments that remain unpaid by the tenant 30 days after the tenant first received notice of the charges, fines, or assessments.

#### **Enforcement of Association-Imposed Assessments and Charges**

- Expands the lien provisions of current law to allow placement of a lien on a condominium unit for failure to pay charges, fines, or assessments for damages to the condominium or for violations of the declaration, bylaws or association rules, in addition to failure to pay assessments for common expenses.

#### **Declarant Responsibility**

- Makes the declarant liable for the proportionate share of actual common expenses incurred during the period of declarant control when units owned by the declarant are exempt from assessments until sold.
- Requires the creation and maintenance of, and access to, financial and operational records of the association during the period of declarant control and, during that period, and one year after, requires the association to arrange for an independent audit of financial records if requested by a specified number of owners.

### **Arbitration Provision for Resolving Disputes**

- Allows the declaration to provide for mandatory arbitration under ch. 788, Stats., of disputes involving the interests of the declarant, unit owners, association, or board of directors when the disputes arise out of the declaration, bylaws, or rules.

### **Small Condominiums**

- Expands the application of the current provisions on small condominiums by increasing the maximum number of units in a “small condominium” from four to 12 and eliminating the requirement that all of the units be restricted to residential uses.

### **Repeal of Provision on Uncompleted Units**

- Repeals s. 703.255, Stats., which provides that if a declarant fails to complete any unit described in the declaration within a specified time, the declarant must obtain agreement for an extended time to complete the units; if the agreement is not obtained, the declarant “loses” the uncompleted units (the declarant must remove the units from the declaration and adjust percentage interests and votes accordingly).

**PART II**  
**COMMITTEE ACTIVITY**

**ASSIGNMENT**

The Joint Legislative Council established the Special Committee on Condominium Law Review by a May 18, 2000 mail ballot. The committee's co-chairs were appointed by a June 13, 2000 mail ballot and members were appointed by an August 14, 2000 mail ballot. The Special Committee was generally directed to study ways to protect the investments of current and future condominium unit owners and ways to facilitate the appropriate development of the condominium form of property ownership. More specifically, the committee was directed to review all aspects of the condominium law, including: the development and establishment of condominiums; the governance of condominium associations, including the establishment of an annual budget and maintenance of reserve funds; the ownership and sale of condominiums; rental of condominiums; and ways to address concerns of local units of government in which condominiums are located.

Membership of the Special Committee consisted of two Senators, four Representatives and 10 Public Members. A list of the committee membership is set forth in **Appendix 3**.

At the Special Committee's March 27, 2001 meeting, the co-chairs established a drafting subcommittee to deal both with technical drafting issues and with issues submitted to the subcommittee by the full committee. The drafting subcommittee consisted of any member of the full committee who wished to attend a particular subcommittee meeting; other interested parties also participated in the subcommittee deliberations. The drafting subcommittee operated informally.

**SUMMARY OF MEETINGS**

**Meetings of the Special Committee**

The Special Committee held seven meetings at the State Capitol, in Madison, on the following dates:

September 28, 2000. Senior Staff Attorney Shaun Haas gave a brief overview of the condominium ownership act (ch. 703, Stats.) and Senior Staff Attorney Don Dyke reviewed condominium law issues that might come before the committee. Committee members then engaged in discussion of issues for consideration at future committee meetings. Before the close of the meeting, the committee reviewed and discussed 1999 Assembly Bill 723, relating to condominium budgets and reserve accounts, identifying a number of issues in relation to providing a statutory provision on reserve accounts for condominiums.

November 16, 2000. Assistant Milwaukee City Attorney David Halbrooks described efforts undertaken in Milwaukee to improve troubled condominiums and recommended committee consideration of several changes in condominium law. Representatives of the Wisconsin Housing and Economic Development Authority (WHEDA) apprised the

committee of the perspective of WHEDA, and of other lenders, on condominium reserve accounts for major repairs and replacements. The committee then discussed proposals for relatively technical changes in condominium law that have been made by interested parties and directed staff to begin preparing draft legislation on some of the recommendations. The committee continued discussion of the issue of mandatory reserve accounts, including allowing an opt-out and providing a liability shield for members of condominium association boards of directors.

December 20, 2000. Mr. Mathew Berkowitz, Vice President, Bartlein and Company, Inc., appeared before the committee to respond to questions concerning his October 12, 2000 letter to committee members suggesting changes in Wisconsin condominium law. Mr. Berkowitz provides property management services for approximately 40 condominium associations, primarily in Southeastern Wisconsin. In response to committee questions, Mr. Berkowitz stressed the advisability of reserve funds and addressed issues relating to owner occupancy, qualifications of property managers, enforcement of condominium rules and developer issues. Joel Batha, Department of Transportation (DOT), appeared before the committee to respond to questions concerning DOT's proposal to streamline the procedure for acquiring condominium property consisting of common elements for highway projects. The committee then reviewed an initial draft of revisions in operational aspects of condominium law and reviewed an additional list of such proposals gathered from interested persons by Committee Member Pharis Horton.

February 21, 2001. The committee engaged in extended discussion of two issues: (1) disclosure to prospective condominium buyers; and (2) reserve funds for repair and replacement of common elements. Concerning disclosure issues, the committee reviewed draft proposals by staff and by the Wisconsin Realtors Association (WRA). In connection with the latter, the committee heard from Debra Conrad, Legal Services Director, WRA. The committee focused its discussion on the content of an executive summary of information important to prospective condominium buyers, the relationship of the executive summary and other disclosure materials to the real estate condition report currently required under ch. 709, Stats., and on the timing of disclosure. The committee directed staff to prepare another draft for review at its next meeting.

The committee also reviewed a draft that required the establishment of reserve accounts for repair and replacement of condominium common elements, subject to the ability to "opt out" of the requirement. The committee made specific suggestions for changes in the draft and requested staff to prepare a redraft for the next meeting.

March 27, 2001. The committee continued its discussion of draft legislation relating to disclosure materials for condominium purchasers and to reserve accounts for major capital repairs and replacements of condominium common elements. The committee discussed who should have responsibility for furnishing various disclosure materials and how much responsibility the purchaser should bear. The committee also considered, for the first time, a draft on issues relating to the rental of condominium units. Several portions of the draft were discussed and staff was directed to make requested changes.

Due to the volume of suggested draft legislation under consideration by the Special Committee, Co-Chairs Senator Jon Erpenbach and Representative Tom Sykora established a **drafting subcommittee** to deal both with technical drafting issues and with issues submitted to the subcommittee by the full committee.

October 1, 2001. The committee met to consider revisions to draft legislation that had been considered by the full committee at previous meetings and additional legislation developed by the drafting subcommittee, which had met seven times since the full committee's last meeting.

The committee considered drafts on disclosure to condominium unit buyers and on a number of miscellaneous areas of condominium law. In considering the drafts, 19 motions were made by committee members (some of which were withdrawn or received no seconds).

October 22, 2001. The committee considered the remaining drafts from the agenda of its October 1 meeting, and additional drafts as well. Numerous motions were considered to modify the drafts. After the committee completed its consideration of the drafts, the co-chairs announced that the drafts, as amended, would be incorporated into a single draft and a mail ballot submitted to committee members for a vote on recommending the single draft to the Joint Legislative Council for introduction in the 2001-02 Legislature.

**Meetings of the Drafting Subcommittee**

The Drafting Subcommittee considered numerous draft proposals and issues at seven meetings held at the State Capitol, in Madison, on the following dates:

April 19, 2001	July 27, 2001
May 14, 2001	August 20, 2001
June 15, 2001	August 29, 2001
July 13, 2001	



### **PART III**

#### **RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL**

This part of the report provides background information on, and a description of, the bill recommended by the Special Committee on Condominium Law Review and introduced in the 2003-04 Session of the Legislature by the Joint Legislative Council.

#### **BACKGROUND**

##### **Statutory Development of Wisconsin Condominium Law**

The first Wisconsin statutes on condominiums were created in 1963. Known as the Unit Ownership Act, the law was based on the Federal Housing Administration model condominium statute, promulgated in 1961. The Unit Ownership Act was primarily directed at apartment-style residential condominiums and, consequently, the Act failed to provide an adequate framework for condominium development in Wisconsin because much of the proposed development was in the form of townhouses, duplexes, cluster residences or single-family homes. Further, the Act only contemplated the construction of the entire condominium in a single project, while many condominiums are designed to be developed and sold in phases. [*Wisconsin Condominium Law Handbook*, s. 1.4, State Bar of Wisconsin CLE Books, Madison, WI (1999).]

The limitations of the Unit Ownership Act resulted in the formation of an ad hoc group of interested persons to remedy the deficiencies of the act and expand the scope of statutory condominium provisions. Legislative Council staff files indicate that the laws of Maryland and Virginia and the uniform act drafted by the National Conference of Commissioners on Uniform State Laws were reviewed and utilized to revise Wisconsin law. The result of that effort, Ch. 407, Laws of 1977, effective August 1, 1978, repealed and recreated ch. 703, Stats. The legislation enacted by Ch. 407 continues to serve as the statutory framework for condominium law in Wisconsin. Among other things, the 1978 revision provided increased flexibility to condominium associations for managing condominiums and required developers to disclose specified information to protect buyers of condominium units.

Since the 1978 revision, the condominium chapter has received legislative attention on several occasions, including a Legislative Council study committee in 1984 and 1985. However, none of the reviews or proposals was comprehensive in scope.

In recent legislative sessions, individual legislators and ad hoc groups of interested persons began to develop legislation to address specific condominium law issues, including reserve accounts; regulation of developers; occupancy by nonowners; and disclosure to condominium unit buyers. The interest in addressing certain condominium law issues and the complexity of condominium law led to the creation by the Joint Legislative Council of the Special Committee on Condominium Law Review.

### *Development of Recommended Legislation*

In addition to its legislative membership, the Special Committee's membership included a wide range of interests represented by its public members, including: attorneys whose practice includes condominium law and representatives of lenders, realtors, condominium developers, condominium unit owners and condominium association officials. The issues considered by the Special Committee included issues raised by individual committee members; by invited testimony and by solicited and unsolicited suggestions made by interested persons.

Many of the issues considered by the Special Committee involved balancing the interests of condominium developers, condominium associations, individual unit owners (both resident and nonresident unit owners), condominium unit tenants, lenders, and local government. A number of issues involved a balancing of the property rights of individual unit owners against the rights of other unit owners and the governance of the condominium by the condominium association and its board of directors. Recommendations of the committee that involved policy choices include proposals that received general consensus and proposals that did not. Even when general consensus existed, many issues involved substantial discussion and give-and-take among committee members.

An example of an area that appeared to achieve consensus is disclosure to purchasers of condominium units. A common theme among committee members was the widespread lack of understanding of what condominium ownership entails. Thus, the committee expanded disclosure requirements that apply to the sale of a condominium unit. In developing the proposals, the committee considered the responsibility and accountability of participants in condominium unit sales transactions and the practical and legal issues involved in expanding disclosure requirements.

An example of an issue where consensus was not achieved is reserve accounts. The committee first reviewed legislation requiring reserve accounts that had been introduced in the previous legislative session. The committee reviewed the desirability of reserve accounts, whether a reserve account should be required, how prescriptive a reserve account requirement should be, and the effect of reserve accounts on low-income persons. The final committee proposal on reserves is intended to educate condominiums about the issue of reserves and to encourage their formation but to permit condominiums to opt out of the requirement and either have no reserve account or have one or more reserve accounts not governed by the statutory provision (or in combination with a statutory reserve account).

The Special Committee made similar decisions to balance competing interests in a variety of other substantive provisions in the bill.

In addition to substantive policy issues, a number of provisions were recommended by lawyers and others who are involved with the practical application of condominium law in order to clarify, simplify, and streamline the law.

**DESCRIPTION OF ASSEMBLY BILL 254, RELATING TO REVISIONS AND ADDITIONS TO CONDOMINIUM LAW**

**Disclosure Requirements Relating to the Sale of a Condominium**

**Executive Summary**

The bill requires an executive summary highlighting important disclosure items to be included as the first document, following the index, in the disclosure materials that must be furnished by a seller of a condominium unit to a buyer. The executive summary is prepared and revised by the declarant or association, whichever is in control of the condominium. The executive summary must contain the following information, or indicate where the information may be found in the disclosure materials:

- The name of the condominium.
- A description of the declarant's expansion plans for the condominium, if any, and deadline for implementation.
- Information identifying the condominium association and management authority and the individual who may be contacted regarding the condominium.
- A description of special amenities such as an athletic club or golf course and the obligation of an owner to join or support the amenity.
- A description of an owner's responsibilities relating to the repair and maintenance of the unit.
- The identity of the person responsible for the maintenance, repair, and replacement of common elements and limited common elements and whether the repair or replacement will be funded from unit owner assessments or reserve funds.
- Whether unit owners may rent their units and any restrictions on rentals.
- A description of any rules, restrictions, or procedures governing a unit owner's authority to alter the unit or use or enclose limited common elements.
- A description of the availability, restrictions, and costs of parking.
- A description of rules relating to unit owners' pets.
- Whether reserves are maintained by the association and, if so, whether a statutory reserve account is maintained.
- At the option of the declarant or association of unit owners, a description of other restrictions or features of the condominium.

The boldface notice on the cover sheet of the disclosure form given to a prospective purchaser of a condominium unit is revised to indicate that the executive summary may not be relied upon as correct and binding and that the purchaser should consult the disclosure documents to which a particular executive summary statement pertains.

### **Addendum to Real Estate Condition Report**

The bill requires an owner of a condominium unit who is transferring ownership of the unit to include certain information in an addendum to the real estate condition report (required under ch. 709, Stats.) pertaining to the condominium unit. The information must include the name of the condominium and other identifying information; the condominium association and management authority; and the amount of current condominium assessments, fees, and other charges for which a unit owner is responsible and whether the current charges have been paid. The addendum must also include a copy of the executive summary, described above.

### **Missing Disclosure Documents**

The bill authorizes the purchaser of a condominium unit to request any documents that are not included in the required disclosure materials within five business days of receipt of the materials. The seller has five business days following receipt of the request to deliver the requested documents.

The purchaser may rescind the sale within five business days following the earlier of the receipt of any missing disclosure documents that have been requested by the purchaser or the deadline for the seller's delivery of the requested missing documents.

### **Other**

The bill clarifies that the entire body of disclosure materials furnished to purchasers of residential units need not be consecutively paginated, providing instead that the consecutive pagination requirement only applies to each section within the body of disclosure materials. The bill also removes the requirement of a table of contents for the articles of incorporation.

### **Statutory Reserve Requirement**

#### **Generally**

The bill requires a declarant or association to establish a "statutory reserve account" to fully or partially fund repairs and replacements of common elements other than routine maintenance, unless the declarant or association elects not to establish an account.

The statutory reserve account provisions generally apply only to exclusively residential condominiums, other than small condominiums. Small condominiums and mixed-use (residential and nonresidential units) condominiums may choose to be governed by the statutory reserve account provisions.

The statutory reserve account provisions expressly do not affect: (1) existing reserve accounts or similar accounts; or (2) reserve accounts or similar accounts that are not statutory reserve accounts established on or after the effective date of the bill.

### **Establishing and Terminating a Statutory Reserve Account**

The declarant must establish a statutory reserve account for a **new condominium** (a condominium established on or after the effective date of the draft) unless the declarant decides not to establish an account. If the declarant establishes a statutory reserve account, assessments for the account may first be assessed against a particular unit when a certificate of occupancy has been issued that applies to that unit. The declarant may defer payment of assessments on a particular unit until the unit is conveyed, but for not more than five years from the date the exterior construction of the building in which the unit is located is completed. If there are accrued reserve fund assessments against a unit, the declarant must disclose to the first purchaser of the unit whether any of the accrued assessments are included in the purchase price and, if not, how any accrued assessment will be paid.

If the declarant has not established or has terminated an account, establishment of an account must be addressed at the first annual meeting of the association held after, or at a special meeting held within one year of, termination of declarant control. A statutory reserve account is established by the association with the written consent of a majority of the unit votes. If the declarant has established a statutory reserve account, the association at any time after the expiration of declarant control may elect to terminate the account with the written consent of at least 2/3 of the unit votes.

**Existing condominiums** (condominiums established before the effective date of the bill) must, within 18 months after the bill's effective date, or within 18 months after the expiration of declarant control, whichever is later, establish a statutory reserve account unless, with the written consent of at least 2/3 of the unit votes, the association elects not to establish an account.

More generally, an association may at any time elect to establish a statutory reserve account, with the written consent of a majority of the unit votes, or to terminate a statutory reserve account, with the written consent of at least 2/3 of the unit votes.

### **Determining the Amount to be Assessed**

Factors that a declarant or association is to consider in determining the amount to be assessed unit owners for the statutory reserve account include: funds currently in the account; the estimated cost of repairing or replacing common elements, other than routine maintenance; the estimated remaining useful life of common elements; the approximate proportion of the estimated cost of repairing or replacing common elements that will be covered by the account and the approximate proportion that will be funded by other means; and any other factor considered relevant. In the case of a conversion condominium, the declarant must also consider the required report of an independent architect or engineer.

## **Investment and Use of Statutory Reserve Account Funds**

Funds in a statutory reserve account may be invested in any investment in which local governments are generally authorized to invest by statute.

Funds in a statutory reserve account may be used only for the repair and replacement of common elements, other than routine maintenance, unless there is written consent of at least 2/3 of the unit votes to use the funds for normal repair or maintenance, customary services or other operational costs in excess of amounts budgeted. If used for the latter purposes, the funds must be replaced within three years from the date of withdrawal from the account.

### **“Statutory Reserve Account Statement”**

A “statutory reserve account statement” must be executed when a statutory reserve account is established or an election is made not to have or to terminate a statutory reserve account. If an election not to establish, or to terminate, a statutory reserve account is made, the statement must indicate how it is anticipated that future expenditures for repairs and replacements of common elements will be funded. The statement must be recorded with the Register of Deeds.

### **Liability Immunity**

Finally, a declarant, unit owner, association, or director, officer, manager, or employee of an association is not liable in connection with the establishment or termination, or decision not to establish or terminate, a statutory reserve account or for any deficiencies in a statutory reserve account that are due to the determination of amounts to be assessed for reserve funds.

### **Annual Budget Requirement**

The bill requires the condominium association for condominiums that include at least one unit that is restricted to residential use to annually adopt and distribute to all unit owners an annual budget setting forth:

- All anticipated common expenses and any amounts to be allocated to a statutory reserve account and to any other funds for future expenditures.
- The amount and purpose of any other anticipated association expenditure.
- The amount in any statutory reserve account or any other funds held for future expenditures.
- Any common surpluses.
- The amount and source of any income, other than unit owner assessments.
- The aggregate amount of any assessment to be levied against unit owners and the purpose of the assessment.

If there is a statutory reserve account (described above) for the condominium, the annual budget must provide reserve funds for the account.

### **Rental of Condominium Units**

#### **Regulation of Certain Agreements and Tenancies**

The bill provides a measure of regulation relating to agreements, whether oral or written, for the rental or lease of a residential condominium unit by the same tenant for a period of more than one month and to periodic residential tenancies with a recurring interval of time of one month or more.

Under the bill, a tenant who enters into such a rental agreement or who is entitled to occupancy under such a periodic tenancy agrees to comply with ch. 703 (condominiums), the rules and bylaws of the association, and the provisions of the declaration. Consequently, failure of a tenant to comply with the chapter, declaration, bylaws, or rules will trigger the provisions of ch. 704 (landlord and tenant) that relate to a tenant's breach of a rental agreement, lease, or tenancy.

If a written condominium rental agreement is entered into, the bill requires the unit owner to provide a copy within five business days to the association. The association must keep a copy of the agreement on file while the agreement is in effect.

The bill provides a means of contacting or giving notice to a tenant or unit owner who is party to a condominium rental agreement or periodic tenancy covered by the bill. Contact or notice may be made or given by the means indicated by the tenant or unit owner in writing to the association or, if that does not apply, by any method currently provided under statutory landlord and tenant law for giving notice to a tenant or landlord. A unit owner must provide a copy of the declaration and the association bylaws and rules to a tenant before the tenant occupies the unit or must place the information in the unit before the tenant occupies the unit.

The above provisions expressly do not apply to a time share governed under ch. 707.

The above provisions first apply to condominium rental agreements renewed or entered into three months after the effective date of the bill.

#### **Eviction Action by Association**

Under the bill, the condominium declaration may authorize the condominium association, under specified circumstances, to bring an eviction action against a tenant who fails to comply with the declaration, bylaws, or association rules or who commits any act or omission that is grounds for eviction under current law (a "violation"). Specifically, a declaration may provide that a unit owner, as a condition of renting or leasing his or her residential unit, grants the association power of attorney to bring an eviction action against a tenant of the unit owner who commits a violation if the unit owner fails to take reasonable action to evict the tenant after being requested to do so by the association. If within 60 days after the eviction request the unit owner gives notice terminating or does not renew the tenant's lease or rental agreement, that constitutes reasonable action to evict the tenant. The

declaration may specify notice and procedural requirements for the exercise of power of attorney by the association and the allocation of responsibility for eviction-related costs between the unit owner and the association. An eviction action brought by an association is subject to relevant eviction provisions of current chs. 704 and 799, Stats.

### **Rental Requirements or Restrictions in Declaration or Bylaws**

The bill requires the condominium declaration to include any requirement applicable to or restriction on the rental of residential condominium units or reference to any such requirement or restriction in the bylaws.

### **Bylaws; Service as Director by Nonoccupant Owners**

The bill expressly provides that the condominium bylaws may provide that a unit owner may not serve as a director of the condominium association unless the unit owner occupies his or her unit or may specify the proportion of nonoccupant unit owners who may serve as directors.

### **Remedies for Unit Owner or Tenant Violations**

#### **Imposition of Charges, Fines or Assessments**

The bill repeals and recreates s. 703.24, relating to liability of a unit owner for damages or injunctive relief caused by the failure of the unit owner to comply with ch. 703, the declaration, or bylaws.

Under the revised section, a unit owner who fails to comply with ch. 703, the declaration, the bylaws, or the association rules (a "violation") is liable for any resulting charges, fines, or assessments imposed pursuant to association bylaws or rules.

New provisions also make a tenant who commits a violation liable for any charges, fines, or assessments imposed by the association for the violation. The bill further provides that if the association gives specified notice to the unit owner of the tenant's violation, the owner of the unit occupied by the tenant when the violation occurred is liable for any association charges, fines, or assessments for which the tenant is liable that remain unpaid 30 days after the tenant received notice. (Double recovery by an association of any charges, fines, or assessments is not intended.)

#### **Enforcement; Liens**

The bill expands the scope of the lien provisions of current s. 703.16 (3) to (9) (renumbered s. 703.165 (2) to (8) by the bill). Currently, those lien provisions apply to failure to pay assessments for common expenses. The new definition, in combination with the treatment of related provisions, expands the coverage of the lien provisions to include failure to pay charges, fines, or assessments for damages to the condominium and for violations of the declaration, bylaws, or association rules.



The bill also expressly provides that a condominium unit owner is liable for any assessments coming due during the pendency of any claim by the unit owner against the association or during any period the unit is not occupied by the unit owner or is leased or rented to any other person. While the new language is within the scope of current language, it is added for clarification.

### **Declarant Responsibility**

#### **Declarant Liability for Assessments on Unsold Unit**

The bill provides that, during the period of declarant control, if a unit owned by the declarant is exempt from assessments for common expenses until the unit is sold, the total amount that may be assessed against units that are not exempt from assessments may not exceed the units' projected percentage share of common expenses; the declarant is liable for the balance of the actual expenses.

#### **Financial and Operational Records During Declarant Control**

The bill requires the creation and maintenance of, and provides means of access to, financial and operational records of the association during the period of declarant control. The declarant is responsible for the creation and maintenance of the records during the period of declarant control and must turn the records over to the board of directors elected after the period of declarant control expires.

Also, during the period of declarant control and one year thereafter, the bill requires the association to arrange for an independent audit of the association's financial records if requested by the lesser of three unit owners or the owners of 10% of the units (not including units owned by the declarant). The frequency of requesting an audit is limited.

#### **Declarant May Assign Rights and Obligations**

The bill gives express authorization for a declarant to assign all of his or her rights and obligations as a declarant under ch. 703 if the declarant records an amendment to the declaration that includes the assignment and an acceptance of the assignment that is signed by the assignee and acknowledged.

### **Condominium Creation; Declaration**

#### **Conversion Condominiums**

Under current law, residential property may not be converted to a condominium unless the property owner gives 120 days' prior written notice of the conversion to each of the tenants of the building scheduled for conversion. A tenant has the "exclusive option to purchase" the unit for a period of 60 days following the date of delivery of the notice. The bill revises current law by:

- Providing that the property may be converted to a condominium immediately upon completion of the notice requirement, rather than 120 days after notice. However, the tenant's rights relating to occupying and purchasing the property are preserved.
- Clarifying that during the 60-day period immediately following the date of delivery of the conversion notice, a tenant has the "first right to purchase" (not the "exclusive option to purchase") the unit if the unit is offered for sale at any time during the 60-day period:
  - For the price at which the unit is being offered on the market.
  - For the price contained in any accepted offer to purchase the unit (from any prospective purchaser, not just the tenant).
  - For the price otherwise agreed to by the tenant and the seller.
- Expressly authorizing the tenant to waive in writing his or her occupancy right and first right to purchase.

### **Content of Declaration**

The bill:

- Substitutes reference to the "resident agent under s. 703.23" for the current requirement that the declaration include the name of the person "to receive service of process in the cases provided in this chapter." Since s. 703.23, Stats., also provides for changing the resident agent, the bill also removes the requirement that the declaration indicate the method by which the association may designate a successor to the person designated to receive service of process.
- Expressly allows the declaration to provide for *mandatory arbitration* under ch. 788, Stats., of disputes involving the interests of the declarant, unit owners, association, or board of directors when the disputes arise out of the declaration, bylaws, or rules.
- Requires the original declaration to be signed by any first mortgagees of the property or the holders of an equivalent security interest, in addition to the owners of the property.

### **Amending the Declaration**

The bill revises the **current procedure** for amending the declaration by:

- Clarifying that reference to "two-thirds of the unit owners" is to 2/3 of the aggregate of the votes (established under current s. 703.09 (1) (f)). The current reference is ambiguous.

- Providing that the required mortgagee approval applies to first mortgagees only and must be in writing and that approval by the person serving the first mortgage loan constitutes approval by the first mortgagee.
- Requiring the document submitting the declaration amendment for recording to state that the required consents and approvals for the amendment were received.

The bill also provides an **alternative procedure** for amending the declaration. The key feature is that the association has 180 days to secure the required consents and approvals and may rely on the list of owners of record contained in a title report at the beginning of the 180-day period. (The current amendment procedure does not include this 180-day "window," but there is no limit on how long the current procedure may take.) Provision is made for notice of the proposed amendment to new unit owners and lienholders during the 180-day period and for the new owners and lienholders to cast a ballot replacing the ballot of the previous owner and lienholder. Provision is made to extend the 180-day period 14 days if the ballot is mailed to the new owner and lienholder within 14 days before the end of the 180-day period.

The procedure contains substantial detail concerning the commencement of the 180-day period; required notice; voting by unit owners and lienholders and subsequent unit owners and lienholders; recording the amended declaration; and retention of materials related to the amendment for two years.

### **Content and Amendment of Condominium Plat**

The bill simplifies the required content of a condominium plat by substituting "plans showing the location of each building" for "diagrammatic floor plans of each building," adding "perimeters," and substituting "approximate square footage" for "floor area." The bill clarifies that an amendment of a condominium plat (addendum) that is not included as part of an amendment to the declaration is to be accomplished in the same manner as an amendment to the declaration.

### **Association of Unit Owners, Including Role of Board of Directors**

The bill clarifies the prevailing, but not always known, view of the role of the association board of directors: with the exception of matters reserved to association members or unit owners by ch. 703, the declaration, or bylaws, all policy and operational decisions of the association are made by the board. Policy and operational decisions include, but are not limited to, interpretation of condominium instruments, bylaws, rules, and other documents relating to the condominium or the association.

For illustrative purposes, the bill expressly provides that a condominium association, subject to any restrictions and limitations specified by the declaration, may borrow funds in the name of the association as part of its general authority to make contracts and incur liabilities. The exercise of this authority by an association is subject to current s. 703.25, relating to the tort and contract liability of an association.

The bill expressly authorizes a condominium association, subject to any restrictions and limitations specified by the declaration, to purchase goods and services jointly with other condominium associations or other persons.

### **Ownership Interests**

#### **Changing Boundaries Between Adjoining Interests**

Current law contains a procedure for changing boundaries between adjoining condominium units when the condominium instruments permit a relocation and the adjoining unit owners desire the relocation. The bill amends the procedure to allow a declaration amendment under the boundary change procedure to be accomplished simply with the approval of the adjoining unit owners and the mortgagees of the adjoining units, if any. (The general method of amending the declaration may, at the option of the adjoining unit owners, continue to be used instead of the simplified procedure.)

#### **Merging Adjoining Units**

The bill provides a procedure for merging adjoining condominium units based on current procedures for: relocating boundaries between adjoining condominium units [s. 703.13 (6), Stats.]; and separation of a unit into one or more units [s. 703.13 (7), Stats.]. The procedure includes a simplified means of amending the declaration.

#### **Improvements to Limited Common Elements**

The bill provides a procedure allowing a unit owner, at the owner's expense, to improve limited common elements appurtenant exclusively to that owner's unit if permitted by the condominium instruments and if the following conditions are met:

- A statement describing the improvement, including a description of the project, the materials to be used, and the project's proposed impact on the appearance of the condominium, and identifying the project contractor is submitted to the board of directors of the association.
- The improvement will not interfere with the use and enjoyment of the units of other unit owners or the common elements or limited common elements of the condominium.
- The improvement will not impair the structural integrity of the condominium.
- Any change to the exterior appearance of the condominium is approved by the board of directors of the association.

#### **Prohibition on Creating Nuisance**

Consistent with current law, the bill expressly limits the unit improvements or alterations that a unit owner may make to exclude those that create a nuisance substantially affecting the use and enjoyment of other units or the common elements.

### **Small Condominiums**

The bill revises the definition of "small residential condominium" by increasing the maximum number of units from 4 to 12 and eliminating the requirement that all the units be restricted to residential uses. As a result, the defined term is changed to "small condominium." The revised definition of "small condominium" will expand the availability of the existing streamlined regulations for the creation and operation of "small" condominiums.

The bill expressly allows a small condominium to utilize a master association.

The bill also authorizes a small condominium, if approved by written consent of all of the unit votes, to substitute an agreement for the bylaws. The terms of the agreement must include specified requirements currently pertaining to small condominiums and must otherwise be consistent with the current provisions regulating small condominiums. An amendment to an agreement may be made with the affirmative vote or written consent of all of the unit votes of the small condominium.

### **Repeal of Provision on Uncompleted Units**

The bill repeals s. 703.255, Stats., which deals with uncompleted units (other than those included in an expanding condominium under s. 703.26, Stats.). Under s. 703.255, if a declarant fails to complete any unit described in the declaration within five years after recording the declaration, the declarant must obtain the agreement of at least 75% of the unit owners permitting completion of the units within five years of the date of the agreement. If the agreement is not obtained, the declarant loses the uncompleted units (the declarant must remove the units from the declaration and adjust percentage interests and votes accordingly).

### **Master Association Authority**

The bill clarifies the authority of a master association to represent either condominium property or noncondominium property: (a) on behalf of one or more condominiums and property under a different form of ownership; or (b) for the benefit of the unit owners of one or more condominiums and the owners of other property.

### **Condemnation of Common Elements**

The bill provides an optional procedure for acquiring a portion of the common elements for public projects, based on a Florida statute. [West's F.S.A. s. 73.073 (2001 Supplement).] The procedure applies to the acquisition (by purchase or eminent domain) of a portion of the common elements (not including limited common elements) by any condemnor for a public purpose.

In general terms, a condemnor who seeks to acquire a portion of the common elements under the procedure is required to notify the association and to give specified notice of the proposed acquisition to each unit owner. If a unit owner fails to object to the association representing the unit owner in the property acquisition within 30 days after receiving the

notice, the owner is deemed to have agreed to that representation in any subsequent proceeding relating to the acquisition of the common elements at issue.

A unit owner who timely objects to representation by the association in the acquisition retains all of his or her rights with regard to the acquisition and all other rights pertaining to unit ownership.

The optional procedure may be used only to acquire common elements of a condominium created six months after the effective date of the bill.

In a related provision, the bill repeals the right of an association (in contrast to the right of individual unit owners) to appeal the necessity of taking, and the condemnation award made for the taking, of common elements.

### **Building Codes, Zoning Ordinance Changes, and Other Land Use Regulations**

#### **Building Code or Zoning Changes; Amendment of Plat**

The bill allows for the amendment of a condominium plat if the revision or adoption of a building code or zoning ordinance prevents or substantially affects the construction or reconstruction of a unit or common elements (including limited common elements) as platted. If such a revision or adoption of a building code or zoning ordinance occurs, the declarant, unit owner, or association, as appropriate, may reasonably modify the condominium plat to the extent necessary to comply with the code or ordinance in order to construct or reconstruct the unit or common elements. The amendment is not subject to the usual formalities for amending a condominium plat.

#### **Application of Land Use Regulations and Building Codes**

The bill:

- Clarifies, with editorial changes, the prohibition on imposing requirements under zoning or other land use ordinances or regulations that discriminate against the condominium form of ownership.
- Clarifies the prohibition on applying a provision of a state or local building code differently to a condominium building than it would be applied if the building were under a different form of ownership, unless the different application is expressly permitted by the building code. Further clarifies that if the different application is expressly permitted, it must be reasonably related to the nature of condominium ownership. Similarly, clarifies that no subdivision ordinance may apply to a condominium unless, as currently required, the ordinance is expressly applicable to condominiums and, as added by the bill, its application is reasonably related to the nature of condominium ownership.
- Clarifies the prohibition against enactment of any law, ordinance, or regulation that would impose a burden or restriction on a condominium that is not imposed on all other property of similar character not subjected to a condominium

declaration to specify that the law, ordinance, or regulation may not impose a “greater” burden or restriction and, additionally, may not provide a lower level of service to a condominium than would be imposed or provided if the condominium were under a different form of ownership.

### **Merger or Consolidation of Condominiums**

The bill authorizes two or more small condominiums, or any combination of small condominiums and other condominiums, to merge, as provided under the current merger provision--s. 703.275, Stats.

### **Interpretation of Condominium Chapter**

The bill clarifies the current interpretation directive which provides that, for purposes of interpreting ch. 703, a condominium is not a subdivision under ch. 236, Stats., by adding the statement that a condominium is “a form of ownership, not a form of land use.”

### **Nuisance Actions Against Association**

The bill allows a city, village, town, or county to proceed directly against a condominium association in an action to abate a nuisance if the city, village, town, or county may bring the abatement action under ch. 823 (nuisances) and the failure of the condominium association to perform its duties to maintain and control the common elements is a reason the nuisance has not been abated.

### **Effective Date**

The general effective date of the bill is the first day of the seventh month beginning after the bill is published in the official state newspaper. The initial applicability of a number of provisions in the bill is separately treated.

## APPENDIX 1

### Committee and Joint Legislative Council Votes

The bill described in this report was first introduced in the 2001 Legislative Session as 2001 Assembly Bill 781 and Senate Bill 412 (companion bills). Neither passed in the 2001 Session. On March 12, 2003, the Joint Legislative Council voted unanimously to reintroduce the proposal into the 2003-04 Legislature. The votes by the Special Committee and by the Joint Legislative Council for introduction of the proposal are listed below.

#### SPECIAL COMMITTEE VOTES

By a mail ballot, the Special Committee voted to recommend WLC: 0219/1 for introduction in the 2001-02 Session of the Legislature. It was also approved that a delayed effective date of six months be added to WLC: 0219/1. The votes were as follows:

- Whether a delayed effective date of six months be added to WLC: 0219/1: Ayes, 12 (Reps. Sykora, Hebl, LaFave and Musser; Sens. Erpenbach and Darling; and Public Members Kassner, Leibsle, Licht, Loeb, Raasch and Sands); Noes, 3 (Public Members Gobel, Horton and Siegel); and Not Voting, 1 (Sather).
- WLC: 0219/1, relating to revisions and additions to condominium law: Ayes, 12 (Reps. Sykora, LaFave and Musser; Sen. Erpenbach; and Public Members Gobel, Horton, Leibsle, Loeb, Raasch, Sands, Sather and Siegel); Noes, 4 (Rep. Hebl; Sen. Darling; and Public Members Kassner and Licht).

#### JOINT LEGISLATIVE COUNCIL VOTES

At its January 30, 2002 meeting, the Joint Legislative Council voted to introduce LRB-4299/1 in the 2001-02 Session of the Legislature. The vote on the draft was as follows:

- LRB-4299/1, relating to revisions and additions to condominium law: Ayes, 14 (Sens. Risser, Baumgart, Darling, Grobschmidt, Panzer, Robson and Zien; and Reps. Rhoades, Bock, Gard, Huber, Lehman, Meyerhofer and Stone; Noes, 0; and Absent, 8 (Sens. Burke, Chvala, George and Welch; and Reps. Black, Foti, Freese and Jensen).

[Sens. Chvala and Welch; and Rep. Black asked that the record reflect that had they been present during the roll call, they would have voted in favor of introducing LRB-4299/1.]

At its March 12, 2003 meeting, the Joint Legislative Council voted unanimously to reintroduce 2001 Assembly Bill 781 into the 2003-04 Session of the Legislature.



**JOINT LEGISLATIVE COUNCIL**

s. 13.81, Stats.

**Co-Chair**

**ALAN LASEE**

*Senate President*  
2259 Lasee Road  
De Pere, WI 54115

**Co-Chair**

**STEVE WIECKERT**

*Representative*  
1702 S. Irma Street  
Appleton, WI 54915

**SENATORS**

**ALBERTA DARLING**

1325 West Dean Road  
River Hills, WI 53217

**JON ERPENBACH**

*Minority Leader*  
2385 Branch St.  
Middleton, WI 53562

**MARY E. PANZER**

*Majority Leader*  
635 Tamarack Drive West  
West Bend, WI 53095

**RUSSELL DECKER**

6803 Lora Lee Lane  
Schofield, WI 54476

**GARY R. GEORGE**

1100 West Wells Street, #1711  
Milwaukee, WI 53233

**FRED A. RISSER**

5008 Risser Road  
Madison, WI 53705

**MICHAEL G. ELLIS**

1752 County Road GG  
Neenah, WI 54956

**SHEILA HARSDORF**

N6627 County Road E  
River Falls, WI 54022

**ROBERT WELCH**

*President Pro Tempore*  
P.O. Box 523  
Redgranite, WI 54970

**VACANCY**

**REPRESENTATIVES**

**G. SPENCER COGGS**

3732 North 40th Street  
Milwaukee, WI 53216

**DEAN KAUFERT**

1360 Alpine Lane  
Neenah, WI 54956

**MARLIN D. SCHNEIDER**

3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

**STEVEN M. FOTI**

*Majority Leader*  
351 Lisbon Road  
Oconomowoc, WI 53066

**JIM KREUSER**

*Minority Leader*  
3505 14th Place  
Kenosha, WI 53144

**JOHN TOWNSEND**

297 Roosevelt Street  
Fond du Lac, WI 54935

**STEPHEN J. FREESE**

*Speaker Pro Tempore*  
310 East North Street  
Dodgeville, WI 53533

**MICHAEL LEHMAN**

1317 Honeysuckle Road  
Hartford, WI 53027

**DAVID TRAVIS**

5440 Willow Road  
Waunakee, WI 53597

**JOHN GARD**

*Speaker*  
481 Aubin Street  
P.O. Box 119  
Peshtigo, WI 54157

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed, as are members of standing committees.

**CONDOMINIUM LAW REVIEW,  
SPECIAL COMMITTEE ON**

**Co-chair**

JON ERPENBACH  
Senator  
2385 Branch Street  
Middleton, WI 53562-2808

**Co-chair**

TOM SYKORA  
Representative  
10688 State Highway 178  
Chippewa Falls, WI 54729-6189

**SENATOR**

ALBERTA DARLING  
1325 West Dean Road  
River Hills, WI 53217-2537

**REPRESENTATIVES**

TOM HEBL  
306 Windsor Street  
Sun Prairie, WI 53590-2144

JOHN LA FAVE  
7237 West Wabash Avenue  
Milwaukee, WI 53223-0410

TERRY MUSSER  
W13550 Murray Road  
Black River Falls, WI 54615-5102

**PUBLIC MEMBERS**

CHUCK GOBEL  
Member of the Board and Past President  
Knickerbocker on the Lake Condo Assn.  
1028 E. Juneau Ave., #625  
Milwaukee, WI 53202-2850

JANE LICHT  
Register of Deeds, Dane County  
P.O. Box 1438  
Madison, WI 53701-1438

MICHAEL SANDS  
Vice President, Mortgage Lending  
State Bank of Cross Plains  
1205 Main Street  
Cross Plains, WI 53528-9476

WM. PHARIS HORTON  
Attorney, Horton Law Office  
222 N. Midvale Blvd., Ste. 7  
Madison, WI 53705-5072

FRED H. LOEB  
President, Capital Associates  
9941 North River Road  
Mequon, WI 53092-5229

ROBERT SATHER  
Governmental Affairs Director  
Chippewa Valley Realtors Assn.  
11010 161<sup>st</sup> Street  
Chippewa Falls 54729-5215

JOHN KASSNER  
Attorney, Brennan, Steil, Basting  
& McDougal, S.C.  
22 E. Mifflin St., #400, P.O. Box 990  
Madison, WI 53701-0990

ROGER M. RAASCH  
Treasurer, Camelot Trails  
Condo Assn.  
7247 South Delaine Drive  
Oak Creek, WI 53154-2409

NEIL SIEGEL  
Senior Market Analyst  
Mortgage Guaranty Insurance Corp.  
P.O. Box 488  
Milwaukee, WI 53201-0488

ROBERT C. LEIBSLE  
Attorney, Godfrey, Leibsle, Conover,  
Blackbourn & Howarth, S.C.  
11 N. Wisconsin Ave., P.O. Box 260  
Elkhorn, WI 53121-0260

**STUDY ASSIGNMENT:** The Committee is directed to study ways to protect the investments of current and future condominium unit owners and ways to facilitate the appropriate development of the condominium form of property ownership. The Committee is directed to review all aspects of condominium law, including: the development and establishment of condominiums; the governance of condominium associations, including the establishment of an annual budget and maintenance of reserve funds; the ownership and sale of condominiums; and rental of condominiums. The Committee shall also study ways to address concerns of local units of government in which condominiums are located. The Special Committee shall report its recommendations to the Joint Legislative Council by January 1, 2001.

Established by a May 18, 2000 mail ballot; Co-chairs appointed by a June 13, 2000 mail ballot; and members appointed by an August 14, 2000 mail ballot.

16 MEMBERS: 2 Senators; 4 Representatives and 10 Public Members.

**LEGISLATIVE COUNCIL STAFF:** Don Dyke, Senior Staff Attorney; Shaun Haas, Senior Staff Attorney; and Wendy Ulrich, Support Staff.

Committee Materials List

**September 28, 2000 Meeting**

**Memo No. 1, Overview of Condominium Ownership Act (ch. 703, Stats.)** (9-19-00)

**Memo No. 2, Statutory Development of and Current Issues Relating to Condominium Law** (9-19-00)

**Chapter 703, Stats. (Condominium Ownership Act)**

**1999 Assembly Bill 723**, relating to condominium budgets and reserve accounts (AB 723 is described in Memo No. 2, listed above)

**Assembly Amendment 1** to Assembly Bill 723

**November 16, 2000 Meeting**

**Memo No. 3, Required Disclosure for Sales of Condominium Units** (11-8-00)

Appendix A, Form for Index of Disclosure Materials [s. 703.33 (2) (b), Stats.]

Appendix B, Real Estate Condition Report [s. 709.03, Stats.]

**Memo No. 4, State Laws Relating to Condominium Reserve Requirements** (11-7-00)

Attachment, Summary of State Reserve Fund Laws, Community Associations Institute, Alexandria, Virginia

**Letter** from Attorney Jesse S. Ishikawa (10-9-00)

**Letter** from Attorney Richard A. Lehmann (10-30-00)

**Letter** from Joel V. Batha, Wisconsin Department of Transportation (10-31-00)

**Preliminary agenda** for the November 16 meeting

### **December 20, 2000 Meeting**

**WLCS: 0018/1**, relating to miscellaneous changes in condominium law

**Memo No. 5, Members' Suggestions on Enhanced Disclosure for Purchasers of Condominium Units** (12-13-00)

**Memo, "Proposals for Condominium Law Revisions,"** by Committee Member Pharis Horton (12-7-00)

**Condominium law amendment proposals**, distributed by Committee Member Pharis Horton

**Preliminary agenda** for the December 20 meeting

### **February 21, 2001 Meeting**

**WLC: 0018/2**, relating to miscellaneous changes in condominium law

**WLC: 0054/1**, relating to owner-occupancy issues

**WLC: 0072/1**, relating to requiring an executive summary highlighting important disclosure items to be included in the disclosure materials required to be furnished to condominium buyers

**WLC: 0084/P1**, relating to establishment of reserve accounts for major repairs and replacements of condominium common elements

**Preliminary agenda** for the February 21 meeting

### **March 27, 2001 Meeting**

**WLC: 0072/2**, relating to changes in the disclosure requirements pertaining to sales of condominium units

**WLC: 0084/1**, relating to establishment of an annual condominium budget and a statutory reserve account for the repair and replacement of condominium common elements

**Letter, "Condominium Proposals,"** from Committee Member Pharis Horton dated (2-19-01)

**Letter, "Condominium Proposals: Other Issues,"** from Committee Member Pharis Horton (3-5-01)

**Letter, "Condominium Proposals: Phantom Units,"** from committee member Pharis Horton (3-5-01)

**Preliminary agenda** for the March 27 meeting

**April 19, 2001 Drafting Subcommittee Meeting**

**WLC: 0018/3**, relating to miscellaneous changes in condominium law

**WLC: 0054/2**, relating to owner-occupancy issues

**WLC: 0084/2**, relating to establishment of an annual condominium budget and a statutory reserve account for the repair and replacement of condominium common elements

**May 14, 2001 Drafting Subcommittee Meeting**

**WLC: 0018/3**, relating to miscellaneous changes in condominium law

**WLC: 0054/3**, relating to owner-occupancy issues

**WLC: 0072/3**, relating to changes in the disclosure requirements pertaining to sales of condominium units

**WLC: 0084/3**, relating to establishment of an annual condominium budget and a statutory reserve account for the repair and replacement of condominium common elements

**WLC: 0160/P1** (miscellaneous changes)

**June 15, 2001 Drafting Subcommittee Meeting**

**WLC: 0018/4**, relating to miscellaneous changes in condominium law

**WLC: 0054/4**, relating to owner-occupancy issues

**WLC: 0072/4**, relating to changes in the disclosure requirements pertaining to sales of condominium units

**WLC: 0084/4**, relating to establishment of an annual condominium budget and a statutory reserve account for the repair and replacement of condominium common elements

**WLC: 0160/P1** (miscellaneous changes)

**July 13, 2001 Drafting Subcommittee Meeting**

**WLC: 0018/5**, relating to miscellaneous changes in condominium law

**WLC: 0054/5**, relating to owner-occupancy issues

**WLC: 0072/5**, relating to changes in the disclosure requirements pertaining to sales of condominium units

**WLC: 0084/5**, relating to establishment of an annual condominium budget and a statutory reserve account for the repair and replacement of condominium common elements

**WLC: 0160/1**, relating to master associations and uncompleted units

**WLC: 0172/1**, relating to acquisition of common elements for public projects

#### **July 27, 2001 Drafting Subcommittee Meeting**

**WLC: 0018/6**, relating to miscellaneous changes in condominium law

**WLC: 0054/6**, relating to owner-occupancy issues

**WLC: 0072/6**, relating to changes in the disclosure requirements pertaining to sales of condominium units

**WLC: 0084/6**, relating to establishment of an annual condominium budget and a statutory reserve account for the repair and replacement of condominium common elements

**WLC: 0160/2**, relating to master associations and uncompleted units

**WLC: 0172/2**, relating to acquisition of common elements for public projects

#### **August 20, 2001 Drafting Subcommittee Meeting**

**WLC: 0018/7**, relating to miscellaneous changes in condominium law

**WLC: 0054/7**, relating to owner-occupancy issues

**WLC: 0072/7**, relating to changes in the disclosure requirements pertaining to sales of condominium units

**WLC: 0172/3**, relating to acquisition of common elements for public projects

**WLC: 0184/P1**, relating to amending a condominium declaration and plat to reflect changes in building codes and zoning ordinances affecting the issuance of building permits for unbuilt units

#### **August 29, 2001 Drafting Subcommittee Meeting**

**WLC: 0184/1**, relating to amending a condominium declaration and plat to reflect changes in building codes and zoning ordinances affecting the issuance of building permits

**WLC: 0187/1**, an amendment to WLC: 0018/7

**WLC: 0188/1**, an amendment to WLC: 0054/7

**October 1, 2001 Meeting**

**WLC: 0018/8**, relating to miscellaneous changes in condominium law

**WLC: 0054/8**, relating to owner occupancy issues

**WLC: 0072/8**, relating to changes in the disclosure requirements pertaining to sales of condominium units

**WLC: 0084/6**, relating to establishment of an annual condominium budget and a statutory reserve account for the repair and replacement of condominium common elements

**WLC: 0160/2**, relating to additional miscellaneous changes

**WLC: 0172/3**, relating to acquisition of common elements by condemners

**WLC: 0184/2**, relating to amending a condominium plat to reflect changes in building codes and zoning ordinances affecting the construction or reconstruction of a unit

**WLC: 0187/2**, an amendment to WLC: 0018/8

**WLC: 0188/2**, an amendment to WLC: 0054/8

**Preliminary agenda** for the October 1 meeting

**October 22, 2001 Meeting**

**Preliminary agenda** for the October 22 meeting

**November 16, 2001 Mail Ballot**

**Mail Ballot** on the question of final Committee recommendation of the following draft:

**WLC: 0219/1**, relating to revisions and additions to condominium law

**Results** of Mail Ballot:

Delayed effective date of 6 months: 12 Ayes; 3 Noes; 1 Not Voting

Approve WLC: 0219/1: 12 Ayes; 4 Noes