



2011 SENATE BILL 344

December 20, 2011 - Introduced by Senator TAYLOR, cosponsored by Representatives MASON, GRIGSBY, TURNER and BERCEAU. Referred to Committee on Insurance and Housing.

1 **AN ACT to repeal** 703.15 (2) (c) 1. a.; **to consolidate, renumber and amend**
2 703.115 (1) (intro.), (a), (b) and (c); **to amend** 703.07 (1), 703.115 (title), 703.115
3 (2), 703.15 (2) (c) 1. b., 703.20 (3) and 703.26 (2) (d); and **to create** 703.115 (3),
4 703.117, 703.145 and 703.15 (3m) of the statutes; **relating to:** length of
5 declarant control; period for expanding condominiums; community manager
6 requirements; requiring a written agreement between the declarant and the
7 municipality, declarant warranties, and posting securities; requiring approval
8 by the municipality of condominium instruments; and requiring certification
9 of condominium financial statements.

Analysis by the Legislative Reference Bureau

Current law contains provisions that regulate the establishment and operation of condominiums. A condominium is a form of property that includes separate units that are owned and occupied by separate owners and common elements that, generally, may be used by all unit owners and in which each unit owner has a specified ownership interest. A condominium is governed by an association of the unit owners with a board of directors elected by the unit owners. This bill makes a number of changes to the condominium laws, including the following:

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1. Under current law, a county may adopt an ordinance that requires review by the county, or by a city, village, or town in the county, of condominium instruments before they are recorded. The bill eliminates the ordinance requirement and provides that condominium instruments may not be recorded unless they are reviewed and approved by each city, village, or town (municipality) in which the condominium is to be located.

2. The bill adds requirements for condominium declarants (the person who establishes the condominium). A declarant must enter into an agreement with each municipality in which the condominium is to be located that specifies the rights and responsibilities of the declarant and the municipality. The agreement must address zoning approvals, permit issuance, the completion schedule, and remedies in the event of default. The agreement must include fair market value guarantees, utility and water and sewer specifications, and a development plan with such details as buildings and other structures, roadways, open space, and parking facilities. The agreement must authorize the municipality to inspect the condominium development during construction and must authorize the condominium association to enforce the agreement. The bill also explicitly gives an association standing to enforce the agreement between the declarant and the municipality.

3. In addition to the agreement requirement, a declarant must provide a three-year warranty to each unit owner against defects in materials and workmanship in the unit, and a three-year warranty to the association against defects in materials and workmanship in the condominium outside of the units. Before conveying the first unit to a purchaser, the declarant must post a bond or letter of credit with each municipality with which the declarant has entered into an agreement. The amount of bond or letter of credit must equal 10 percent of the estimated construction or conversion costs and be in favor of the municipality for the benefit of the association and any unit owner damaged by a defect in materials or workmanship.

4. Under current law, a condominium declaration may authorize the association to hire a manager to handle the day-to-day affairs of the condominium. The bill provides that any person hired by an association as a manager must be certified by the Certified Manager of Community Associations certification program and must post a bond in an amount specified by the association board.

5. Under current law, before the declarant turns over control of the condominium to the owner's association and for one year after that, the association must arrange for an independent audit of the condominium's financial records, at the association's expense, upon the request of three unit owners or the owners of 10 percent of the units, whichever is less. Any request for an audit within three years after a previous audit must be paid for by the requesting unit owners. The bill requires the association to arrange for an independent audit by a certified public accountant annually, at the association's expenses, both during and after the declarant turns over control. Any additional audit must be paid for by the requesting owner or owners.

6. Under current law, the declarant may not have control over the association for more than three years, or for more than ten years if the condominium is

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expandable, meaning that the declaration allows more units to be added to the original plans by amendment to the declaration. Also, the declaration of a condominium may not allow the condominium to be expanded for a period exceeding ten years. The bill limits the period during which a condominium may expand to no more than three years and limits the maximum period of declarant control over the association of an expandable condominium to three years.

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

1 **SECTION 1.** 703.07 (1) of the statutes is amended to read:

2 703.07 **(1)** A condominium may only be created by recording condominium
3 instruments that have been approved under s. 703.115 (1) with the register of deeds
4 of the county where the property is located. A condominium declaration and plat
5 shall be presented together to the register of deeds for recording.

6 **SECTION 2.** 703.115 (title) of the statutes is amended to read:

7 **703.115 (title) Local review and approval of condominium instruments.**

8 **SECTION 3.** 703.115 (1) (intro.), (a), (b) and (c) of the statutes are consolidated,
9 renumbered 703.115 (1) and amended to read:

10 703.115 **(1)** ~~A county may adopt an ordinance to require the review of No~~
11 ~~condominium instruments before recording~~ instrument may be recorded unless it
12 has been reviewed and approved by persons employed by the county of recording or
13 ~~by a~~ each city, village, or town ~~that is~~ in which the condominium is to be located in
14 whole or in part in the county of recording if the ordinance does all of the following:
15 ~~(a) Requires the.~~ The review to must be completed within 10 working days after
16 submission of the condominium instrument ~~and provides that, if.~~ If the review is not
17 completed within this period, the condominium instrument is approved for
18 recording. ~~(b) Provides that a~~ A condominium instrument may be rejected only if
19 it fails to comply with the applicable requirements of ss. 703.095, 703.11 (2) (a), (c),

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1 and (d) and (3), 703.275 (5), and 703.28 (1m) or if the surveyor's certificate under s.
2 703.11 (4) is not attached to or included in the condominium plat. (e) If the person
3 performing the review approves the condominium instrument, requires the person
4 to shall certify approval in writing, accompanied by his or her signature and title.

5 **SECTION 4.** 703.115 (2) of the statutes is amended to read:

6 703.115 (2) ~~An ordinance adopted under this section~~ A city, village, or town
7 performing a review under sub. (1) may ~~authorize the county to~~ charge a fee that
8 reflects the actual cost of performing the review.

9 **SECTION 5.** 703.115 (3) of the statutes is created to read:

10 703.115 (3) If a county has in effect on the effective date of this subsection ...
11 [LRB inserts date], an ordinance, rule, or resolution that is inconsistent with sub. (1),
12 the ordinance, rule, or resolution does not apply and may not be enforced.

13 **SECTION 6.** 703.117 of the statutes is created to read:

14 **703.117 Agreement between declarant and municipality. (1)** In this
15 section, "municipality" means any city, village, or town.

16 **(2)** (a) Notwithstanding s. 703.27, the declarant shall enter into a written
17 agreement with each municipality in which the condominium is to be located in
18 whole or in part. The agreement shall specify the rights, responsibilities,
19 undertakings, and promises of each party with respect to the condominium
20 development, including all of the following, as applicable:

21 1. Permit issuance.

22 2. Zoning approvals.

23 3. Fee payment.

24 4. Development plan, including all buildings and other structures, roadways,
25 elevation contours, open space, parking facilities, and landscaping.

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1 5. Utility and water and sewer specifications.

2 6. Completion schedule.

3 7. Fair market value guarantees.

4 8. Subject to s. 703.145 (2), form and amount of any security required.

5 9. Remedies in the event of default.

6 (b) The agreement shall include provisions that do all of the following:

7 1. Authorize the municipality to inspect the condominium property during the
8 construction process.

9 2. Authorize the condominium association that is established under s. 703.15
10 to enforce the agreement.

11 (c) The declarant shall provide a copy of the signed agreement under this
12 section to the condominium association when it is established under s. 703.15.

13 **(3)** Notwithstanding any other remedies provided for in the agreement, the
14 condominium association established under s. 703.15 has standing to enforce the
15 agreement.

16 **SECTION 7.** 703.145 of the statutes is created to read:

17 **703.145 Declarant warranties; security. (1)** (a) Except as provided in par.
18 (d), the declarant shall furnish both of the following:

19 1. A minimum of a 3-year warranty covering the full cost of labor and materials
20 for the repair or replacement of roof and structural components, and mechanical,
21 electrical, plumbing, and common service elements serving the condominium
22 property or additional property as a whole, that is occasioned or necessitated by a
23 defect in materials or workmanship.

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1 2. A 3-year warranty covering the full cost of labor and materials for the repair
2 or replacement of structural, mechanical, and other elements pertaining to each unit
3 that is occasioned or necessitated by a defect in materials or workmanship.

4 (b) The warranty under par. (a) 1. shall commence as follows:

5 1. For a condominium development other than an expandable condominium
6 development, on the date on which the deed or other evidence of ownership is filed
7 for record following the sale of the first condominium ownership interest in the
8 development to a purchaser in good faith for value.

9 2. a. For an expandable condominium development, for property included in
10 the original declaration, on the date on which the deed or other evidence of ownership
11 is filed for record following the sale of the first condominium ownership interest in
12 the property to a purchaser in good faith for value.

13 b. For an expandable condominium development, for any additional property
14 added by amendment to the declaration, on the date on which the deed or other
15 evidence of ownership is filed for record following the sale of the first condominium
16 ownership interest in the additional property to a purchaser in good faith for value.

17 (c) The warranty under par. (a) 2. for each unit shall commence on the date on
18 which the deed or other evidence of ownership is filed for record following the
19 declarant's sale and conveyance of the condominium ownership interest in the unit
20 to a purchaser in good faith for value.

21 (d) The valid assignment by the declarant of the express and implied warranty
22 of the manufacturer satisfies the declarant's obligation under this section with
23 respect to ranges, refrigerators, washing machines, clothes dryers, hot water
24 heaters, and other similar appliances installed and furnished as part of the unit by

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1 the declarant. The declarant's warranty under par. (a) is limited to the installation
2 of the appliances.

3 (e) All warranties made to the declarant that exceed time periods specified in
4 par. (a) with respect to any part of a unit shall be assigned to the purchaser of that
5 unit, and warranties with respect to any part of the common elements shall be
6 assigned to the association.

7 **(2)** Before the declarant's first conveyance of a residential unit to a purchaser,
8 the declarant shall post a bond or letter of credit with each municipality with which
9 the declarant has entered into an agreement under s. 703.117 in the amount of 10
10 percent of the estimated construction or conversion costs of the condominium
11 development. The bond or letter of credit shall be in favor of the municipality for the
12 benefit of the association and any unit owner damaged by a defect in materials or
13 workmanship.

14 **SECTION 8.** 703.15 (2) (c) 1. a. of the statutes is repealed.

15 **SECTION 9.** 703.15 (2) (c) 1. b. of the statutes is amended to read:

16 703.15 **(2)** (c) 1. b. Three years ~~in the case of any other condominium.~~

17 **SECTION 10.** 703.15 (3m) of the statutes is created to read:

18 703.15 **(3m)** MANAGER QUALIFICATIONS AND REQUIREMENTS. If the bylaws provide
19 that the board may engage the services of a manager, any manager hired by the board
20 must be certified by the Certified Manager of Community Associations certification
21 program and shall be required to post a surety bond or provide other security
22 specified by the board in the amount required by the board.

23 **SECTION 11.** 703.20 (3) of the statutes is amended to read:

24 703.20 **(3)** ~~DECLARANT RESPONSIBILITIES~~ RESPONSIBILITIES FOR RECORDS. During
25 the period of declarant control under s. 703.15 (2) (c), the declarant is responsible for

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1 creating and maintaining the financial and operational records of the association
2 and shall turn the records over to the directors elected under s. 703.15 (2) (f). ~~During~~
3 Annually during the period of declarant control under s. 703.15 (2) (c) and ~~for one~~
4 each year thereafter, ~~upon written request to the association by the lesser of 3 unit~~
5 ~~owners or the owners of 10% of the units, not including units owned by the declarant,~~
6 the association shall arrange for an independent audit of its financial records by a
7 certified public accountant at the association's expense. The cost of any additional
8 audit requested ~~within 36 months after the completion of a previous audit by one or~~
9 more unit owners shall be paid for by the requesting unit owner or owners.

10 **SECTION 12.** 703.26 (2) (d) of the statutes is amended to read:

11 703.26 (2) (d) In a declaration establishing a condominium, a right to expand
12 the condominium may be reserved in the declaration for a period not exceeding 10
13 3 years from the date of recording of the declaration.

14 **SECTION 13. Initial applicability.**

15 (1) The treatment of sections 703.07 (1), 703.115 (title), (1) (intro.), (a), (b), and
16 (c), (2), and (3), 703.117, 703.145, 703.15 (2) (c) 1. a. and b., and 703.26 (2) (d) of the
17 statutes first applies to condominiums for which condominium instruments are first
18 recorded on the effective date of the subsection.

19 **SECTION 14. Effective date.**

20 (1) This act takes effect on the first day of the 7th month beginning after
21 publication.

22 (END)