

2009 DRAFTING REQUEST

Bill

Received: 01/23/2009

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Gary Hebl (608) 266-7678

By/Representing: Kate Battiato

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters:

Subject: Real Estate - condominiums

Extra Copies:

Submit via email: YES

Requester's email: Rep.Hebl@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Condominium revisions

Instructions:

See Attached

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/P1			mduchek 03/04/2009	_____	lparisi 03/04/2009		
/P2	pkahler 09/10/2009	bkraft 09/10/2009	phenry 09/11/2009	_____	sbasford 09/14/2009		
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/2	pkahler 12/14/2009	bkraft 12/14/2009	jfrantze 12/15/2009	_____	lparisi 12/15/2009	lparisi 12/15/2009	

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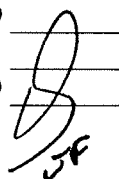
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LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Kate ~~De~~ Battiato
6-7678

Pharis Horton

do preliminary draft of code revisions

fr Gary Hest

Kahler, Pam

From: Battiato, Kate
Sent: Friday, January 16, 2009 3:09 PM
To: Kahler, Pam
Subject: Condo Law Revisions

Attachments: Horton Condo Ideas_HEBL.pdf

Hi Pam,

Attached is the drafting information pertaining to condo law revisions. Thank you so much for drafting the *preliminary*



Horton Condo
Ideas_HEBL.pdf (1..
draft.

Kate Battiato
Office of State Representative Gary Hebl
46th Assembly District
Phone: 266-7678

HORTON LAW OFFICE, S.C.

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January 10, 2009

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ATTORNEY AT LAW

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P.O. Box 8952
Madison WI 53708

DM Dyke

*Co-chairs
- Erperbach
- Sykora*

*2000
Study Committee
on Condominium Law
Revision*

Dear Gary:

I had the pleasure a few years back of serving on a [Legislative Council study committee] on condominium law. Since that time, I have been sort of a focus for lawyers, and others, with ideas on how to make further improvements (sometimes the idea of improvement is a bit subjective) to the law. I have been collecting them and have spread them around for analysis and comment. So far we have about ninety potential amendments ranging from picking nits (correcting the reference from "mechanic's" liens to "construction" liens) to some fairly esoteric policy changes. As more comments come in, I expect more ideas to be added to the list.

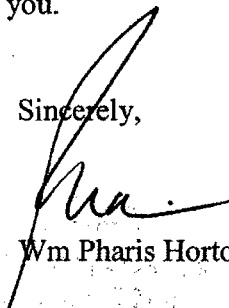
→ because of experience w/ title company

In talking to Mark Pocan on another matter, he suggested that you would be a logical one to approach on this. Right now, what we are looking for is to have these ideas drafted in legislative language. If the result looks like something you could get behind, I'd love to have you as the moving force on getting it introduced and moved along. There is no identified interest group pushing it, although we have sent it out to several for comments. Perhaps the most attractive part about it is that it has no fiscal impact. That alone could make it a pleasant relief from the primary focus of this session.

I am enclosing a copy of the materials we have circulated (and put on a web site) for comment. For the original ideas I have inserted some explanatory notes. The last ten were added after the first batch and have no commentary. I think they are fairly self-explanatory.

Take a look at what we've got. If you have any questions, give me a call or I can arrange to meet with you to go over proposals. In any event, if this is something you would be interested in working on, we'd love to have you.

Sincerely,



Wm Pharis Horton

PS Sorry for the copy quality.

CONDOMINIUM LAW IDEAS

1. Amend 703.02(5): "Condominium instruments" mean the declaration and plat of a condominium, as amended from time to time, together with any attached exhibits or schedules."

[This deletes "plans" and recognizes potential amendments.]

2. Amend 703.02(6): "Conversion condominium" means a property which includes a structure which . . .

[This clarifies the definition of conversion condominium since it is the entire property and not just the structure that is being converted.]

3. Amend 703.02(6m): "Correction instrument" means . . . that, upon recording, corrects an error in a condominium or updates a condominium plat for changes not requiring an addendum.

[Certain changes to a condominium plat do not require a formal addendum and this includes such changes as correction instruments.]

4. Amend 703.02(12): "Mortgagee" means the holder of any recorded mortgage encumbering one or more units or a land contract vendor; for purposes of receiving notices or giving approvals, mortgagee shall mean the party servicing the mortgage or land contract.

~~[With mortgages generally being sold to the secondary market, determination of the holder is difficult so the authority of acting for the holder in relation to the condominium is given to the servicing entity.]~~

5. Amend 703.02(14g): "Removal instrument" means . . . and that removes property, either an entire condominium or a portion thereof, from the provisions . . ."

[This is part of a policy change to the law permitting removal of part but not all of the property of a condominium. It is being done now with some confusion. The same effect is being sought by the use of leases and easements. The purpose of this, and related sections 10 and 35-41, is to recognize and formalize the procedure to accomplish this result.]

6. Amend 703.02(15): "Unit" means a part of a condominium, regardless of size or use, intended for any type . . .

[The Supreme Court ABKA case dealing with dockominiums, now the subject of separate legislation, raised the possibility of a *de minimis* rule on the size, and possibly the use, of condominium units and the non-recognition of those falling below an undefined line. This

is designed to overcome that possibility since the issue in the original case has now been otherwise dealt with.]

7. Amend 703.03: This chapter . . .duly executing and recording a declaration and plat as provided . . .

[This recognizes that a condominium is created by the recording of the declaration and plat.]

8. Amend 703.04: "A unit, together with its undivided interest in the common elements and its other appurtenant interests, for all purposes constitutes real property.

[Reference to other appurtenant interests includes them as part of the bundle that is real property as part of the unit.]

9. Amend 703.05: "A unit owner .is entitled to the exclusive ownership and possession. his or her unit and to the exercise of the rights appurtenant to his or her unit."

[This adds that in addition to use and enjoyment of the unit the unit owner also may exercise rights appurtenant to it.]

10. Amend 703.06: Except as otherwise . . . safety of the property, interfere with the condition or operation of the mechanical systems, reduce the value . . .

[The section prohibits alterations which adversely impact the condominium. This adds protection of the mechanical systems to the existing list.]

11. Amend 703.07(2): ~~Condominium instruments, all amendments to condominium instruments, and all certifications and statements relating to the condominium which must be recorded, shall be recorded . . .~~

[This rewords the section to clarify its intent.]

12. Amend 703.08: (1) Residential property may not be converted to condominium ownership unless the owner of the *residential real* property gives prior written notice of the conversion to each of the residential tenants of the *building or buildings scheduled for conversion* structure or structures that are part of the property being converted.

During the 60-day period immediately following the date of delivery of the notice a residential tenant has the right to purchase the unit in which the tenant resides, if the unit is offered for sale at any time during that period, for any of the following: ...

13. Amend 703.08(2): A residential tenant . . .

[Sections 8 and 9 together are amended to clarify that protection and rights are afforded to residential tenants only in the event of conversion. It also shifts from "building" to "structure" to fit the conversion definition.]

✓ 14. Amend 703.09(1c): "A condominium declaration shall be signed by the owners of the property and by or on behalf of any first mortgagee . . ."

[This is changed to be consistent with the proposed change of 703.02(12).]

✓ 15. Amend 703.09(2): Except as provided in . . . (8)(b), and 703.13, 703.26 and 703.28, a condominium declaration . . .

[This recognizes that there are additional ways in which a declaration may be amended other than the consent/approval procedures for regular amendments.]

✓ 16. Amend 703.10(1): "The administration of . . . Every unit owner and occupant shall comply . . . Failure to comply . . . maintainable by the association, enforcement under s. 703.24, or, in a proper case, action by an aggrieved unit owner."

[This clarifies that the bylaws and rules of the condominium apply to all occupants as well as unit owners. It also makes reference to the possibility of private, in-house enforcement now permitted under the law.]

✓ 17. Amend 703.10(2)(d): The election by . . . of whom, except during the period of declarant control, not more . . . and that the terms of elected directors shall not exceed three years at least one-third of the directors shall expire annually, . . .

[This allows more than one director to be a non-unit owner only during the period of declarant control. Also, the one-third turnover rule caused arithmetic problems (e.g., five directors with revolving three-year terms meant a 2-2-1 rotation which violates the one-third rule).]

✓ 18. Amend 703.10(2)(f): The manner of . . . conveying property, if the association is to have these powers.

[This deals with the law's mandatory inclusion in bylaws of the manner of borrowing money and acquiring and conveying property. Many bylaws don't include this because the association will not have those powers. The amendment makes it a requirement only if those powers are to be part of the scope of authority of the association.]

✓ 19. Amend 703.10(6): Title to a condominium . . . or otherwise affected, other than by liens filed pursuant to the bylaws, by any provision . . .

[The law provides that the bylaws may not affect title, but where authority to impose liens is included in the bylaws it could be argued that they do.]

✓ 20. Amend 703.105(1m): Insert the word "unit" after "condominium".

[This supplies a word that appears to have been inadvertently omitted.]

✓ 21. Amend 703.105(2): "Notwithstanding subs. (1) and (1m) . . . signs, flags and flagpoles, which may limit their display to those parts of the condominium over which the unit owner has exclusive rights of use."

[This limits displays of signs and flags to units and limited common elements.]

✓ 22. Amend 703.115(1)(a): Requires the review . . . is approved for recording without certification of approval or signature of reviewer.

[The optional municipal review provision says that there is a limited time for the review to be completed. This clarifies that if the time limit passes, no sign-off is needed. Perhaps something is needed to evidence when the documents are submitted for review.]

✓ 23. Amend 703.12: A description . . . which makes reference to the *letter or number or other appropriate unit* designation . . . for all purposes. Where a parcel identification number is required for any purpose, the designation of all units in the condominium may be shown by the parcel number or numbers of the property submitted to this chapter to create the condominium.

[Inclusion of the parcel identification numbers of all units in a document affecting a condominium generally can be a problem. This allows for a congregate parcel identification number, the identifier(s) of the original property submitted to condominium ownership, to represent all of the unit PINs.]

✓ 24. Amend 703.13(2): Delete the word "disbursed" and insert in lieu thereof "used or allocated".

[Common surpluses may be retained or used rather than disbursed.]

✓ 25. Amend 703.13(4): ~~"The percentage interest . . . and the consent by or on behalf of the first mortgagee or the holder of an equivalent security interest, if any, of each unit their mortgagees. . . . In the event a condominium is not fully constructed as declared or one or more units are destroyed and not rebuilt or removed from the condominium, the percentage interests in the common elements of the condominium shall be adjusted to maintain the same ratio among the units, unless otherwise changed as permitted in this chapter."~~

[This also implements the proposed change in 703.02(12). It also makes an automatic adjustment in percentage interests if the number of units in a condominium is not as shown in the declaration creating it.]

✓ 26. Amend 703.13(5)(a): "A unit owner may . . . lessen the support of any portion of the condominium, interfere with the condition or operation of the mechanical systems, . . . A unit owner making alterations within a unit which involves changing the configuration of rooms within the unit shall file plans showing the reconfiguration with the association.

[The first portion is consistent with the proposed change to 703.06. Internal configuration of units is no longer required as a part of the plat, so reconfiguration will not require an

addendum to the plat. This would require that the information be filed with the association.]

✓ 27. Amend 703.13(5m)(a)3: add "or interfere with the condition or operation of the mechanical systems."

[This is consistent with proposed change to 703.06.]

✓ 28. Amend 703.13(5m)(b): All costs . . . maintenance and repair as determined by the association are the . . ."

[This allows the association to determine what additional repair and maintenance costs will be absorbed for the improvements to the limited common elements.]

✓ 29. Amend 703.13(6)(b): "If any unit owners . . . application from those unit owners and after determination that this relocation does not violate the condominium instruments and 30 days' written notice . . ."

[Since recording the amendment showing the relocation is conclusive evidence that the action is not in violation of the condominium instruments, this should be established prior to the action being taken.]

✓ 30. Amend 703.13(6)(e): Delete "identifying numbers or letters" and insert "designations" in lieu thereof.

[This uses the generic term designation since by earlier amendment units in new condominiums may now only be identified by numbers, 703.11(3). Earlier units may have ~~both numbers and letters in their designation.~~]

✓ 31. Amend 703.13(7)(a): If any condominium instruments . . . in accordance with this section, or section (9) if the separation involves creation of more than 2 units, and any . . .

[There are different considerations in splitting one large unit into two and using the unit as the parcel of real estate for the creation of several separate ownership interests, for example by creating a condominium within a condominium. Splitting can be handled under this section but more is required to plan and implement a more complex division of interests. In that regard, where the ownership of the unit remains undivided (as in the case of a cooperative) there can be multiple use interests without any separation ownership.]

✓ 32. Amend 703.13(7)(b): "The principal officer of the association . . . (separator) and after determination that this relocation does not violate the condominium instruments and 30 days' written notice . . . An amendment to the condominium instruments shall assign a new designation to each new unit, provided one may retain the original designation of the separated unit, created . . ."

[Since recording the amendment showing the separation is conclusive evidence that the action is not in violation of the condominium instruments, this should be established prior to the action being taken. The term designation is used for consistency and in the redesignation of the units one may retain the original unit designation.]

33. Amend 703.13(7)(c): "Plats and plans showing the boundaries and dimensions of the new units, including the boundary separating them and their new designations shall be prepared."

[This is primarily a clarification of present wording.]

34. Amend 703.13(8)(b): "If the unit owners . . . the unit owners after determination by the association that this relocation does not violate the condominium instruments and 30 days' written notice . . . An amendment to the condominium instruments shall assign a new designation to the new unit, which may be the original designation of one of the merged units, created . . ."

[Since recording the amendment showing the merger is conclusive evidence that the action is not in violation of the condominium instruments, this should be established prior to the action being taken. The term designation is used for consistency and in the redesignation of the unit it may retain the original unit designation of one of the merged units.]

35. Amend 703.13(8)(c): "~~Plats and plans showing the boundaries and dimensions of the new unit together with the new designation shall be prepared.~~"

[This is primarily a clarification of present wording.]

36. Create 703.13(9): DIVISION OF UNITS. (a) If permitted in the declaration, a unit in a condominium may be divided into multiple separate ownership interests. This does not apply if record ownership of the unit is not subdivided.

(b) If these interests are based on a division of rights in the ownership of the unit on the basis time periods, this division shall be controlled by ch. 707.

(c) If these interests are based on a division of rights other than on the basis of time periods, they shall be created by condominium, subdivision or certified survey map, as appropriate, and must be further shown by amendment to the condominium declaration and addendum of the condominium plat.

(d) Subdivision does not require removal of the condominium from the provisions of this chapter.

[There have been situations in which there is a desire to fractionate the interests in a unit. This can occur when there is a large unit with several potential users or a unit in which the interests are divided by time, as in a timeshare. Arguably 703.13(7) dealing with the

separation of units could take care of this. Proposals include making a unit owned by an entity into a cooperative (which would not appear to require either separation or subdivision since the ownership would remain unitary), a condominium, a subdivision or certified survey map. The policy issue is whether the unit parcel should be allowed to be divided (timeshares and multiple ownership in a titled entity seem to be covered already and perhaps separation of units allows this) and, if so, under what limitations and rules. Additional drafting will be required once some decisions are made.]

37. Amend 703.14(1): The common elements . . . condominium instruments or association bylaws or rules, the common elements . . .

[This identifies that it is the association bylaws, and its rules, that control use of the common elements.]

38. Amend 703.15(2)(a): *Every declarant shall establish an association to govern the condominium not later than the date of the first conveyance of a unit to a purchaser. No later than the date of the first conveyance of a unit to a purchaser, an association shall be deemed to exist to govern the condominium. It is the obligation of declarant to organize the association and to operate it until control is transferred to the unit owners.*

[At present the obligation to create the association is on the declarant, many of whom have no knowledge of or interest in the requirement. This makes the creation of the association automatic but puts the responsibility to organize and operate it on the declarant. It means that when turnover time comes at least there is an association, perhaps an unincorporated and merely theoretical one, for the unit owners to take over and there is some spur to move recalcitrant declarants to do something about it.]

39. Amend 703.15(2)(c)2: add at the end "Declarant may transfer control of the association prior to the expiration of the declarant control period as established in sub. (c)1."

[This recognizes the frequently exercised right of a declarant to advance the period of unit owner control of the association,]

40. Create 703.15(2)(c)3: "Upon termination of declarant control, declarant shall turn over all association records and accounts to the directors elected under sub. (f)."

[This merely clarifies the fact that the association records and accounts remain with the association "under new management" after declarant control terminates. This essentially repeats 703.20(3) and may be unnecessary.]

41. Amend 703.15(2)(d): *Prior to Within 30 days after the conveyance of 25%
Prior to Within thirty days after the conveyance of 50%*

[This provides a more manageable process for the determination of when the percentages have been met and election of unit owner representatives.]

42. Amend 703.15(2)(f): "No later than 45 days after declarant control ends, an association . . ."

[Since the declarant control may either expire by passage of time or be earlier terminated, the more generic "ends" is used.]

43. Amend 703.15(3)(a): In addition to any other powers vested in it by law, an An association has . . .

[This recognizes that certain additional powers may be inherent in the association by the nature of its form of organization, e.g. chap. 181.]

44. Amend 703.15(4)(b): "Every unit owner shall furnish the association with the name and current address of every owner of the unit and every tenant of the unit if it is rented. . ."

[The name and address of the unit owner is already required but this clarifies that this information on all owners must be provided and adds that this information on tenants must also be provided.]

45. Amend 703.15(4)(e): Unless otherwise provided . . . a different majority or manner of voting, decisions . . . present and voting at a meeting at which a quorum is present.

[This is designed to give more flexibility to the association in the determination of how its decisions may be made. For example, teleconference meetings and voting by ballot would be more easily allowed.]

46. Amend 703.155(1): "profit or".

[There would appear to be no situation in which a business corporation, or limited liability company, would be appropriate as a master association.]

47. Amend 703.155(2): Delete "described in s. 703.15(3)" and insert "of an association" in lieu thereof.

[Association powers may be broader than those enumerated in 703.15(3) and any association powers may be assigned to the master association.]

48. Amend 703.16(1): "All common surpluses of the association may be used by the association as it determines, but if credited or distributed to unit owners, they shall be allocated as provided in the declaration, or if there is no provision in the declaration, in proportion to their percentage interests in the common elements."

[This recognizes that surpluses may be used by the association and not credited or distributed to the unit owners, but if going to unit owners the allocation is established.]

49. Amend 703.16(2)(b): "During any period during which any unit owned by the declarant is exempt . . ."

[Currently the requirement that the declarant augment the association budget is limited to the period of declarant control. This extends that requirement so long as the declarant has exempted unsold units from maintenance fees.]

50. Create 703.161(2)(g): "(g) The amount assessed to the unit."

[This adds a requirement that the budget include a statement of the amount assessed.]

51. Create 703.161(3): "(3) Amendment. An association may adopt amendments to its budget during the course of its fiscal year. Adoption of amendments shall require the same procedures and actions required for the adoption of the original budget."

[The law currently does not cover the question of amendments to an association budget. This provides that the same procedures, including authority to adopt, is maintained for amendment.]

52. Amend 703.165(2): A unit owner . . . In any voluntary grant, other than one resulting from the foreclosure of a first mortgage or equivalent security interest in the unit, the grantee shall . . .

[This extends the joint liability of grantor and grantee for liened expenses to all grants, voluntary or not, other than the standard mortgagee situation. The old wording gave a broader exception to joint liability which is not consistent with the priorities in 703.165(5).]

53. Amend 703.165(3): "All assessments . . . statement of lien is filed within 2 years after the date the last installment of the assessment becomes due. . . ."

[The time within which a condominium lien may be filed is two years after the assessment upon which the lien is based is due. This clarifies that it runs from the date the last installment is due since most assessments are paid in monthly installments.]

54. Amend 703.165(5)(c): Delete "Mechanic's" and insert "Construction" in lieu thereof.

[This brings the wording of the section into line with chap. 779, Stats.]

55. Amend 703.17(1): The association shall obtain insurance ^{ensure} or assure that insurance is obtained for the property as defined in s. 703.02(14) against loss . . . for not less than full replacement value of the property. . . . The insurance may include reasonable deductibles. . . . in the percentages established in the declaration, provided a declaration may establish an allocation of insurance proceeds which differs from the percentage interest in the common elements established in s. 703.13(1).

[Many associations shift the obligation of obtaining insurance to the unit owners, although the present law seems pretty clear that it is the association's responsibility. This allows the

shifting but makes the association responsible for assuring that the Insurance is obtained. It is also common for the Insurance coverage to include deductibles. Finally, a declaration may establish a ratio of percentage interests in the common elements which is not reflective of the relative value of the units. This permits a declaration to set a different percentage for sharing in insurance proceeds from the general interests in the common elements.]

56. Amend 703.18(2)(b): However, if a condominium . . . in proportion to their percentage interests in the common elements as established in s. 703.13(1) or, if the declaration provides, an allocation of net sales and insurance proceeds which differs from the percentage interest in the common elements, and shall be . . .

[Frequently the declaration will provide that units' percentage interests in the common elements are equal even though the units are of substantially different value. This allows the declaration to say that if the condominium is destroyed net amounts (insurance recovery, sale proceeds) may be disbursed by a different percentage.]

57. → Amend 703.19(3)(b) and (c): Add at the end "as established in s. 703.13(1) or, if the declaration provides, an allocation of the award which differs from the percentage interest in the common elements."

[This makes allocation of condemnation awards consistent with insurance and sale proceeds.]

58. Amend 703.20(1): An association shall . . . any other expenses incurred. These records are the property of the association wherever maintained. The records and . . .

[In turnover situations and changes of management companies there is frequently a problem for the association in getting its records. This clarifies that these records belong to the association.]

59. Amend 703.22 Intro, (2) and (3): Mechanics' Contractors', mechanics' contractors'

[This brings terminology in line with the state's lien statute.]

60. Amend 703.23(2): "A unit owner who commits a violation is liable for any charges, fines or assessments imposed by the association pursuant to the declaration or its bylaws or rules . . ."

[This recognizes that enforcement may be included in the declaration.]

61. Amend 703.25(3): "A judgment for money or a blanket lien under s. 703.22 shall be . . . An action for a money judgment against an association shall not be the basis for filing a lis pendens against the units of the condominium."

[This responds to two reported cases. The 1995 Lakeshore Towers case questioned how liability for a blanket lien should be allocated. The 1998 Interlaken case held that filing an action against an association would be a basis for filing a lis pendens against the units in the condominium although the action does not, itself, involve title issues.]

62. Amend 703.26(1): A declarant may reserve the right to expand a condominium by subjecting additional real estate and units property to the condominium declaration or adding one or more units on real estate already subject to the declaration in such a manner that as each additional parcel of real estate and unit or units are property is subjected to the condominium declaration, the percentage of interests in the common elements of the preceding and new property, including any new property, shall be reallocated . . .

[Expansion currently is limited to situations in which both land and new units are added to the condominium. This would allow, where the right is reserved, for addition of units on land already submitted to condominium ownership. In the absence of timely expansion, that property would remain in the condominium but not be subject to declarant expansion.]

63. Amend 703.26(2)(a): A declaration . . . to the condominium, and the square footage of the parcel.

[This was requested by the municipal property records staff to facilitate their work.]

64. Amend 703.26(3)(a): If the conditions . . . an amendment to the declaration, showing the designation of the units being added, the new percentage interest . . .

[This was requested by the municipal property records staff to facilitate their work.]

65. Create 703.275(4m): PLAT. The plat of the resultant condominium shall be titled as an addendum to the plat of the resultant condominium, identify the plat of every condominium which is merged into the resultant condominium by name and recording data, and identify units both by their designation in the resultant condominium and by their designation in the merged condominiums. If there are any changes in the common elements, including the reservation of parts of them as limited common elements, these shall be identified on the plat of the resultant condominium.

[This adds requirements for plats of merged condominiums which were not covered in the law and was requested by the municipal property records staff to facilitate their work.]

66. 703.28(1); All of the unit owners may remove all or any part of the property may be removed from the provisions of this chapter by a removal instrument, duly recorded as an amendment to the declaration, as provided herein, and an addendum to the plat.

67. Delete remainder of 703.28(1), 1m and 2.

68. Create new 703.28(2): If all of the property is being removed, the removal instrument must be approved by all of the unit owners and consented to by the holders of all liens affecting the condominium or any unit. The removal instrument shall provide that any lien is transferred to the percentage interest of the unit owner whose unit is encumbered by it and that any lien on the condominium as a whole is allocated among the units in accordance with s. 703.25(3). Upon removal of the property from this chapter, the property shall be deemed to be owned in common by the unit owners in their relative interests under s. 703.18(2)(b).

*the provisions
5/5*

69. Create 703.28(3): If less than all of the property is being removed;
(a) The removal instrument must identify what part of the property is being removed, who will own the part of the property being removed after its removal, what consideration is being given for the removal to the remaining condominium, and how the finances, including expenses, surpluses, assets, liabilities and reserves will be allocated between the part of the property being removed and the remaining condominium.

(b) The removal instrument must be approved by eighty percent (80%) of unit owners, including all owners of any units being removed, and consented to by the holders of all liens affecting the condominium or any unit. If the part of the property being removed will be owned by declarant or any affiliate of declarant, the removal instrument must be approved by all non-declarant unit owners and the holders of any liens affecting their units. To the extent the removal affects the value of any unit owner's interest in the common elements, the removal instrument shall comply with s. 703.09(3). The removal instrument shall provide that any lien is transferred to the percentage interest of the unit owner whose unit is encumbered by it and that any lien on the condominium as a whole is allocated among the units in accordance with s. 703.25(3).

(c) Any part of the property removed must result in the part removed being a legal parcel for its intended purpose.

70. Create 703.28(4): The approvals and consents shall be attested to in the instruments recorded with the removal instrument.

71. Create 703.28(5): The removal provided for herein shall in no way bar the subsequent resubmission of the property or the part of the property removed to this chapter.

[Sections 66-71 allow for the removal of part of a condominium from condominium ownership status. At present the law appears to require an all or nothing removal and

situations have arisen where partial removal is sought. This establishes the rule under which this may be accomplished.]

72. Delete 703.29

[This provision has been included in 703.28(5) as part of the removal amendment language.]

73. Amend 703.33(1): "Not later than 15 days prior to the closing of the sale of a residential unit to a member of the public, the seller shall furnish to the purchaser the following:"

[This reflects the exemption of 703.33(78).]

? One is order of res; other is made for mortgage purposes

74. Amend 703.34: heading add ; Mortgagee Approvals

75. Create 703.34(4): In those situations in which mortgagee consent or approval is required, if a mortgagee cannot be contacted with the use of reasonable diligence or if a mortgagee does not acknowledge receipt of the request for consent or approval or respond either affirmatively or negatively to the request within a reasonable time, the association may seek the right to proceed with the proposed action under ch. 840.

[This addresses situations in which there is a problem in obtaining mortgagee approvals. This could be tweaked to conform more closely with new FannieMae opinion requirements.]

76. Amend 703.365(1)(a): "The declaration for a small condominium may provide that any or all of subs. (2) to (6) and (8) or any parts . . ."

77. Amend 703.365(1)(b): "If a declaration under par (a) provides that any or all of subs. (2) to (6) and (8) or any parts . . ."

[It has been intended that small condominiums not be expandable. This clarifies that intent by removing (7) from those sections which may be opted in by declarant. This does not prohibit mergers involving small condominiums or amendment of the declaration of a small condominium to remove it from small condominium status.]

78. Create 703.365(9): "(9) Resident Agent; Taxes. In the declaration of a small condominium, the declarant shall designate one of the unit owners as the resident agent of the condominium and designate how real estate taxes for the year the condominium is created shall be divided among the units, if other than by percentage interests in the common elements."

[This was requested by the municipal property records staff to facilitate their work.]

79. Create 703.365(10): "(10) Easements. The units and limited common elements of a small condominium are subject to cross easements for any utility services to other units in the condominium."

[Often small condominium units are served by a single utility service which is metered in unit but has lines which traverse that unit to serve others in the condominium. This creates an automatic easement for utility services.]

80. Create 703.365(11): “(11) Unless the declaration provides otherwise, units in a two-unit small condominium shall have the same insurer and any improvement, decoration, or repair to the exterior of either unit of the condominium must be agreed upon by the owners of both units, subject to arbitration under subs. (6)(b) through (e) in the event of a dispute.”

[Problems have been cited in which a duplex condominium has separate insurance for each unit and where disputes have arisen over exterior appearance due to the actions of one owner or the other.]

• * * * * *

The following are additional items that have been put in the hopper since the above was finalized:

- ✓ 1. Amend 703.02(16) changing “identifying” to “designating” to be consistent.
- ✓ 2. Amend 703.03 to add “and any mortgagee or holder of an equivalent security interest” after “all of the owners”.
- ✓ 3. Amend 703.13(6)(c) to add at the end “which shall constitute a conveyance of the affected part of the unit or units between the unit owners.”
- ✓ 4. Amend 703.15(3)(a)1: “Adopt and amend budgets . . .”
- ✓ 5. Amend 703.15(4)(d)1 to add at the end “Voting records, including official rosters and ballots cast, shall be open to review by any unit owner.”
- ✓ 6. Amend 703.17(1) as amended above to add at the end “If the insurance contains a deductible, the association shall determine by bylaw or rule whether the deductible shall be paid as a common expense or, if not, how it will be allocated.”
- ✓ 7. Amend 703.19(3) to add “subject to sub. (6)” after “shall be awarded”
- ✓ 8. Amend 703.26(1) by adding “in the initial declaration of the condominium” after “expand a condominium” in the first sentence.
- ✓ 9. Amend 703.365(6)(a) add “3. An action is proposed by one unit owner which may have an adverse impact on the condominium or the use and enjoyment of another unit in the condominium.”
- ✓ 10. Amend 703.365^(b)(b) by adding “or the unit owner described under par (a) 3.” after “under par. (a) 1. or 2.”



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1733/6 PI
PJK:.....
bjk — r m not seen

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
x-ref
Insert
D-note
(v 2-25)

for cut

1 AN ACT *for cut*; relating to: miscellaneous modifications to the condominium laws.

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:

2 SECTION 1. 703.02 (5) of the statutes is amended to read:

3 703.02 (5) "Condominium instruments" mean the declaration, plats, and plans
4 of a condominium, as amended from time to time, together with any attached
5 exhibits or schedules.

6 History: 1977 c. 407; 1985 a. 188; 1997 a. 333; 1999 a. 85; 2003 a. 283; 2007 a. 20.

SECTION 2. 703.02 (6) of the statutes is amended to read:

7 703.02 (6) "Conversion condominium" means property that includes a
8 structure ~~which~~ that, before the recording of a condominium declaration, was wholly
9 or partially occupied by persons other than those who have contracted for the

1 purchase of condominium units and those who occupy with the consent of the
2 purchasers.

3 History: 1977 c. 407; 1985 a. 188; 1997 a. 333; 1999 a. 85; 2003 a. 283; 2007 a. 20.

SECTION 3. 703.02 (6m) of the statutes is amended to read:

4 703.02 (6m) "Correction instrument" means an instrument drafted by a
5 licensed land surveyor that complies with the requirements of s. 59.43 (2m) and that,
6 upon recording, corrects an error in a condominium plat or updates a condominium
7 plat for changes that do not require an addendum. "Correction instrument" does not
8 include an instrument of conveyance.

9 History: 1977 c. 407; 1985 a. 188; 1997 a. 333; 1999 a. 85; 2003 a. 283; 2007 a. 20.

SECTION 4. 703.02 (12) of the statutes is amended to read:

10 703.02 (12) "Mortgagee" means the holder of any recorded mortgage
11 encumbering one or more units ~~or~~ a land contract vendor, or for purposes of receiving
12 notices or giving approvals the party servicing the mortgage or land contract.

13 History: 1977 c. 407; 1985 a. 188; 1997 a. 333; 1999 a. 85; 2003 a. 283; 2007 a. 20.

SECTION 5. 703.02 (14g) of the statutes is amended to read:

14 703.02 (14g) "Removal instrument" means an instrument that complies with
15 the requirements of s. 59.43 (2m) and that removes property, either all or a portion
16 of a condominium, from the provisions of this chapter upon recording. "Removal
17 instrument" does not include an instrument of conveyance.

18 History: 1977 c. 407; 1985 a. 188; 1997 a. 333; 1999 a. 85; 2003 a. 283; 2007 a. 20.

SECTION 6. 703.02 (15) of the statutes is amended to read:

19 703.02 (15) "Unit" means a part of a condominium intended for any type of
20 independent use, including one or more cubicles of air at one or more levels of space
21 or one or more rooms or enclosed spaces located on one or more floors, or parts thereof,
22 in a building. A unit may be of any size, may be for any use, and may include 2 or
23 more noncontiguous areas.

History: 1977 c. 407; 1985 a. 188; 1997 a. 333; 1999 a. 85; 2003 a. 283; 2007 a. 20.

X

1 SECTION 7. 703.02 (16) of the statutes is amended to read:

2 703.02 (16) "Unit number" means the number ~~identifying~~ designating a unit
3 in a declaration.

4 History: 1977 c. 407; 1985 a. 188; 1997 a. 339; 1999 a. 85; 2003 a. 283; 2007 a. 20.

X

4 SECTION 8. 703.03 of the statutes is amended to read:

5 703.03 **Application of chapter.** This chapter applies only to property, a sole
6 owner or all of the owners, and any mortgagee or holder of an equivalent security
7 interest, of which submit the property to the provisions of this chapter by duly
8 executing and recording a declaration and plat as provided in this chapter.

History: 1977 c. 407.

****NOTE: Do you want this limited to first mortgagees?

X

9 SECTION 9. 703.04 of the statutes is amended to read:

10 703.04 **Status of the units.** A unit, together with its undivided interest in the
11 common elements and its other appurtenant interests, for all purposes constitutes
12 real property.

13 History: 1977 c. 407.

X

13 SECTION 10. 703.05 of the statutes is amended to read:

14 703.05 **Ownership of units.** A unit owner is entitled to the exclusive
15 ownership and possession of, and to the exercise of the rights appurtenant to, his or
16 her unit.

History: 1977 c. 407.

****NOTE: Did you intend that "exclusive" also apply to "the exercise of the rights appurtenant to"?

X

17 SECTION 11. 703.06 of the statutes is amended to read:

18 703.06 **Alterations prohibited.** Except as otherwise provided in this
19 chapter, no unit owner may make any alteration that would jeopardize the
20 soundness or safety of the property, interfere with the condition or operation of the
21 mechanical systems, reduce the value ~~thereof~~ of the property, impair any easement

1 or hereditament, or change the exterior appearance of a unit or any other portion of
2 the condominium not part of the unit.

History: 1977 c. 407; 2003 a. 283.

3 **SECTION 12.** 703.07 (2) of the statutes is amended to read:

4 703.07 (2) A condominium instrument, ~~and all amendments, addenda and~~
5 ~~certifications of an amendment to a condominium instrument, and any certification~~
6 ~~or statement relating to the condominium that must be recorded~~ shall be recorded
7 in every county in which any portion of the condominium is located, and shall be
8 indexed in the name of the declarant and the name of the condominium. Subsequent
9 instruments affecting the title to a unit ~~which~~ that is physically located entirely
10 within a single county shall be recorded only in that county, notwithstanding the fact
11 that the common elements are not physically located entirely within that county.
12 Subsequent amendments and addenda shall be indexed under the name of the
13 condominium.

History: 1977 c. 407; 1997 a. 333.

14 **SECTION 13.** 703.08 (1) (intro.) of the statutes is amended to read:

15 703.08 (1) (intro.) Residential real property may not be converted to a
16 condominium unless the owner of the residential real property gives prior written
17 notice of the conversion to each of the residential tenants of the ~~building or buildings~~
18 ~~scheduled for conversion~~ structure or structures that are part of the property being
19 converted. During the 60-day period immediately following the date of delivery of
20 the notice a residential tenant has the first right to purchase the unit in which the
21 tenant resides, if the unit is offered for sale at any time during that period, for any
22 of the following:

History: 1977 c. 407; 2003 a. 283.

23 **SECTION 14.** 703.08 (2) (intro.) of the statutes is amended to read:

1 703.08 (2) (intro.) A residential tenant may not be required to vacate the
2 property during the 120-day period immediately following the date of delivery of the
3 notice required under sub. (1) except for:

4 ~~X~~
History: 1977 c. 407; 2003 a. 283.

SECTION 15. 703.08 (3) of the statutes is amended to read:

5 703.08 (3) A residential tenant may waive in writing his or her first right of
6 purchase under sub. (1), his or her right to remain on the property under sub. (2), or
7 both.

8 ~~X~~
History: 1977 c. 407; 2003 a. 283.

SECTION 16. 703.09 (1c) of the statutes is amended to read:

9 703.09 (1c) A condominium declaration shall be signed by the owners of the
10 property and by or on behalf of any first mortgagee of the property or the holder of
11 an equivalent security interest in the property in the same manner as required in
12 conveyances of real property.

13 ~~X~~
History: 1977 c. 407; 1985 a. 188, 332; 2003 a. 283.

SECTION 17. 703.09 (2) of the statutes is amended to read:

14 703.09 (2) Except as otherwise provided in ~~sub. (4) and ss. 703.093, 703.13 (6)~~
15 ~~(e) and (d) and (8) (b), and 703.26~~ this chapter, a condominium declaration may be
16 amended with the written consent of at least two-thirds of the aggregate of the votes
17 established under sub. (1) (f) or a greater percentage if provided in the declaration.
18 An amendment becomes effective when it is recorded in the same manner as the
19 declaration. The document submitting the amendment for recording shall state that
20 the required consents and approvals for the amendment were received. A unit
21 owner's written consent is not effective unless it is approved in writing by the first
22 mortgagee of the unit, or the holder of an equivalent security interest, if any.
23 Approval from the first mortgage lender or equivalent security interest holder, or the
24 person servicing the first mortgage loan or its equivalent on a unit, constitutes

1 approval of the first mortgagee or equivalent security interest holder under this
2 subsection.

History: 1977 c. 407; 1985 a. 188, 332; 2003 a. 283.

****NOTE: Is the way in which I amended this provision okay?

X

3 **SECTION 18.** 703.10 (1) of the statutes is amended to read:

4 703.10 (1) BYLAWS TO GOVERN ADMINISTRATION. The administration of every
5 condominium shall be governed by bylaws. Every unit owner and occupant shall
6 comply strictly with the bylaws and with the rules adopted under the bylaws, as the
7 bylaws or rules are amended from time to time, and with the covenants, conditions,
8 and restrictions set forth in the declaration or in the deed to the unit. Failure to
9 comply with any of the bylaws, rules, covenants, conditions, or restrictions is
10 grounds for action to recover sums due, for damages or injunctive relief or both,
11 maintainable by the association or, in a proper case, by an aggrieved unit owner, or
12 for enforcement under s. 703.24.

History: 1977 c. 407; 1987 a. 262; 1991 a. 295; 1995 a. 27; 1999 a. 82.

****NOTE: Is the intention to authorize a civil action or in-house enforcement under
s. 703.24?

X

13 **SECTION 19.** 703.10 (2) (d) of the statutes is amended to read:

14 703.10 (2) (d) The election by the unit owners of a board of directors of whom,
15 except during the period of declarant control, not more than one is a nonunit owner,
16 the number of persons constituting the same board of directors and that the terms
17 of at least one-third of the elected directors shall expire annually not exceed 3 years,
18 the powers and duties of the board, the compensation, if any, of the directors, the
19 method of removal from office of directors, and whether or not the board may engage
20 the services of a manager or managing agent.

History: 1977 c. 407; 1987 a. 262; 1991 a. 295; 1995 a. 27; 1999 a. 82.

21 **SECTION 20.** 703.10 (2) (f) of the statutes is amended to read:

1 703.10 (2) (f) The manner of borrowing money and acquiring and conveying
2 property, if the association is to have these powers.

3 History: 1977 c. 407; 1987 a. 262; 1991 a. 295; 1995 a. 27; 1999 a. 82.

3 **SECTION 21.** 703.10 (6) of the statutes is amended to read:

4 703.10 (6) TITLE TO CONDOMINIUM UNITS UNAFFECTED BY BYLAWS. Title to a
5 condominium unit is not rendered unmarketable or otherwise affected by any
6 provision of the bylaws, except for liens filed under the authority of the bylaws, or
7 by reason of any failure of the bylaws to comply with the provisions of this chapter.

8 History: 1977 c. 407; 1987 a. 262; 1991 a. 295; 1995 a. 27; 1999 a. 82.

8 **SECTION 22.** 703.105 (1m) of the statutes is amended to read:

9 703.105 (1m) No bylaw or rule may be adopted or provision included in a
10 declaration or deed that prohibits a unit owner from displaying in his or her
11 ~~condominium~~ unit a sign that supports or opposes a candidate for public office or a
12 referendum question.

13 History: 2003 a. 161; 2005 a. 303.

13 **SECTION 23.** 703.105 (2) of the statutes is amended to read:

14 703.105 (2) Notwithstanding subs. (1) and (1m), bylaws or rules may be
15 adopted that regulate the size and location of signs, flags, and flagpoles, including
16 limiting their display to those parts of the condominium that the unit owner has the
17 exclusive right to use.

18 History: 2003 a. 161; 2005 a. 303.

18 **SECTION 24.** 703.115 (1) (a) of the statutes is amended to read:

19 703.115 (1) (a) Requires the review to be completed within 10 working days
20 after submission of the condominium instrument and provides that, if the review is
21 not completed within this period, the condominium instrument is approved for
22 recording without certification of review or approval or the signature of the reviewer.

History: 1997 a. 333.

****NOTE: In addition to without certification of approval, I added without certification of review. Okay?

Insert 7-22 →

X

1 SECTION 25. 703.12 of the statutes is amended to read:

2 703.12 Description of units. A description in any deed or other instrument
 3 affecting title to any unit which that makes reference to the ~~letter or number or other~~
 4 ~~appropriate~~ unit designation on the condominium plat together with a reference to
 5 the condominium instruments shall be a good and sufficient description for all
 6 purposes. Whenever a parcel identification number is required for any purpose, the
 7 designation of all units in the condominium may be shown by the parcel number or
 8 numbers of the property submitted to this chapter to create the condominium.

X

History: 1977 c. 407.

9 SECTION 26. 703.13 (2) of the statutes is amended to read:

10 703.13 (2) RIGHTS TO COMMON SURPLUSES. Common surpluses shall be ~~disbursed~~
 11 used or allocated as provided under s. 703.16 (1).

X

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; ~~2003~~ a. 283.

12 SECTION 27. 703.13 (4) of the statutes is amended to read:

13 703.13 (4) CHANGE IN PERCENTAGE INTEREST. The percentage interests shall have
 14 a permanent character and, except as specifically provided by this chapter, may not
 15 be changed without the written consent of all of the unit owners and ~~their~~ the consent
 16 by or on behalf of all of the first mortgagees or holders of equivalent security
 17 interests. Any change shall be evidenced by an amendment to the declaration and
 18 recorded among the appropriate land records. The percentage interests may not be
 19 separated from the unit to which they appertain. Any instrument, matter,
 20 circumstance, action, occurrence, or proceeding in any manner affecting a unit also
 21 shall affect, in like manner, the percentage interests appurtenant to the unit. In the
 22 event that a condominium structure is not fully constructed as declared or one or
 23 more units are destroyed and not rebuilt or are removed from the condominium, the

1 percentage interests in the common elements shall be adjusted to maintain the same
2 ratio among the units, unless otherwise changed as permitted under this chapter.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

****NOTE: Have I interpreted the proposed language properly? Should this say that the destroyed units are removed from the condominium *plat*? (If they are destroyed and not rebuilt, they would seem to be automatically removed from the condominium.)

3 **SECTION 28.** 703.13 (5) (a) of the statutes is amended to read:

4 703.13 (5) (a) A unit owner may make any improvements or alterations within
5 his or her unit that do not impair the structural integrity or lessen the support of any
6 portion of the condominium or interfere with the condition or operation of the
7 mechanical systems and that do not create a nuisance substantially affecting the use
8 and enjoyment of other units or the common elements. A unit owner may not change
9 the exterior appearance of a unit or of any other portion of the condominium without
10 permission of the board of directors of the association. A unit owner making
11 alterations within his or her unit that involve changing the configuration of rooms
12 within the unit shall file plans with the association showing the reconfiguration.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

13 **SECTION 29.** 703.13 (5) (b) of the statutes is amended to read:

14 703.13 (5) (b) Except to the extent prohibited by the condominium instruments,
15 and subject to any restrictions and limitation specified therein, a unit owner
16 acquiring an adjoining or adjoining part of an adjoining unit, may remove all or any
17 part of any intervening partition or create doorways or other apertures therein, even
18 if the partition may in whole or in part be a common element, if those acts do not
19 impair the structural integrity or lessen the support of any portion of the
20 condominium or interfere with the condition or operation of the mechanical systems.
21 The creation of doorways or other apertures is not deemed an alteration of
22 boundaries.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

****NOTE: Although not requested, I added the treatment of this provision for consistency. Okay?

X

1 SECTION 30. 703.13 (5m) (a) 3. of the statutes is amended to read:

2 703.13 (5m) (a) 3. The improvement will not impair the structural integrity of
3 the condominium or interfere with the condition or operation of the mechanical
4 systems.

X

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

5 SECTION 31. 703.13 (5m) (b) of the statutes is amended to read:

6 703.13 (5m) (b) All costs and expenses of an improvement under this
7 subsection and any increased costs of maintenance and repair of the limited common
8 elements resulting from the improvement, as determined by the association, are the
9 obligation of the unit owner. The unit owner shall protect the association and other
10 unit owners from liens on property of the association or of other unit owners that
11 otherwise might result from the improvement.

X

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

12 SECTION 32. 703.13 (6) (b) of the statutes is amended to read:

13 703.13 (6) (b) If any unit owners of adjoining units whose mutual boundaries
14 may be relocated desire to relocate those boundaries, the principal officer of the unit
15 owners association, upon written application from those unit owners, and after
16 determining that the relocation does not violate the condominium instruments and
17 providing 30 days' written notice to all other unit owners, shall prepare and execute
18 appropriate instruments.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

****NOTE: Who must provide the notice? As drafted, the principal officer of the unit owners association must. Okay?

X

19 SECTION 33. 703.13 (6) (c) of the statutes is amended to read:

20 703.13 (6) (c) An amendment to a declaration shall identify the units involved
21 and shall state that the boundaries between those units are being relocated by

1 agreement of the ~~unit~~ owners ~~thereof~~ of those units. The amendment shall contain
 2 words of conveyance between those unit owners, and when recorded shall also be
 3 indexed in the name of the grantor and grantee. If the adjoining unit owners have
 4 specified in their written application the reallocation between their units of the
 5 aggregate undivided interest in the common elements appertaining to those units,
 6 the amendment to the declaration shall reflect that reallocation. An amendment to
 7 a declaration under this paragraph shall be adopted, at the option of the adjoining
 8 unit owners, either under s. 703.09 (2) or by the written consent of the owners of the
 9 adjoining units involved and the written consent by or on behalf of the mortgagees
 10 of the adjoining units, which amendment shall constitute a conveyance between the
 11 unit owners of the affected part or parts of the unit or units.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

****NOTE: I added "*consent by or on behalf of the mortgagees.*" Is this okay? If so,
 do you want to limit the consent to *first mortgagees* and add *holders of equivalent security*
interests?

X

12 **SECTION 34.** 703.13 (6) (e) of the statutes is amended to read:

13 703.13 (6) (e) Plats and plans showing the altered boundaries and the
 14 dimensions thereof between adjoining units, and their ~~identifying numbers or letters~~
 15 designations, shall be prepared. ^ΔThe plats and plans shall be certified as to their
 16 accuracy in compliance with this subsection by a civil engineer, architect, or licensed
 17 land surveyor authorized to practice his or her profession in the state.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

18 **SECTION 35.** 703.13 (7) (a) of the statutes is amended to read:

19 703.13 (7) (a) If any condominium instruments expressly permit the separation
 20 of a unit into 2 or more units, a separation shall be made in accordance with this
 21 section, or sub. (9) if the separation involves the creation of more than 2 units, and
 22 any restrictions and limitations which the condominium instruments may specify.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

****NOTE: Since sub. (9) is part of "this section," it is unnecessary to add the proposed language. Would you prefer to amend the paragraph to say, "a separation shall be made in accordance with this *subsection* [meaning sub. (7)], or sub. (9) if the separation involves the creation of more than 2 units"? Additionally, sub. (9) appears to divide the ownership interest of a unit, not the unit itself.

✕

1 **SECTION 36.** 703.13 (7) (b) of the statutes is amended to read:

2 703.13 (7) (b) The principal officer of the association, upon written application
3 of a person proposing the separation of a unit (separator), and after determining that
4 the separation does not violate the condominium instruments and providing 30 days'
5 written notice to all other unit owners, shall promptly prepare and execute
6 appropriate instruments under this subsection. An amendment to the condominium
7 instruments shall assign a new ~~identifying number~~ designation to each new unit
8 created by the separation of a unit, except that one of the new units may retain the
9 original designation of the separated unit. The amendment shall allocate to those
10 new units, on a reasonable basis acceptable to the separator and the executive board,
11 all of the undivided interest in the common ~~element~~ elements and rights to use the
12 limited common elements and the votes in the association formerly appertaining to
13 the separated unit. The amendment shall reflect a proportionate allocation to the
14 new units of the liability for common expenses and rights to common surpluses
15 formerly appertaining to the subdivided unit.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; ~~2003~~ ²⁰⁰³ a. 283.

16 **SECTION 37.** 703.13 (7) (c) of the statutes is amended to read:

17 703.13 (7) (c) Plats and plans showing the boundaries and dimensions
18 ~~separating of the new units together with their other boundaries and their new~~
19 ~~identifying numbers or letters, including the boundary separating them, together~~
20 with their new designations, shall be prepared. The plats and plans shall be certified

1 as to their accuracy and compliance with this subsection by a civil engineer, architect,
2 or licensed land surveyor authorized to practice his or her profession in the state.

3 History: 1977 c. 407; 1985 a. 332; 1987 a. 403; ~~2003~~^X a. 283.

SECTION 38. 703.13 (8) (b) of the statutes is amended to read:

4 703.13 (8) (b) If the unit owners of adjoining units that may be merged desire
5 to merge the units and the association determines that the merger does not violate
6 the condominium instruments, the unit owners, after providing 30 days' written
7 notice to all other unit owners, shall prepare and execute appropriate instruments
8 under this subsection. An amendment to the condominium instruments shall assign
9 a new identifying number designation to the new unit created by the merger of the
10 units, which designation may be the original designation of one of the merged units,
11 and shall allocate to the new unit all of the undivided interest in the common
12 elements and rights to use the limited common elements and the votes in the
13 association formerly appertaining to the separate units. The amendment shall
14 reflect an allocation to the new unit of the liability for common expenses and rights
15 to common surpluses formerly appertaining to the separate units. An amendment
16 to a declaration under this paragraph shall be adopted either under s. 703.09 (2) or
17 by the written consent of the owners of the units to be merged, the written consent
18 by or on behalf of the mortgagees of those units, if any, and the written consent of the
19 board of directors of the association.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

****NOTE: I added "by or on behalf of" before mortgagees. Okay? Do you want these mortgagees limited to first mortgagees, and do you want to add "holders of an equivalent security interest"?

X

20 **SECTION 39.** 703.13 (8) (c) of the statutes is amended to read:

21 703.13 (8) (c) Plats and plans showing the boundaries and dimensions of the
22 new unit, together with the new ~~identifying number or letter~~ designation, shall be

1 prepared. The plats and plans shall be certified as to their accuracy and compliance
2 with this subsection by a civil engineer, architect, or licensed land surveyor
3 authorized to practice in this state.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; ~~2003~~ a. 283.

4 SECTION 40. 703.13 (9) of the statutes is created to read:

5 703.13 (9) DIVISION OF UNITS. (a) If permitted in the declaration, a
6 condominium unit may be divided into multiple separate ownership interests. This
7 paragraph does not apply if the record ownership of the unit is not subdivided.

****NOTE: I don't understand this provision. It sounds like what you are saying is that a unit may be divided into separate ownership interests, but only if the ownership is already subdivided. What is the difference between being subdivided and being multiple separate interests?

8 (b) 1. Except as provided in subd. 2., the separate interests shall be created by
9 condominium, subdivision, or certified survey map, as appropriate, and must be
10 further shown by amendment and addendum.

****NOTE: What do you mean that the interests shall be created "by condominium"? That phrase does not work with the definition of "condominium" in s. 703.02 (4). Do you mean that the unit must be subjected to the provisions of this chapter to create a condominium form of ownership? What do you mean that the interests shall be created "by subdivision"? I assume you are not referring to the technical requirements for subdividing property under ch. 236.

11 2. If the separate interests are based on a division of rights in the ownership
12 of the unit on the basis of time periods, the division shall be controlled by ch. 707, if
13 applicable.

****NOTE: I added "if applicable" here because a division of interests on the basis of time periods might not be consistent with the definition of "time share" under ch. 707.

14 (c) Subdivision of a unit under this subsection does not require removal of the
15 condominium from the provisions of this chapter.

> ****NOTE: Once again, I assume you are not referring to subdivision under ch. 236. When you use "condominium" in this statement, do you mean the larger condominium of which the unit is a part? Should this paragraph say "subdivision of the ownership interest of a unit"? Should the entire subsection be entitled "Division of ownership interests" instead of "Division of units"? "Division of units" sounds like a physical division of the unit.

3

X

1 **SECTION 41.** 703.14 (1) of the statutes is amended to read:

2 703.14 (1) The common elements may be used only for the purposes for which
3 they were intended and, except as provided in the condominium instruments or
4 association bylaws or rules, the common elements are subject to mutual rights of
5 support, access, use, and enjoyment by all unit owners. However, any portion of the
6 common elements designated as limited common elements may be used only by the
7 unit owner of the unit to which their use is limited in the condominium instruments
8 and association bylaws and rules.

X

History: 1977 c. 407.

9 **SECTION 42.** 703.15 (2) (a) of the statutes is amended to read:

10 703.15 (2) (a) *Establishment.* ~~Every declarant shall establish an association~~
11 ~~to govern the condominium not later than As of the date of the first conveyance of a~~
12 ~~unit to a purchaser, an association shall immediately exist to govern the affairs of the~~
13 ~~condominium. The declarant shall organize and operate the association until control~~
14 ~~of the association is transferred to the unit owners.~~ The association shall be
15 organized as a profit or nonprofit corporation or as an unincorporated association.
16 After it is organized, the membership of the association shall at all times consist
17 exclusively of all of the unit owners.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

****NOTE: I provided that the association would exist immediately, as provided in
s. 703.365 (5). It is not clear, however, when the declarant must organize the association.
Is that before or after it immediately exists?

X

18 **SECTION 43.** 703.15 (2) (b) of the statutes is amended to read:

19 703.15 (2) (b) *Power and responsibility prior to establishment.* Until an
20 association is established, a declarant has the power and responsibility to act in all
21 instances where this chapter, any other provision of the law, or the declaration
22 require action by the association or its officers.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

*the paragraph above
to be amended to*

****NOTE: Should ~~the~~ say until an association exists under sub. (1), or is the intention that the declarant will act, even though an association exists, until the declarant actually organizes one under sub. (1) (in which case, should "established" be changed to "organized"), or until the declarant transfers control of the association?

1 X
SECTION 44. 703.15 (2) (c) 2. of the statutes is amended to read:

2 703.15 (2) (c) 2. The period of declarant control begins on the date that the first
3 condominium unit is conveyed by a declarant to any person other than the declarant.
4 If there is any other unit owner other than a declarant, a declaration may not be
5 amended to increase the scope or the period of the declarant control. The declarant
6 may transfer control of the association before the expiration of the period of declarant
7 control.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

****NOTE: Doesn't declarant control end when control of the association is transferred?

8 X
SECTION 45. 703.15 (2) (c) 3. of the statutes is created to read:

9 703.15 (2) (c) 3. Upon the termination of declarant control, the declarant shall
10 turn over all association records and accounts to the directors elected under par. (f).

11 X
SECTION 46. 703.15 (2) (d) of the statutes is amended to read:

12 703.15 (2) (d) *Meeting to elect directors.* ~~Prior to~~ Within 30 days after the
13 conveyance of ~~25%~~ 25 percent of the common element interest to purchasers, an
14 association shall hold a meeting and the unit owners other than the declarant shall
15 elect at least ~~25%~~ 25 percent of the directors of the executive board. ~~Prior to~~ Within
16 30 days after the conveyance of ~~50%~~ 50 percent of the common element interest to
17 purchasers, an association shall hold a meeting and the unit owners other than the
18 declarant shall elect at least ~~33 1/3%~~ 33 1/3 percent of the directors of the executive
19 board.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

20 SECTION 47. 703.15 (2) (f) of the statutes is amended to read:

1 703.15 (2) (f) *Elections after expiration of declarant control.* Not later than 45
2 days after the expiration of any period of declarant control ends, an association shall
3 hold a meeting and the unit owners shall elect an executive board of at least 3
4 directors and officers of the association. The directors and officers shall take office
5 upon election.

6 History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1993^X a. 225; 2003 a. 283.

SECTION 48. 703.15 (3) (a) (intro.) of the statutes is amended to read:

7 703.15 (3) (a) *Powers.* (intro.) ~~An~~ In addition to any other powers vested in it
8 by law, an association has the power to do all of the following:

9 History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1993^X a. 225; 2003 a. 283.

SECTION 49. 703.15 (3) (a) 1. of the statutes is amended to read:

10 703.15 (3) (a) 1. Adopt and amend budgets for revenues, expenditures, and
11 reserves and levy and collect assessments for common expenses from unit owners; and

12 History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1993^X a. 225; 2003 a. 283.

SECTION 50. 703.15 (3) (a) 2. of the statutes is amended to read:

13 703.15 (3) (a) 2. Employ and dismiss employees and agents; and

14 History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1993^X a. 225; 2003 a. 283.

SECTION 51. 703.15 (3) (a) 3. of the statutes is amended to read:

15 703.15 (3) (a) 3. Sue on behalf of all unit owners; and

16 History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1993^X a. 225; 2003 a. 283.

SECTION 52. 703.15 (3) (b) (intro.) of the statutes is amended to read:

17 703.15 (3) (b) *Conditional powers.* (intro.) Subject to any restrictions and
18 limitations specified by the declaration, an association may do any of the following:

19 History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1993^X a. 225; 2003 a. 283.

SECTION 53. 703.15 (4) (b) of the statutes is amended to read:

20 703.15 (4) (b) Every unit owner shall furnish the association with ~~his or her~~ the
21 name and current mailing address of every owner of the unit and, if the unit is leased,

1 of every tenant of the unit. No unit owner may vote at meetings of the association
2 until this information is furnished.

3 History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995^X a. 225; 2003 a. 283.

SECTION 54. 703.15 (4) (d) 1. of the statutes is amended to read:

4 703.15 (4) (d) 1. At meetings of the association every unit owner is entitled to
5 cast the number of votes appurtenant to his or her unit, as established in the
6 declaration under s. 703.09 (1) (f). Unit owners may vote by proxy, but, the proxy is
7 effective only for a maximum period of 180 days following its issuance, unless
8 granted to a mortgagee or lessee. If only one of multiple owners of a unit is present
9 at a meeting of the association, the owner who is present is entitled to cast the votes
10 allocated to that unit. Voting records, including official rosters and ballots cast, shall
11 be open to review by any unit owner.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

***NOTE: I added "who is present" for clarity. Okay?

12 ^X
SECTION 55. 703.15 (4) (e) of the statutes is amended to read:

13 703.15 (4) (e) Unless otherwise provided in this chapter, and subject to
14 provisions in the bylaws requiring a different majority or manner of voting, decisions
15 of an association shall be made on a majority of votes of the unit owners present and
16 voting at a meeting at which a quorum is present.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995^X a. 225; 2003 a. 283.

17 **SECTION 56.** 703.155 (1) of the statutes is amended to read:

18 703.155 (1) DEFINITION. In this section, "master association" means a ~~profit or~~
19 nonprofit corporation or unincorporated association ~~which~~ that exercises the powers
20 under s. 703.15 (3) on behalf of one or more condominiums or for the benefit of the
21 unit owners of one or more condominiums.

History: 1985 a. 188; 2003 a. 283.

22 ^X
SECTION 57. 703.155 (2) of the statutes is amended to read:

1 703.155 (2) DELEGATION. If a declaration provides that any of the powers
2 described in s. 703.15 (3) of an association are to be exercised by or may be delegated
3 to a master association, all provisions of this chapter applicable to an association
4 apply to the master association, except as modified by this section or the declaration.

5 History: 1985 a. 188; 2003 a. 283.

5 ~~X~~
SECTION 58. 703.16 (1) of the statutes is amended to read:

6 703.16 (1) DISPOSITION OF COMMON SURPLUSES. All common surpluses of the
7 association ~~shall be credited to the unit owners' assessments for common expenses~~
8 may be used by the association in the manner determined by the association. If
9 surpluses are credited or distributed to the unit owners, they shall be allocated
10 among the unit owners as provided in the declaration or, if there is no applicable
11 provision in the declaration, in proportion to their percentage interests in the
12 common elements ~~or as otherwise provided in the declaration or shall be used for any~~
13 ~~other purpose as the association decides.~~

14 History: 1977 c. 407; 1991 a. 39; 1993 a. 453; ~~1995 a. 224, 227~~; 1997 a. 27, 250; 1999 a. 185; 2003 a. 283.

14 ~~X~~
SECTION 59. 703.16 (2) (b) of the statutes is amended to read:

15 703.16 (2) (b) ~~During the period of declarant control of the association under~~
16 ~~s. 703.15 (2) (c), if any period in which~~ any unit owned by the declarant is exempt from
17 assessments for common expenses until the unit is sold, the total amount assessed
18 against units that are not exempt from assessments may not exceed the amount that
19 equals nonexempt units' budgeted share of common expenses, based on the
20 anticipated common expenses set forth in the annual budget under s. 703.161 (2) (a).
21 The declarant is liable for the balance of the actual common expenses.

22 History: 1977 c. 407; 1991 a. 39; 1993 a. 453; ~~1995 a. 224, 227~~; 1997 a. 27, 250; 1999 a. 185; 2003 a. 283.

22 ~~X~~
SECTION 60. 703.161 (2) (intro.) of the statutes is amended to read:

1 703.161 (2) REQUIREMENT. (intro.) An association annually shall adopt and
2 distribute to ~~all unit owners~~ each unit owner an annual budget setting forth all of the
3 following:

4 ^X
History: 2003 a. 283. SECTION 61. 703.161 (2) (g) of the statutes is created to read:

5 703.161 (2) (g) The amount assessed to the owner's unit.

6 ^X
SECTION 62. 703.161 (3) of the statutes is created to read:

7 703.161 (3) AMENDMENT. An association may adopt amendments to its budget
8 during the course of its fiscal year, and shall use the same procedures and actions as
9 are required for adoption of the original budget.

10 ^X
SECTION 63. 703.165 (2) of the statutes is amended to read:

11 703.165 (2) LIABILITY FOR ASSESSMENTS. A unit owner shall be liable for all
12 assessments, or installments thereof, coming due while owning a unit, including any
13 assessments coming due during the pendency of any claim by the unit owner against
14 the association or during any period in which the unit is not occupied by the unit
15 owner or is leased or rented to any other person. In [☆] a voluntary any grant, other than
16 one resulting from the foreclosure of a first mortgage or an equivalent security
17 interest in the unit, the grantee shall be jointly and severally liable with the grantor
18 for all unpaid assessments against the grantor for his or her share of the common
19 expenses up to the time of the ~~voluntary~~ grant for which a statement of condominium
20 lien is recorded, without prejudice to the rights of the grantee to recover from the
21 grantor the amounts paid by the grantee for such assessments. ^Δ Liability for
22 assessments may not be avoided by waiver of the use or enjoyment of any common
23 element or by abandonment of the unit for which the assessments are made.

24 ^X
History: 2003 a. 283 ss. 31, 34; 2003 a. 326. SECTION 64. 703.165 (3) of the statutes is amended to read:

1 703.165 (3) ASSESSMENTS CONSTITUTE LIEN. All assessments, until paid,
2 together with interest on them and actual costs of collection, constitute a lien on the
3 units on which they are assessed, if a statement of lien is filed within 2 years after
4 the date the last installment of the assessment becomes due. The lien is effective
5 against a unit at the time the last installment of the assessment became due
6 regardless of when within the 2-year period it is filed. A statement of condominium
7 lien is filed in the land records of the clerk of circuit court of the county where the unit
8 is located, stating the description of the unit, the name of the record owner, the
9 amount due, and the period for which the assessment was due. The clerk of circuit
10 court shall index the statement of condominium lien under the name of the record
11 owner in the judgment and lien docket. The statement of condominium lien shall be
12 signed and verified by an officer or agent of the association as specified in the bylaws
13 and then may be filed. On full payment of the amount of the assessment for which
14 the lien is claimed, the unit owner shall be entitled to a satisfaction of the lien that
15 may be filed with the clerk of circuit court.

History: 2003 a. 283 ss. 31, 34; 2003 a. 326.

****NOTE: Should "the last installment" also be added before "assessment" in the
second sentence, as I have done?

16 ^X
SECTION 65. 703.165 (5) (c) of the statutes is amended to read:

17 703.165 (5) (c) ~~Mechanic's~~ Construction liens filed prior to the making of the
18 assessment.

History: 2003 a. 283 ss. 31, 34; 2003 a. 326.

19 ^X
SECTION 66. 703.17 (1) of the statutes is amended to read:

20 703.17 (1) An association shall obtain insurance, or ensure that insurance is
21 obtained, for the property against loss or damage by fire and such other hazards for
22 not less than full replacement value of the property insured and a liability policy
23 covering all claims commonly insured against. Insurance coverage shall be written

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1 on the property in the name of the association as trustee for each of the unit owners
 2 in the percentages established in the declaration. The declaration may establish an
 3 allocation of insurance proceeds that differs from the percentage interest in the
 4 common elements established under s. 703.13 (1). Premiums shall be common
 5 expenses. The insurance may include reasonable deductibles, and, if it does, the
 6 association shall determine by bylaw or rule whether a deductible shall be paid as
 7 a common expense or, if not, how it will be allocated. Provisions for such insurance
 8 shall be without prejudice to the right of each unit owner to insure his or her own unit
 9 for personal benefit.

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

X

SECTION 67. 703.18 (2) (b) of the statutes is amended to read:

11 703.18 (2) (b) However, if a condominium is damaged to an extent more than
 12 the available insurance proceeds, the condominium shall be subject to an action for
 13 partition upon obtaining the written consent of the unit owners having ~~75%~~ 75
 14 percent or more of the votes. In the case of partition, the net proceeds of sale together
 15 with any net proceeds of insurance shall be considered as one fund and shall be
 16 divided among all unit owners in proportion to their percentage interests in the
 17 common elements as established under s. 703.13 (1) or, if the declaration so provides,
 18 in an allocation that differs from the percentage interests in the common elements,
 19 and shall be distributed in accordance with the priority of interests in each unit.

History: 1977 c. 407.

X

SECTION 68. 703.19 (3) (intro.) of the statutes is amended to read:

21 703.19 (3) ALLOCATION OF AWARD; IN ABSENCE OF PROVISIONS IN DECLARATION OR
 22 BYLAWS. (intro.) Unless otherwise provided for in a declaration or bylaws, any

1 damages for a taking of all or part of a condominium shall, subject to sub. (6), be
2 awarded as follows:

3 History: 1977 c. 407; 2003 a. 283, 326.

^X
SECTION 69. 703.19 (3) (b) of the statutes is amended to read:

4 703.19 (3) (b) Any award for the taking of limited common elements shall be
5 allocated to the unit owners of the units to which the use of those limited common
6 elements is restricted in proportion to their respective percentage interests in the
7 common elements as established under s. 703.13 (1) or, if the declaration so provides,
8 in an allocation that differs from the percentage interests in the common elements.

9 History: 1977 c. 407; 2003 a. 283, 326.

^X
SECTION 70. 703.19 (3) (c) of the statutes is amended to read:

10 703.19 (3) (c) In the event no reconstruction is undertaken, any award for the
11 taking of common elements shall be allocated to all unit owners in proportion to their
12 respective percentage interests in the common elements as established under s.
13 703.13 (1) or, if the declaration so provides, in an allocation that differs from the
14 percentage interests in the common elements.

15 History: 1977 c. 407; 2003 a. 283, 326.

^X
SECTION 71. 703.20 (1) of the statutes is amended to read:

16 703.20 (1) RECORD KEEPING; AVAILABILITY FOR EXAMINATION. An association shall
17 keep detailed, accurate records using standard bookkeeping procedures of the
18 receipts and expenditures affecting the common elements, specifying and itemizing
19 the maintenance and repair expenses of the common elements and any other
20 expenses incurred. The records, wherever maintained, are the property of the
21 association. The records and the vouchers authorizing the payments shall be
22 available for examination by the unit owners at convenient hours.

23 History: 1977 c. 407; 1985 a. 188; 2003 a. 283.

^X
SECTION 72. 703.22 (title) of the statutes is amended to read:

1 **703.22 (title) Meehanics' Construction and suppliers' liens.**

2 History: 1977 c. 407; 1979 c. 32 s. 92 (9); 2005 a. 204.

3 **SECTION 73.** 703.22 (2) of the statutes is amended to read:

4 703.22 (2) Any meehanics' construction lien or suppliers' lien under subch. I
5 of ch. 779 arising as a result of repairs to or improvements of a unit by a unit owner
6 shall be a lien only against the unit.

7 History: 1977 c. 407; 1979 c. 32 s. 92 (9); 2005 a. 204.

8 **SECTION 74.** 703.22 (3) of the statutes is amended to read:

9 703.22 (3) Any meehanics' construction or suppliers' lien under subch. I of ch.
10 779 arising as a result of repairs to or improvements of the common elements, if
11 authorized in writing by the association, shall be paid by the association as a common
12 expense and until paid shall be a lien against each unit in proportion to its percentage
13 interest in the common elements. On payment of the proportionate amount by any
14 unit owner to the lienor or on the filing of a written undertaking in the manner
15 specified by s. 779.08, the unit owner shall be entitled to a release of his or her unit
16 from the lien and the association shall not be entitled to assess his or her unit for
17 payment of the remaining amount due for the repairs or improvements.

18 History: 1977 c. 407; 1979 c. 32 s. 92 (9); 2005 a. 204.

19 **SECTION 75.** 703.24 (2) of the statutes is amended to read:

20 703.24 (2) LIABILITY FOR UNIT OWNER VIOLATION. A unit owner who commits a
21 violation is liable for any charges, fines, or assessments imposed by the association
22 pursuant to the declaration or the association's bylaws or association rules as a result
of the violation and may be subject to a temporary or permanent injunction.

23 History: 1977 c. 407; 2003 a. 283.

24 **SECTION 76.** 703.25 (3) of the statutes is renumbered 703.25 (3) (a) and
amended to read:

1 703.25 (3) (a) A judgment for money or a blanket lien under s. 703.22 against
2 an association shall be a lien against any property owned by the association, and
3 against each of the condominium units in proportion to the liability of each unit
4 owner for common expenses as established under the declaration in an amount not
5 exceeding the market value of the unit, but not against any other property of any unit
6 owner.

History: 1977 c. 407.

X

7 **SECTION 77.** 703.25 (3) (b) of the statutes is created to read:

8 703.25 (3) (b) An action for a money judgment against an association shall not
9 be the basis for filing a lis pendens against the units of the condominium.

X

10 **SECTION 78.** 703.26 (1) of the statutes is amended to read:

11 703.26 (1) DECLARANT MAY RESERVE RIGHT TO EXPAND. A declarant may reserve
12 the right to expand a condominium in the original condominium declaration by
13 subjecting additional real property and units to the condominium declaration or
14 adding one or more units on real property already subject to the declaration in such
15 a manner that as each additional parcel of real property or unit is subjected to the
16 condominium declaration, the percentage of undivided interests in the common
17 elements of the ~~preceding and new property, including any new property,~~ shall be
18 reallocated between the unit owners on the basis of the aggregate undivided interest
19 in the common elements appertaining to the property.

History: 1977 c. 407; 1997 a. 333.

****NOTE: By "including any new property" do you mean the real property or units
that are being added?

X

20 **SECTION 79.** 703.26 (2) (a) of the statutes is amended to read:

1 703.26 (2) (a) A declaration establishing a condominium shall describe each
 2 parcel of property ~~which, along with its square footage, that~~ may be added to the
 3 condominium.

4 History: 1977 c. 407; 1997 a. 333.

SECTION 80. 703.26 (3) (a) of the statutes is amended to read:

5 703.26 (3) (a) If the conditions of sub. (2) are complied with, property may be
 6 added to a condominium if the declarant records an amendment to the declaration,
 7 showing ~~the designation of the units being added,~~ the new percentage interests of the
 8 unit owners, and the votes ~~which~~ that each unit owner may cast in the condominium
 9 as expanded, and records an addendum to the condominium plat that includes the
 10 detail and information concerning the new property as required in the original
 11 condominium plat.

12 History: 1977 c. 407; 1997 a. 333.

SECTION 81. 703.275 (4m) of the statutes is created to read:

13 703.275 (4m) PLAT. The plat of the resultant condominium shall be titled as
 14 an addendum to the plat of the resultant condominium, shall identify the plat of
 15 every condominium that is merged into the resultant condominium by name and
 16 recording data, and shall identify units both by their designations in the resultant
 17 condominium and by their designations in the merged condominiums. Any changes
 18 in the common elements, including the reservation of parts of them as limited
 19 common elements, shall be identified on the plat of the resultant condominium.

20 **SECTION 82.** 703.28 (1) of the statutes is amended to read:

21 703.28 (1) ~~All of the unit owners may remove all or any part of the property~~ may
 22 be removed from the provisions of this chapter by a removal instrument, duly
 23 recorded, ~~provided that the holders of all liens affecting any of the units consent~~
 24 ~~thereto or agree, in either case by instruments duly recorded, that their liens be~~

1 transferred to the percentage of the undivided interest of the unit owner in the
2 property as an amendment to the declaration, as provided in this section, and as an
3 addendum to the plat.

History: 1977 c. 407; 1997 a. 333; 1999 a. 96.

4 ~~SECTION 83.~~ 703.28 (1m) of the statutes is repealed.

5 ~~SECTION 84.~~ 703.28 (2) of the statutes is repealed.

6 ~~SECTION 85.~~ 703.28 (2m) of the statutes is created to read:

7 703.28 (2m) If all of the property is being removed, the removal instrument
8 must be approved by all of the unit owners and consented to by the holders of all liens
9 affecting the condominium or any unit. The removal instrument shall provide that
10 any lien against a unit is transferred to the percentage interest of the owner of the
11 unit that is encumbered by the lien and that any lien against the condominium as
12 a whole is allocated among the units in accordance with s. 703.25 (3). Upon removal
13 of the property from the provisions of this chapter, the property shall be owned in
14 common by the unit owners in their relative interests under s. 703.18 (2) (b).

****NOTE: Is s. 703.18 (2) (b) the correct cross-reference here? That paragraph
relates to a division of insurance proceeds in proportion to the unit owners' interests in
the common elements.

15 ~~SECTION 86.~~ 703.28 (3) of the statutes is created to read:

16 703.28 (3) (a) If less than all of the property is being removed, the removal
17 instrument must specify all of the following:

- 18 1. The part of the property that is being removed.
- 19 2. Who will own the part of the property that is being removed after its removal.
- 20 3. The consideration that is being given to the remaining condominium for the
21 removal.

1 4. How the finances, including expenses, surpluses, assets, liabilities, and
2 reserves, will be allocated between the part of the property that is being removed and
3 the remaining condominium.

4 (b) A removal instrument under this subsection must be approved by 80
5 percent of the unit owners, including all of the owners of any units that are being
6 removed, and consented to by the holders of all liens affecting the condominium or
7 any unit. If the part of the property that is being removed will be owned by the
8 declarant or an affiliate of the declarant, the removal instrument must be approved
9 by all of the unit owners who are not the declarant and all of the holders of any liens
10 affecting their units. To the extent that the removal affects the value of any unit
11 owner's interest in the common elements, the removal instrument shall comply with
12 s. 703.09 (3). The removal instrument shall provide that any lien against a unit is
13 transferred to the percentage interest of the owner of the unit that is encumbered by
14 the lien and that any lien against the condominium as a whole is allocated among
15 the units in accordance with s. 703.25 (3).

 ***NOTE: Is it the removal instrument or the owner of the part being removed that
must comply with s. 703.09 (3)? That subsection seems to require compensation to a unit
owner if the value of their interest in the common elements is reduced.

16 (c) Any part of the property that is removed under this subsection must result,
17 after the removal, in a legal parcel for its intended purpose.

18 ^X
SECTION 87. 703.28 (4) of the statutes is created to read:

19 703.28 (4) The approvals and consents required under this section shall be
20 attested to in the instruments recorded with the removal instrument.

21 ^X
SECTION 88. 703.28 (5) of the statutes is created to read:

1 703.28 (5) A removal under this section does not bar the property or the part
2 of the property that is removed from subsequent resubmission to the provisions of
3 this chapter.

4 ~~X~~
SECTION 89. 703.29 of the statutes is repealed.

5 ~~X~~
SECTION 90. 703.33 (1) (intro.) of the statutes is amended to read:

6 703.33 (1) MATERIAL TO BE FURNISHED BY SELLER TO PURCHASER BEFORE CLOSING.
7 (intro.) Not later than 15 days prior to the closing of the sale of a residential unit to
8 a member of the public, the seller shall furnish to the purchaser the following:

9 History: 1977 c. 407; 1985 a. 188; 2003 a. 283.

9 ~~X~~
SECTION 91. 703.34 (title) of the statutes is amended to read:

10 703.34 (title) **Blanket mortgages and other blanket liens affecting a unit**
11 **at time of first conveyance; mortgage approvals.**

12 History: 1977 c. 407.

12 ~~X~~
SECTION 92. 703.34 (4) of the statutes is created to read:

13 703.34 (4) In those situations in which mortgagee consent or approval is
14 required, if a mortgagee cannot be contacted with the use of reasonable diligence or
15 if a mortgagee does not acknowledge receipt of the request for consent or approval
16 or respond to the request within a reasonable time, the association may seek the
17 right to proceed with the proposed action under ch. 840.

****NOTE: I don't understand the context of this provision. Is it intended to apply to any situation under the chapter in which mortgagee consent or approval is required or only under s. 703.34? If it is intended to apply to situations throughout the chapter, it should not be placed in s. 703.34. Is the "proposed action" any action in the chapter for which mortgagee consent or approval is required or only an action under s. 703.34? Would the "proposed action" necessarily be listed in s. 840.03 or in another provision in ch. 840 or does an action under ch. 703 need to be added to ch. 840?

18 ~~X~~
SECTION 93. 703.365 (6) (a) 3. of the statutes is created to read:

19 703.365 (6) (a) 3. An action is proposed by one unit owner that may have an
20 adverse impact on the condominium or the use and enjoyment of another unit in the
21 condominium.

X

1 **SECTION 94.** 703.365 (6) (b) of the statutes is amended to read:

2 703.365 (6) (b) The unit owner or owners challenging a decision of the board
3 of directors described under par. (a) 1. or 2. or the unit owner under par. (a) 3. shall
4 give written notice of the objection to all unit owners and mortgagees within 45 days
5 after the decision but before any action is taken or expenditure is made. Upon receipt
6 of this notice, the board of directors shall reconsider its decision and either affirm,
7 reverse or modify the decision.

History: 1985 a. 188, 332; 1995 a. 201; 2003 a. 283.

****NOTE: The two provisions above do not work as proposed because no decision is being made by the board in par. (a) 3. to reconsider in par. (b), and the unit owner proposing the action in par. (a) 3. has nothing to object to, as stated in par. (b). How do you want to resolve this? Do you want the board to make a decision in par (a) 3. and either the unit owner proposing the action or the other unit owners may challenge the decision?

X

8 **SECTION 95.** 703.365 (6) (d) of the statutes is amended to read:

9 703.365 (6) (d) The board of directors, upon submission of the matter to
10 arbitration as provided in par. (c) or sub. (12) (b), shall name a proposed arbitrator.
11 The unit owner or owners may accept the proposed arbitrator or propose a different
12 arbitrator. If there is no agreement on a single arbitrator, the 2 arbitrators shall
13 select a 3rd person and the 3 shall serve as an arbitration panel chaired by the 3rd
14 person. The expense of the arbitration shall be shared equally by the association and
15 the unit owner or owners challenging the decision of the board of directors.

History: 1985 a. 188, 332; 1995 a. 201; 2003 a. ~~283~~

16 **SECTION 96.** 703.365 (7) of the statutes is renumbered 703.365 (9) and amended
17 to read:

18 703.365 (9) EXPANDING CONDOMINIUMS. Section 703.26 does not apply to a small
19 condominium, and the declaration for a small condominium may not provide that s.
20 703.26 applies to the small condominium.

History: 1985 a. 188, 332; 1995 a. 201; 2003 a. ~~283~~

21 **SECTION 97.** 703.365 (10) of the statutes is created to read:

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FROM THE
LEGISLATIVE REFERENCE BUREAU**

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PJK:.....

INSERT 7-22

X

1 **SECTION 1.** 703.115 (1) (b) of the statutes is amended to read:

2 703.115 (1) (b) Provides that a condominium instrument may be rejected only

3 if it fails to comply with the applicable requirements of ss. 703.095, 703.11 (2) (a), (c)

4 and (d) and (3), and 703.275 (5) and 703.28 (1m) or if the surveyor's certificate under

5 s. 703.11 (4) is not attached to or included in the condominium plat.

History: 1997 a. 333.

****NOTE: This draft repeals s. 703.28 (1m). Do you want to substitute another section in its place in this paragraph?

(END OF INSERT 7-22)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

Date

LRB-1733/^edn P1
PJK:.....
L bjk

I have included a number of embedded notes throughout the draft with comments and questions.

In this draft, some but not all of the added references to “mortgagee” are limited to first mortgagees. Some but not all of the added references to “mortgagee” also add “holders of equivalent security interests.” (This is also the case in the current law provisions that are not amended in this draft.) Please review these references to “mortgagee” carefully so that they are what you intend.

Is it necessary to delay the effective date or provide an initial applicability provision for any of the provisions in this draft? Should any of these changes first apply to only newly created condominiums?

Pamela J. Kahler
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1733/P1dn

PJK:bjk:md

March 4, 2009

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