

1985 Senate Bill 274

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1985 Wisconsin Act 188

AN ACT to renumber 703.02 (1) and 703.20; to amend 703.09 (2), 703.20 (title), 703.33 (1) (intro.) and (a) to (c) and (2) (title), (a) and (b) and 703.33 (5); and to create 703.02 (1), 703.02 (14m), 703.09 (3), 703.155, 703.20 (1) (title) and (2), 703.255, 703.275, 703.33 (2) (cm), 703.365 and 703.38 (9) to (11) of the statutes, relating to disclosure requirements for sales of condominium units and conversion condominium units, creation and operation of small residential condominiums, master condominium associations, uncompleted condominiums, voting requirements to amend a condominium declaration and merger or consolidation of condominiums.

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

SECTION 1. 703.02 (1) of the statutes is renumbered 703.02 (1m).

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

703.02 (1) "Allocated interests" means the undivided percentage interest in the common elements, the liability for common expenses and the number of votes at meetings of the association appurtenant to each unit.

SECTION 3. 703.02 (14m) of the statutes is created to read:

703.02 (14m) "Small residential condominium" means a condominium with no more than 4 units, all of which are restricted to residential uses.

SECTION 4. 703.09 (2) of the statutes is amended to read:

703.09 (2) Except as provided in s. 703.26, a condominium declaration may be amended with the written

consent of 75% at least two-thirds of the unit owners ~~and mortgagees~~ or a greater percentage if provided in the declaration. An amendment becomes effective when it is recorded in the same manner as the declaration. A unit owner's written consent is not effective unless it is approved by the mortgagee of the unit, if any.

SECTION 4m. 703.09 (3) of the statutes is created to read:

703.09 (3) (a) If an amendment to a condominium has the effect of reducing the value of any unit owner's interest in any common element, including any limited common element, and increases the value of the declarant's or any other unit owner's interest in the common element or limited common element, then the declarant or other unit owner shall compensate the unit owner the value of whose interest is reduced in the amount of the reduction in value, either in cash or by other consideration acceptable to the unit owner.

(b) A unit owner may waive the right to obtain compensation under par. (a) in writing.

(c) Paragraph (a) does not apply to an expanding condominium under s. 703.26.

SECTION 5. 703.155 of the statutes is created to read:

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

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

(3) **POWERS LIMITED.** Unless a master association is the only association for a condominium under s. 703.15 (1), it may exercise the powers set forth in s. 703.15 (3) only to the extent expressly permitted in the declarations that are associated with the master association or expressly described in the delegations of power from those condominiums to the master association.

(4) **LIABILITY LIMITED.** If a declaration provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to the exercise of those powers following delegation.

(5) **UNIT OWNERS; RIGHTS AND RESPONSIBILITIES.** The rights and responsibilities of unit owners with respect to the association set forth in s. 703.15 apply, in the conduct of the affairs of a master association, only to those persons under sub. (6) who elect the executive board of a master association, whether or not those persons are unit owners.

(6) **MASTER ASSOCIATION; ELECTION OF EXECUTIVE BOARD.** Notwithstanding s. 703.15 (2) (f) and whether or not a master association is also an association described in s. 703.15 (1), the instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association shall provide that the executive board of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of the executive board.

(b) All members of the executive boards of all condominiums subject to the master association may elect all members of the executive board.

(c) All unit owners of each condominium subject to the master association may elect specified members of the executive board.

(d) All members of the executive board of each condominium subject to the master association may elect specified members of the executive board.

SECTION 6. 703.20 (title) of the statutes is amended to read:

703.20 (title) Books of receipts and expenditures.

SECTION 7. 703.20 of the statutes is renumbered 703.20 (1).

SECTION 8. 703.20 (1) (title) and (2) of the statutes are created to read:

703.20 (1) (title) **RECORD KEEPING; AVAILABILITY FOR EXAMINATION.**

(2) **DISCLOSURE INFORMATION.** Within 10 days after a request by a seller other than the declarant, an association shall furnish the information necessary for the seller to comply with s. 703.33. The seller shall pay the association the actual costs of furnishing the information.

SECTION 9. 703.255 of the statutes is created to read:

703.255 Noncompletion of units. (1) A declarant who does not complete any unit described in the declaration within 5 years after recording the declaration under s. 703.07 shall do one of the following:

(a) Amend the declaration to remove the description of the uncompleted units and, notwithstanding the unit owner consent requirements of ss. 703.09 (2) and 703.13 (4), revise the percentage interests appurtenant to each unit and the number of votes appurtenant to each unit to adjust for the units removed.

(b) Secure a written agreement from at least 75% of the unit owners, not including the declarant, which permits the declarant to complete the uncompleted units within 5 years after the date of the written agreement and shall either complete the units within that time period or amend the declaration as provided in par. (a).

(2) Subsection (1) does not apply to expanding condominiums under s. 703.26.

(3) Subsection (1) does not eliminate any liability of a declarant under s. 703.24 or 703.25.

SECTION 10. 703.275 of the statutes is created to read:

703.275 Merger or consolidation of condominiums.

(1) **AGREEMENT; LEGAL EFFECT.** Any 2 or more condominiums, by agreement of the unit owners as provided in this section, may be merged or consolidated into a single condominium. Unless the agreement otherwise provides, the condominium resulting from a merger or consolidation is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of the preexisting associations.

(2) **REALLOCATION OF INTERESTS.** The merger or consolidation agreement shall provide for the reallo-

cation of the allocated interests among the units of the resultant condominium. The agreement may not change the ratio that exists before the merger or consolidation between the allocated interests of any unit and the allocated interests of any other unit in the same preexisting condominium. The agreement shall state one of the following:

(a) The reallocations or the formulas upon which they are based.

(b) The percentage of the total of allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums.

(3) AGREEMENT; OTHER PROVISIONS. The merger or consolidation agreement may contain any provisions consistent with this chapter in addition to those specified in sub. (2).

(4) VOTES. The merger or consolidation agreement is effective if the agreement is approved by the unit owners of units to which at least 80% of the votes in each preexisting association are allocated. If the declaration of a preexisting association specifies that a percentage greater than 80% of the votes in that association is required to approve a merger or consolidation agreement, the greater percentage applies to the vote of that association. A declaration of a preexisting association may specify a smaller percentage and the smaller percentage applies to the vote of that association only if all of the units in the preexisting condominium are restricted exclusively to nonresidential uses.

(5) RECORDING. The merger or consolidation agreement constitutes an amendment to the declaration of each preexisting condominium and shall be recorded as provided in s. 703.07.

SECTION 11. 703.33 (1) (intro.) and (a) to (c) and (2) (title), (a) and (b) of the statutes are amended to read:

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

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

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

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

(2) (title) DISCLOSURE FORM. (a) *Cover sheet.* A cover sheet shall be of the same approximate size and shape as the majority of the disclosure materials

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

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

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

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

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

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

1. *Declaration.* The declaration establishes and describes the condominium, the units and the common areas. The declaration begins on page

2. *Bylaws.* The bylaws contain rules which govern the condominium and effect the rights and responsibilities of unit owners. The bylaws begin on page

3. *Articles of incorporation.* The operation of a condominium is governed by the association, of which each unit owner is a member. Powers, duties, and operation of an association are specified in its articles of incorporation. The articles of incorporation begin on page

4. *Management or employment contracts.* Certain services are provided to the condominium through contracts with individuals or private firms. These contracts begin on page

5. *Annual operating budget.* The association incurs expenses for the operation of the condominium which are assessed to the unit owners. The operating budget

is an estimate of those charges which are in addition to mortgage and utility payments. The budget begins on page

6. *Leases.* Units in this condominium are sold subject to one or more leases of property or facilities which are not a part of the condominium. These leases begin on page

7. *Expansion plans.* The declarant has reserved the right to expand the condominium in the future. A description of the plans for expansion and its effect on unit owners begins on page

8. *Floor plan and map.* The ~~declarant~~ seller has provided a floor plan of the unit being offered for sale and a map of the condominium which shows the location of the unit you are considering and all facilities and common areas which are part of the condominium. The floor plan and map begin on page

SECTION 12. 703.33 (2) (cm) of the statutes is created to read:

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

1. A statement by the declarant, based on a report prepared by an independent architect or engineer, describing the present condition of those structural components and mechanical and electrical installations that are material to the use and enjoyment of the building.

2. A statement by the declarant of the expected useful life of each item reported on in subd. 1 or a statement that no representations are made in that regard.

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

SECTION 13. 703.33 (5) of the statutes is amended to read:

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

SECTION 14. 703.365 of the statutes is created to read:

703.365 Small residential condominiums. (1) *APPLICABILITY.* (a) The declaration for a small residential condominium may provide that any or all of subs. (2) to (8) or any parts of those subsections apply to the small residential condominium.

(b) If a declaration under par. (a) provides that any or all of subs. (2) to (8) or any parts of those subsections apply, then, except as provided in those subsections or parts of those subsections, this chapter applies to the small residential condominium in the same manner and to the same extent as to other condominiums.

(2) *DECLARATION.* (a) The declaration for a small residential condominium need not contain those provisions otherwise required under s. 703.09 (1) (e) to (g) and (i).

(b) The undivided percentage interest in a small residential condominium shall be allocated equally among the units.

(c) Each unit in a small residential condominium shall have one vote at meetings of the association.

(d) Commercial activity is permitted in a small residential condominium only to the extent that commercial activity is permitted in residences in a zoning ordinance adopted under s. 59.97, 60.61, 61.35 or 62.23.

(e) All actions taken under this chapter which require a vote of units or unit owners must be approved by an affirmative vote or written consent of at least 75% of the unit votes of a small residential condominium, or a greater percentage if required by the declaration or this chapter.

(3) *BYLAWS.* (a) Notwithstanding s. 703.10 (2) (a), all aspects of the management, operation and duties of the association of a small residential condominium shall be delegated to the board of directors, which may retain a manager for the small residential condominium, and the bylaws shall so specify.

(b) Under s. 703.10 (2) (c), notice of meetings shall be given in a manner best calculated to assure that actual notice is received by the owners of a all units of small residential condominium, and the bylaws shall so specify.

(c) Section 703.10 (2) (d) does not apply to a small residential condominium. The board of directors shall be composed of one representative from each unit, chosen by and from among the unit owners of that unit.

(d) All actions taken by the board of directors of a small residential condominium under this chapter must be approved by an affirmative vote or written consent of at least 75% of the board.

(e) Section 703.10 (4) does not apply to a small residential condominium.

(4) *CONDOMINIUM PLAT.* (a) The survey under s. 703.11 (2) (b) shall be an as-built survey of the property described in the declaration, building and other improvements on the land which are part of the small residential condominium.

(b) The floor plans under s. 703.11 (2) (c) need only show the location and designation of each unit in the building and the limited common elements appurtenant to each unit of a small residential condominium. These plans may be supplemented by an agreement

among all unit owners and mortgagees regarding the allocation of use and enjoyment of common elements which, in both its original and any amended form, shall be recorded.

(5) ASSOCIATION. (a) Under s. 703.15 (2), an association shall exist immediately upon establishment of a small residential condominium and the declarant shall have rights in the association only as an owner of a unit or units.

(b) Directors of a small residential condominium shall be chosen in accordance with sub. (3) (c). The board of directors shall meet at least quarterly.

(c) Unless included in the bylaws, s. 703.15 (4) (b) to (d) does not apply to a small residential condominium.

(6) EXPENSES; MAINTENANCE; OPERATION. (a) Paragraphs (b) to (e) apply to a small residential condominium if any of the following criteria is met:

1. A proposed expenditure or action for the repair, maintenance or upkeep of the property, or for the operation of the property, is not approved by the board of directors and any unit owner believes the expenditure or action is necessary for the safety and proper use of the property or of the owner's unit.

2. An expenditure or action is approved by the board of directors and any unit owner believes the expenditure or action is contrary to the safety and proper use of the property or the owner's unit.

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

(c) The unit owner or owners may challenge the decision after reconsideration by the board of directors under par. (b) only in an arbitration proceeding under ch. 788. Acceptance of a conveyance of a small residential condominium which is subject to pars. (b)

to (e) is deemed to constitute an agreement by the unit owner to submit challenges to decisions of the board of directors to arbitration.

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

(e) The arbitration award by the arbitration panel under par. (d) shall permit or prohibit the decision and the decision shall not be implemented, if it is an affirmative action, until the award is final unless there is a bona fide emergency requiring it.

(7) EXPANDING CONDOMINIUMS. Section 703.26 does not apply to a small residential condominium.

(8) DISCLOSURE REQUIREMENTS. The disclosure required for a small residential condominium under s. 703.33 shall be limited to the disclosure required under s. 703.33 (1) (a) to (e), if applicable, and a copy of the condominium plat.

SECTION 15. 703.38 (9) to (11) of the statutes are created to read:

703.38 (9) Unless the declaration is amended as provided under s. 703.09 (2), 1983 stats., to provide otherwise, a condominium created prior to the effective date of this subsection [revisor inserts date], is subject to s. 703.09 (2), 1983 stats., rather than s. 703.09 (2).

(10) Section 703.365 applies to condominiums created on or after the effective date of this subsection [revisor inserts date], and to condominiums created before the effective date of this subsection [revisor inserts date], that elect to be subject to s. 703.365.

(11) Section 703.255 applies to condominiums created after December 31, 1986.

SECTION 16. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
70.095	703.02 (1)	703.02 (1m)
70.47 (7)(ab)	703.02 (1)	703.02 (1m)