



**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

<b>2003 Assembly Bill 254</b>	<b>Assembly Amendment 2</b>
<i>Memo published:</i> March 11, 2004	<i>Contact:</i> Don Dyke, Chief of Legal Services (266-0292)

Assembly Amendment 2 was offered by Representatives Wieckert and Krug and adopted by the Assembly on a voice vote. Changes to the bill by the amendment are described below.

**1. INCLUSION OF RENTAL REQUIREMENTS OR RESTRICTIONS IN DECLARATION**

**The Bill**

The bill requires the condominium declaration to include: (a) any requirement applicable to or restriction on the rental of residential condominium units; or (b) reference to any such requirement or restriction contained in the bylaws.

**The Amendment**

The amendment deletes this provision.

**2. MANDATORY ARBITRATION**

**The Bill**

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

**The Amendment**

The amendment deletes this provision.

### **3. EVICTION ACTION BY ASSOCIATION**

#### **The Bill**

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

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

The bill’s provision applies only to leases or rental agreements entered into or renewed after three years after the effective date of the bill.

#### **The Amendment**

The amendment deletes this provision.

### **4. RECORDING DECLARATION AMENDMENT BASED ON ALTERNATE PROCEDURE**

#### **The Bill**

SECTION 16 of the bill provides an alternative procedure for amending the declaration. Under the procedure, the condominium association has 180 days to secure necessary consents and approvals and may rely on the list of owners of record contained in a title report at the beginning of the 180-day period.

If an amendment under this procedure is successful, the bill requires recording an “affidavit” containing specified information with the register of deeds.

#### **The Amendment**

The amendment requires, consistent with current ch. 703 recording requirements, that the “amendment” (not affidavit) be recorded, together with the required information.

## **5. BYLAWS: SERVICE AS DIRECTOR BY NONOCCUPANT OWNERS**

### **The Bill**

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

### **The Amendment**

The amendment deletes this provision.

## **6. DECLARANT LIABILITY FOR ASSESSMENTS ON UNSOLD UNITS**

### **The Bill**

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

### **The Amendment**

The amendment provides that the total amount that may be assessed against units that are not exempt from assessments may not exceed those units' "budgeted share" of common expenses (in contrast to those units' "projected share" of common expenses).

## **7. OPTING OUT OF STATUTORY RESERVE ACCOUNT REQUIREMENT**

### **The Bill**

The bill requires a declarant or association to establish a "statutory reserve account" to fully or partially fund repairs and replacements of common elements, other than routine maintenance, unless the declarant or association elects not to establish an account. The reserve account provisions apply to exclusively residential condominiums, other than small condominiums. The association may elect to terminate a statutory reserve account with the written consent of at least 2/3 of the unit votes. Existing condominiums may elect not to establish a statutory reserve account with the written consent of at least 2/3 of the unit votes.

### **The Amendment**

The amendment revises the above 2/3 vote requirements by substituting "a majority" of the unit votes.

## **8. RECORDING STATUTORY RESERVE ACCOUNT STATEMENTS**

### **The Bill**

The bill requires a “statutory reserve account statement” to be recorded with the register of deeds when an account is established or an election is made not to establish or to terminate an account.

### **The Amendment**

The amendment requires the recorded statement to conform to current standard format requirements for recorded documents under s. 59.43 (2m), Stats.

## **9. FINANCIAL AND OPERATIONAL RECORDS DURING DECLARANT CONTROL**

### **The Bill**

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

Also, during the period of declarant control and one year thereafter, the bill requires the association to arrange for an independent audit of the association’s financial records if requested by the lesser of three unit owners or the owners of 10% of the units (not including units owned by the declarant). The frequency of requesting an audit is limited under the bill: no request may be made for an audit within 24 months after completion of a previous audit.

### **The Amendment**

The amendment provides that a financial audit requested under the provision is at the association’s expense but the cost of any audit requested within 36 months after completion of a previous audit is to be paid for by the requesting unit owners (the 24-month limitation of the bill is deleted).

## **10. EXECUTIVE SUMMARY OF DISCLOSURE ITEMS**

### **The Bill**

The bill requires an “executive summary” of certain information as the first document in the disclosure materials that are currently furnished by a unit seller to a buyer. The summary is intended to highlight important items in the disclosure package that may be difficult to find in other disclosure materials.

### **The Amendment**

The amendment adds the following to the required information in the executive summary:

- A description of any provisions exempting the declarant or modifying the declarant's obligation to pay assessments on the declarant's unsold units during the period of declarant control, and any other provisions in the declaration, bylaws, or budget addressing the levying and payment of assessments on units during the period of declarant control.
- An indication that a unit purchaser's rights and responsibilities may be altered by an amendment of the declaration or bylaws, and a description of the amendment process and requirements.

## **11. NUISANCE ACTIONS AGAINST ASSOCIATION**

### **The Bill**

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

### **The Amendment**

Under the amendment, the municipality or a county may proceed under the provision if it has "grounds under ch. 823 to abate a nuisance occurring upon the common elements of a condominium." Under the amendment, the action authorized by the provision is an action for receivership under ch. 823, Stats. Finally, the amendment expressly states that the provision does not authorize the seizure of condominium buildings or units.

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