

CHAPTER 703

CONDOMINIUMS

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NOTE: 2003 Wis. Act 283, which affected this chapter, contains extensive explanatory notes.

703.01 Condominium ownership act. This chapter shall be known as the “Condominium Ownership Act”.

History: 1977 c. 407.

State and federal regulation of condominiums. Minahan, 58 MLR 55.

Condominium conversion and tenant rights—Wisconsin statutes section 703.08: What kind of protection does it really provide. Wynn, 63 MLR 73 (1979).

Transferring Declarant Rights and Obligations Under the Wisconsin Condominium Ownership Act. Ishikawa. Wis. Law. Feb. 1992.

Wisconsin’s Revised Condominium Ownership Act. Hinkston. Wis. Law. Sept. 2004.

703.02 Definitions. In this chapter, unless the context requires otherwise:

(1b) “Addendum” means a condominium instrument that modifies a recorded condominium plat.

(1h) “Amendment” means a condominium instrument that modifies a recorded condominium declaration.

(1m) “Association” means all of a condominium’s unit owners acting as a group, either through a nonstock, nonprofit corporation or an unincorporated association, in accordance with its bylaws and declaration.

(2) “Common elements” mean all of a condominium except its units.

(3) “Common expenses and common surpluses” mean the expenses and surpluses of an association.

(4) “Condominium” means property subject to a condominium declaration established under this chapter.

(5) “Condominium instruments” mean the declaration, plats and plans of a condominium together with any attached exhibits or schedules.

(6) “Conversion condominium” means a structure which, before the recording of a condominium declaration, was wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of the purchasers.

(6m) “Correction instrument” means an instrument drafted by a licensed land surveyor that complies with the requirements of s. 59.43 (2m) and that, upon recording, corrects an error in a

condominium plat. “Correction instrument” does not include an instrument of conveyance.

(7) “Declarant” means any owner who subjects his or her property to a condominium declaration established under this chapter. The term includes an assignee of the declarant under s. 703.09 (4).

(8) “Declaration” means the instrument by which a property becomes subject to this chapter, and that declaration as amended from time to time.

(9) “Expandable condominium” means a condominium to which additional property or units or both may be added in accordance with the provisions of a declaration and this chapter.

(10) “Limited common element” means a common element identified in a declaration or on a condominium plat as reserved for the exclusive use of one or more but less than all of the unit owners.

(11) “Majority” or “majority of unit owners” mean the condominium unit owners with more than 50% of the votes assigned to the units in the condominium declaration.

(12) “Mortgagee” means the holder of any recorded mortgage encumbering one or more units or a land contract vendor.

(13) “Person” means an individual, corporation, partnership, association, trustee or other legal entity.

(14) “Property” means unimproved land, land together with improvements on it or improvements without the underlying land. Property may consist of noncontiguous parcels or improvements.

(14g) “Removal instrument” means an instrument that complies with the requirements of s. 59.43 (2m) and that removes property from the provisions of this chapter upon recording. “Removal instrument” does not include an instrument of conveyance.

(14m) “Small condominium” means a condominium with no more than 12 units.

(15) “Unit” means a part of a condominium intended for any type of independent use, including one or more cubicles of air at one or more levels of space or one or more rooms or enclosed spaces located on one or more floors, or parts thereof, in a building. A unit may include 2 or more noncontiguous areas.

(16) “Unit number” means the number identifying a unit in a declaration.

(17) “Unit owner” means a person, combination of persons, partnership or corporation who holds legal title to a condominium unit or has equitable ownership as a land contract vendee.

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

The definition of “unit” under sub. (15) encompasses a property on which there is no constructed unit. *Aluminium Industries v. Camelot Trails*, 194 Wis. 2d 575, 535 N.W.2d 74 (Ct. App. 1995).

Small lock boxes were not “intended for any type of independent use” within the meaning of “unit” under sub. (15). Because there are no valid units, there could be no valid condominium units, and the conveyance of riparian rights to docks attempted to be transferred as common elements were not valid. *ABKA Limited Partnership v. DNR*, 2002 WI 106, 255 Wis. 2d 486, 648 N.W.2d 854, 99–2306.

703.03 Application of chapter. This chapter applies only to property, a sole owner or all of the owners of which submit the property to the provisions of this chapter by duly executing and recording a declaration as provided in this chapter.

History: 1977 c. 407.

703.04 Status of the units. A unit, together with its undivided interest in the common elements, for all purposes constitutes real property.

History: 1977 c. 407.

703.05 Ownership of units. A unit owner is entitled to the exclusive ownership and possession of his or her unit.

History: 1977 c. 407.

703.06 Alterations prohibited. Except as otherwise provided in this chapter, no unit owner may make any alteration that would jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement or hereditament, or change the exterior appearance of a unit or any other portion of the condominium not part of the unit.

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.07 Establishment of condominium. (1) A condominium may only be created by recording condominium instruments with the register of deeds of the county where the property is located. A condominium declaration and plat shall be presented together to the register of deeds for recording.

(2) A condominium instrument, and all amendments, addenda and certifications of a condominium instrument, shall be recorded in every county in which any portion of the condominium is located, and shall be indexed in the name of the declarant and the name of the condominium. Subsequent instruments affecting the title to a unit which is physically located entirely within a single county shall be recorded only in that county, notwithstanding the fact that the common elements are not physically located entirely within that county. Subsequent amendments and addenda shall be indexed under the name of the condominium.

(3) All instruments affecting title to units shall be recorded and taxed as in other real property transactions.

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

703.08 Notice prior to conversion of residential property to condominium. (1) Residential real property may not be converted to a condominium unless the owner of the residential real property gives prior written notice of the conversion to each of the tenants of the building or buildings scheduled for conversion. During the 60–day period immediately following the date of delivery of the notice a tenant has the first right to purchase the unit, if the unit is offered for sale at any time during that period, for any of the following:

- (a) The price at which the unit is being offered on the market.
- (b) The price contained in any accepted offer to purchase the unit.
- (c) The price otherwise agreed to by the tenant and the seller.

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

- (a) Violation of a covenant in the lease; or
- (b) Nonpayment of rent.

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

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

Condominium conversion and tenant rights—Wisconsin statutes section 703.08: What kind of protection does it really provide. *Wynn*, 63 MLR 73 (1979).

703.09 Declaration. (1) A condominium declaration shall contain:

(a) The name and address of the condominium and the name shall include the word “condominium” or be followed by the words “a condominium”.

(b) A description of the land on which the condominium is, or is to be, located, together with a statement of the owner’s intent to subject the property to the condominium declaration established under this chapter.

(c) A general description of each unit, including its perimeters, location and any other data sufficient to identify it with reasonable certainty.

(d) A general description of the common elements together with a designation of those portions of the common elements that are limited common elements and the unit to which the use of each is restricted. Fixtures designed to serve a single unit, located contiguous to the unit’s boundaries, are deemed limited common elements appertaining to that unit exclusively and need not be shown or designated as limited common elements in the condominium instruments.

(e) The percentage interests appurtenant to each unit.

(f) The number of votes at meetings of the association of unit owners appurtenant to each unit.

(g) Statement of the purposes for which the building and each of the units are intended and restricted as to use.

(h) The name and address of the resident agent under s. 703.23.

(i) Provision as to the percentage of votes by the unit owners which shall be determinative of whether to rebuild, repair, restore or sell the property in the event of damage or destruction of all or part of the property.

(j) Any further details in connection with the property which the person executing the declaration deems desirable to set forth consistent with this chapter, except those provisions which are required to be included in the bylaws.

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

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

(3) (a) If an amendment to a condominium declaration 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.

(4) A declarant may assign his or her rights and obligations as a declarant under this chapter by recording an amendment to the declaration that includes the assignment and an acceptance of the assignment that is signed by the assignee and acknowledged. A declarant may not assign under this subsection less than all of his or her rights and obligations as a declarant under this chapter.

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

An amendment of a condominium declaration that changed a common area to a limited common area but did not change the owners' percentage interests in the common areas did not require unanimous approval of all owners and was valid. Any reduction in value due to the change from common area was recoverable under s. 703.09 (3) (a) by the owners whose condominium value decreased due to the change. *Newport Condominium Association v. Concord–Wisconsin*, 205 Wis. 2d 577, 556 N.W.2d 775 (Ct. App. 1996), 95–0869.

703.093 Alternative procedure for amending declaration. (1) As an alternative to s. 703.09 (2), a condominium declaration may be amended under this section if at least two-thirds of the aggregate of the votes established under s. 703.09 (1) (f), or a greater percentage if provided in the declaration, consent to the amendment in writing and those consents are approved by the mortgagees or holders of equivalent security interests in the units. An amendment becomes effective when it is recorded in the same manner as the declaration.

(2) The association has 180 days to secure the required consents and approvals under this section, commencing with the recording of an affidavit with the register of deeds of the county in which the condominium is located. The affidavit shall do all of the following:

(a) Set forth the text of the proposed amendment.

(b) Provide the name and address of the senior executive officer of the association to whom inquiries should be directed with regard to the proposed amendment.

(c) State that a notice was sent to each owner of record and each lender of record for each unit of the association on the date the affidavit is recorded.

(d) Be signed by the senior executive officer of the association.

(3) Notice of a proposed amendment to a declaration under this section shall be mailed on the date the affidavit is recorded under sub. (2) to the owner of each condominium unit and to any mortgagee of, or holder of an equivalent security interest in, each unit, as identified in a title report prepared on the date the notice is sent.

(4) The notice mailed under sub. (3) shall do all of the following:

(a) Contain a copy of the text of the proposed amendment and a current copy of this section.

(b) Include a written ballot to be signed by the unit owner, identifying the unit casting the ballot and identifying each owner of record of that unit as of the date the affidavit is recorded under sub. (2). The ballot shall include a place for any mortgagee or equivalent security interest holder to whom notice is sent under sub. (3) to indicate its approval or objection under sub. (5) (b).

(c) State that, if more than one person is an owner of the unit and the owners cannot agree how to cast the ballot, the unit's vote shall be treated as a vote in opposition to the proposed amendment.

(d) State that a ballot signed by only one owner shall count as the ballot of that unit, unless more than one ballot is received by

the association for that unit, in which case all ballots received for that unit must concur in the vote cast or the ballots, collectively, shall be treated as a vote in opposition to the proposed amendment by that unit.

(e) State that the proposed amendment must be voted on as written and that no changes to the proposed amendment may be accomplished by this vote.

(f) Include the address to which the completed ballot should be mailed or delivered.

(5) (a) The owner of each unit shall vote on the proposed amendment by signing the ballot before a notary public and by mailing the signed and notarized ballot or by personally delivering it to the association of unit owners at the applicable address specified under sub. (4) (f).

(b) Each mortgagee or equivalent security interest holder receiving the notice under sub. (3) shall signify its approval or objection to the amendment by having an authorized person sign the ballot before a notary public and by returning the signed, notarized ballot to the association.

(6) The association may rely on the list of owners of record set forth in a title report obtained as of the date the affidavit is recorded under sub. (2), unless the association receives a written notice, signed and notarized by both the previous owner and the new owner, advising the association that ownership of the unit has changed. The association shall send a copy of the notice under sub. (3) to the new owner of a unit and any mortgagee or equivalent security interest holder promptly after receiving notice of the transfer of ownership. It is the responsibility of the new unit owner to comply with this section. If the previous owner had voted prior to the change in ownership, the new owner may execute the ballot included in the notice under sub. (3), which ballot, when returned by the new owner, shall supersede and replace any ballot cast by the previous owner if the required approval of any mortgagee or equivalent security interest holder is also timely received. The 180-day period applicable to receipt of the ballot for the unit shall be extended to a date 14 days after the ballot is mailed by the association if the ballot is mailed within 14 days before the end of the 180-day period.

(7) Any person acquiring a mortgage or equivalent security interest on a unit after the affidavit is recorded under sub. (2) may notify the association in writing of the mortgage or equivalent security interest lien, identifying the unit on which it holds a lien, and signify its approval of or objection to the proposed amendment to the declaration.

(8) If the association receives the required number of consents and approvals from unit owners and mortgagees and equivalent security interest holders within the required time after the affidavit is recorded under sub. (2), the senior executive officer of the association shall record an amendment in the office of the register of deeds of the county in which the condominium is located, setting forth the facts satisfying the requirements of this section and providing record notice to all interested persons that the declaration has been revised, effective upon the recording of the amendment, and restating the entire declaration, as amended.

(9) The association shall, for a period of 2 years following the recording of the amended declaration under sub. (8), retain on file and make available for inspection at the place where the condominium financial records are maintained all of the following:

(a) The title report under sub. (6) relied upon by the association.

(b) All of the ballots received by the association from unit owners.

(c) All written approvals or objections received by the association from mortgagees and equivalent security interest holders.

History: 2003 a. 283.

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

The doctrine of merger of title that: "No man can, technically, be said to have an easement in his own land. And the consequence is, that if the same person becomes owner in fee simple of both estates, the easement is extinguished." did not apply to

extinguish easements created in a condominium declaration. Creation of a condominium is, by statute, a unilateral act by the owner in anticipation of a future sale. It does not involve any transfer of rights to a third party and does not create any new rights that can immediately merge back into the fee. Rather, it is a document defining rights to be sold in the future. *Anderson v. Quinn*, 2007 WI App 260, 306 Wis. 2d 686, 743 N.W.2d 492, 06–2462.

Sub. (1) (g) does not mandate that all restrictions be stated in the declaration. Sub. (1) (g) requires the declaration to contain a statement of intended purpose and use restrictions, section 703.10 (3) permits the bylaws to contain use restrictions, and s. 703.10 (1) directs that unit owners “shall comply strictly” with the bylaws, the rules adopted thereunder, and any amendments to them. Ignoring the plain language of s. 703.10 (3) would effectively render it superfluous. *Apple Valley Gardens Assoc., Inc. v. MacHutta*, 2007 WI App 270, 306 Wis. 2d 780, 743 N.W.2d 483, 07–0191.

703.095 Modification and correction of recorded condominium instruments, amendments and addenda. A recorded condominium instrument, amendment or addendum may only be modified by recording an amendment, addendum or correction instrument, or by removal from the provisions of this chapter under s. 703.28 (1). The register of deeds may not record a correction instrument if it does not refer to the instrument being corrected and may not record amendments and addenda unless they are numbered consecutively and bear the name of the condominium as it appears in the declaration.

History: 1997 a. 333.

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

(2) **REQUIRED PARTICULARS.** The bylaws shall express at least the following particulars:

(a) The form of administration, indicating whether the association shall be incorporated or unincorporated, and whether, and to what extent, the duties of the association may be delegated to a board of directors, manager or otherwise, and specifying the powers, manner of selection and removal of them.

(b) The mailing address of the association.

(c) The method of calling the unit owners to assemble; the attendance necessary to constitute a quorum at any meeting of the association; the manner of notifying the unit owners of any proposed meeting; who presides at the meetings of the association, who keeps the minute book for recording the resolutions of the association and who counts votes at meetings of the association.

(d) The election by the unit owners of a board of directors of whom not more than one is a nonunit owner, the number of persons constituting the same and that the terms of at least one-third of the directors shall expire annually, the powers and duties of the board, the compensation, if any, of the directors, the method of removal from office of directors and whether or not the board may engage the services of a manager or managing agent.

(e) The manner of assessing against and collecting from unit owners their respective shares of the common expenses.

(f) The manner of borrowing money and acquiring and conveying property.

(2m) **LIMITATION ON ENFORCEMENT OF CERTAIN PROVISIONS.** No bylaw or rule adopted under a bylaw and no covenant, condition or restriction set forth in a declaration or deed to a unit may be applied to discriminate against an individual in a manner described in s. 106.50.

(3) **PERMISSIBLE ADDITIONAL PROVISIONS.** The bylaws also may contain any other provision regarding the management and operation of the condominium, including any restriction on or requirement respecting the use and maintenance of the units and the common elements.

(4) **PROHIBITING VOTING BY CERTAIN UNIT OWNERS.** The bylaws may contain a provision prohibiting any unit owner from voting

at a meeting of the association if the association has recorded a statement of condominium lien on the person’s unit and the amount necessary to release the lien has not been paid at the time of the meeting.

(5) **AMENDMENT.** The bylaws may be amended by the affirmative vote of unit owners having 67% or more of the votes. Each particular set forth in sub. (2) shall be expressed in the bylaws as amended.

(6) **TITLE TO CONDOMINIUM UNITS UNAFFECTED BY BYLAWS.** Title to a condominium unit is not rendered unmarketable or otherwise affected by any provision of the bylaws or by reason of any failure of the bylaws to comply with the provisions of this chapter.

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

Because sub. (6) prohibits condominium bylaws from affecting the transfer of title to a condominium unit, a bylaw prohibiting the sale of any condominium unit to an owner who would not reside in the condominium unit could not be applied to prevent the confirmation of a foreclosure sale to the high bidder who admitted he would not occupy the premises. *Bankers Trust Company of California, N.A. v. Bregant*, 2003 WI App 86, 261 Wis. 2d 855, 661 N.W.2d 498, 02–2085.

703.105 Display of the United States flag and political signs. (1) No bylaw or rule may be adopted or provision included in a declaration or deed that prohibits a unit owner from respectfully displaying the United States flag.

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

(2) Notwithstanding subs. (1) and (1m), bylaws or rules may be adopted that regulate the size and location of signs, flags and flagpoles.

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

703.11 Condominium plat. (1) **TO BE FILED FOR RECORD.** When any condominium instruments are recorded, the declarant shall file for record a condominium plat in a separate plat book maintained for condominium plats.

(2) **REQUIRED PARTICULARS.** A condominium plat may consist of one or more sheets and shall contain at least the following particulars:

(a) The name of the condominium and county in which the property is located on each sheet of the plat. The name of the condominium must be unique in the county in which the condominium is located. If there is more than one sheet, each sheet shall be consecutively numbered and show the relation of that sheet number to the total number of sheets.

(am) A blank space at least 2.5 inches by 2.5 inches in size on the first sheet for recording use by the register of deeds.

(b) A survey of the property described in the declaration complying with minimum standards for property surveys adopted by the examining board of architects, landscape architects, professional engineers, designers and land surveyors and showing the location of any unit or building located or to be located on the property.

(c) Plans that show the location of each building located or to be located on the property and, if there are units in a building, that show the perimeters, approximate dimensions, approximate square footage, and location of each unit in the building. Common elements shall be shown graphically to the extent feasible.

(d) All survey maps and floor plans submitted for filing shall be legibly prepared with a binding margin of 1.5 inches on the left side and a one-inch margin on all other sides on durable white media that is 14 inches long by 22 inches wide with a permanent nonfading black image. The maps and plans shall be drawn to a convenient scale.

(3) **DESIGNATION OF UNITS.** Every unit shall be designated on the condominium plat by the unit number. Unit numbers may not contain more than 8 numerals and must be unique throughout the condominium.

(4) SURVEYOR'S CERTIFICATE. A condominium plat is sufficient for the purposes of this chapter if there is attached to or included in it a certificate of a licensed land surveyor authorized to practice that profession in this state that the plat is a correct representation of the condominium described and the identification and location of each unit and the common elements can be determined from the plat.

(5) AMENDMENT. Except as provided in s. 703.265, amendment of a condominium plat by an addendum that is not included as part of an amendment to the declaration shall be accomplished in the same manner as an amendment to the declaration under s. 703.09 (2).

History: 1977 c. 407; 1983 a. 497; 1993 a. 463, 465, 491; 1997 a. 300, 333; 2003 a. 283; 2005 a. 9, 41.

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

Cross Reference: See also ch. Trans 233, Wis. adm. code.

703.115 Local review of condominium instruments.

(1) A county may adopt an ordinance to require the review of condominium instruments before recording by persons employed by the county of recording or by a city, village or town that is located in whole or in part in the county of recording if the ordinance does all of the following:

(a) Requires the review to be completed within 10 working days after submission of the condominium instrument and provides that, if the review is not completed within this period, the condominium instrument is approved for recording.

(b) Provides that a condominium instrument may be rejected only if it fails to comply with the applicable requirements of ss. 703.095, 703.11 (2) (a), (c) and (d) and (3), 703.275 (5) and 703.28 (1m) or if the surveyor's certificate under s. 703.11 (4) is not attached to or included in the condominium plat.

(c) If the person performing the review approves the condominium instrument, requires the person to certify approval in writing, accompanied by his or her signature and title.

(2) An ordinance adopted under this section may authorize the county to charge a fee that reflects the actual cost of performing the review.

History: 1997 a. 333.

703.12 Description of units. A description in any deed or other instrument affecting title to any unit which makes reference to the letter or number or other appropriate designation on the condominium plat together with a reference to the condominium instruments shall be a good and sufficient description for all purposes.

History: 1977 c. 407.

The requirements of ch. 236 may not be used to legally describe condominium units. 75 Atty. Gen. 94.

703.13 Percentage interests. (1) UNDIVIDED PERCENTAGE INTEREST IN COMMON ELEMENTS. Every unit owner owns an undivided percentage interest in the common elements equal to that set forth in the declaration. Except as specifically provided in this chapter, all common elements shall remain undivided. Except as provided in this chapter, no unit owner, nor any other person, may bring a suit for partition of the common elements and any covenant or provision in any declaration, bylaws or other instrument to the contrary is void.

(2) RIGHTS TO COMMON SURPLUSES. Common surpluses shall be disbursed as provided under s. 703.16 (1).

(3) LIABILITY FOR COMMON EXPENSES. Except for the specially assessed common expenses, the amount of all common expenses shall be assessed as provided under s. 703.16 (2).

(4) CHANGE IN PERCENTAGE INTEREST. The percentage interests shall have a permanent character and, except as specifically provided by this chapter, may not be changed without the written consent of all of the unit owners and their mortgagees. Any change shall be evidenced by an amendment to the declaration and recorded among the appropriate land records. The percentage

interests may not be separated from the unit to which they appertain. Any instrument, matter, circumstance, action, occurrence or proceeding in any manner affecting a unit also shall affect, in like manner, the percentage interests appurtenant to the unit.

(5) ALTERATIONS WITHIN UNITS. (a) A unit owner may make any improvements or alterations within his or her unit that do not impair the structural integrity or lessen the support of any portion of the condominium and that do not create a nuisance substantially affecting the use and enjoyment of other units or the common elements. A unit owner may not change the exterior appearance of a unit or of any other portion of the condominium without permission of the board of directors of the association.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitation specified therein, a unit owner acquiring an adjoining or adjoining part of an adjoining unit, may remove all or any part of any intervening partition or create doorways or other apertures therein, even if the partition may in whole or in part be a common element, if those acts do not impair the structural integrity or lessen the support of any portion of the condominium. The creation of doorways or other apertures is not deemed an alteration of boundaries.

(5m) IMPROVEMENTS TO LIMITED COMMON ELEMENTS. (a) If permitted by the condominium instruments and subject to par. (b) and to any restrictions or limitations specified in the condominium instruments, a unit owner may improve, including the enclosure of, the limited common elements appurtenant exclusively to that owner's unit if all of the following conditions are met:

1. A statement describing the improvement, including a description of the project, the materials to be used, and the project's proposed impact on the appearance of the condominium, and identifying the project contractor is submitted to the board of directors of the association.

2. The improvement will not interfere with the use and enjoyment of the units of other unit owners or the common elements or limited common elements of the condominium.

3. The improvement will not impair the structural integrity of the condominium.

4. Any change to the exterior appearance of the condominium is approved by the board of directors of the association.

(b) All costs and expenses of an improvement under this subsection and any increased costs of maintenance and repair of the limited common elements resulting from the improvement are the obligation of the unit owner. The unit owner shall protect the association and other unit owners from liens on property of the association or of other unit owners that otherwise might result from the improvement.

(6) RELOCATION OF BOUNDARIES. (a) If any condominium instruments expressly permit a relocation of boundaries between adjoining units, those boundaries may be relocated in accordance with this section and any restrictions and limitations which the condominium instruments may specify.

(b) If any unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate those boundaries, the principal officer of the unit owners association, upon written application from those unit owners and after 30 days' written notice to all other unit owners, shall prepare and execute appropriate instruments.

(c) An amendment to a declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof. The amendment shall contain words of conveyance between those unit owners, and when recorded shall also be indexed in the name of the grantor and grantee. If the adjoining unit owners have specified in their written application the reallocation between their units of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation. An amendment to a declaration under this paragraph shall be adopted, at the option of the adjoining unit

owners, either under s. 703.09 (2) or by the written consent of the owners of the adjoining units involved and the mortgagees of the adjoining units.

(d) If the adjoining unit owners have specified in their written application a reasonable reallocation, as determined by the board of directors, of the number of votes in the association or liabilities for future common expenses not specially assessed, appertaining to their units, an amendment to the condominium instruments shall reflect those reallocations. An amendment to a declaration under this paragraph shall be adopted in the manner specified in par. (c).

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

(f) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the adjoining unit owners upon payment by them of all reasonable charges for the preparation thereof. Those instruments are effective when the adjoining unit owners have executed them and they are recorded in the name of the grantor and grantee. The recordation thereof is conclusive evidence that the relocation of boundaries did not violate the condominium instruments.

(7) SEPARATION OF UNITS. (a) If any condominium instruments expressly permit the separation of a unit into 2 or more units, a separation shall be made in accordance with this section and any restrictions and limitations which the condominium instruments may specify.

(b) The principal officer of the association, upon written application of a person proposing the separation of a unit (separator) and after 30 days' written notice to all other unit owners shall promptly prepare and execute appropriate instruments under this subsection. An amendment to the condominium instruments shall assign a new identifying number to each new unit created by the separation of a unit, shall allocate to those units, on a reasonable basis acceptable to the separator and the executive board all of the undivided interest in the common element and rights to use the limited common elements and the votes in the association formerly appertaining to the separated unit. The amendment shall reflect a proportionate allocation to the new units of the liability for common expenses and rights to common surpluses formerly appertaining to the subdivided unit.

(c) Plats and plans showing the boundaries and dimensions separating the new units together with their other boundaries and their new identifying numbers or letters shall be prepared. The plats and plans shall be certified as to their accuracy and compliance with this subsection by a civil engineer, architect or licensed land surveyor authorized to practice his or her profession in the state.

(d) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the separator upon payment by him or her of all reasonable cost for their preparation. Those instruments are effective when the separator has executed them and they are recorded. The recording of the instruments is conclusive evidence that the separation did not violate any restrictions or limitation specified by the condominium instruments and that any reallocations made under this subsection were reasonable.

(8) MERGER OF UNITS. (a) If any condominium instruments expressly permit the merger of 2 or more adjoining units into one unit, a merger shall be made in accordance with this subsection and any restrictions and limitations specified in the condominium instruments.

(b) If the unit owners of adjoining units that may be merged desire to merge the units, the unit owners, after 30 days' written notice to all other unit owners, shall prepare and execute appropriate instruments under this subsection. An amendment to the con-

dominium instruments shall assign a new identifying number to the new unit created by the merger of the units and shall allocate to the new unit all of the undivided interest in the common elements and rights to use the limited common elements and the votes in the association formerly appertaining to the separate units. The amendment shall reflect an allocation to the new unit of the liability for common expenses and rights to common surpluses formerly appertaining to the separate units. An amendment to a declaration under this paragraph shall be adopted either under s. 703.09 (2) or by the written consent of the owners of the units to be merged, the mortgagees of those units, if any, and the board of directors of the association.

(c) Plats and plans showing the boundaries and dimensions of the new unit together with the new identifying number or letter shall be prepared. The plats and plans shall be certified as to their accuracy and compliance with this subsection by a civil engineer, architect, or licensed land surveyor authorized to practice in this state.

(d) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the owner or owners of the merged unit upon payment by the owner or owners of all reasonable costs for their preparation. Those instruments are effective when executed by the owner or owners of the merged unit and recorded in the office of the register of deeds of the county where the property is located. The recording of the instruments is conclusive evidence that the merger did not violate any restriction or limitation specified by the condominium instruments and that any reallocations made under this subsection were reasonable.

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

An amendment of a condominium declaration that changed a common area to a limited common area but did not change the owners' percentage interests in the common areas did not require unanimous approval of all owners and was valid. Any reduction in value due to the change from common area was recoverable under s. 703.09 (3) (a) by the owners whose condominium value decreased due to the change. *Newport Condominium Association v. Concord-Wisconsin*, 205 Wis. 2d 577, 556 N.W.2d 775 (Ct. App. 1996), 95–0869.

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

(2) The declaration or bylaws may allow any unit owner of a unit to which the use of any limited common element is restricted to grant by deed, subject to the rights of any existing mortgagee, the use of the limited common element to any other unit owner. Thereafter, the grantor has no further right to use the limited common element.

History: 1977 c. 407.

703.15 Association of unit owners. (1) **LEGAL ENTITY.** The affairs of every condominium shall be governed by an association that, even if unincorporated, is constituted a legal entity for all purposes. Except for matters reserved to the association members or unit owners by this chapter, the declaration, or the bylaws, all policy and operational decisions of the association, including interpretation of the condominium instruments, bylaws, rules, and other documents relating to the condominium or the association, shall be made by its board of directors. This subsection does not affect the deference accorded to, or the standard of review of, an action of the board of directors by a court.

(2) **ORGANIZATION OF ASSOCIATION.** (a) *Establishment.* 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. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association. After it is orga-

nized, the membership of the association shall at all times consist exclusively of all of the unit owners.

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

(c) *Declarant control.* 1. Except as provided in par. (d), a declarant may authorize the declarant or persons designated by him or her to appoint and remove the officers of the association or to exercise the powers and responsibilities otherwise assigned by the declaration or this chapter to the association or its officers. A declaration may not authorize any declarant control of the association for a period exceeding the earlier of any of the following:

- a. Ten years in the case of an expandable condominium.
- b. Three years in the case of any other condominium.
- c. Thirty days after the conveyance of 75% of the common element interest to purchasers.

2. The period of declarant control begins on the date that the first condominium unit is conveyed by a declarant to any person other than the declarant. If there is any other unit owner other than a declarant, a declaration may not be amended to increase the scope or the period of the declarant control.

(d) *Meeting to elect directors.* Prior to the conveyance of 25% of the common element interest to purchasers, an association shall hold a meeting and the unit owners other than the declarant shall elect at least 25% of the directors of the executive board. Prior to the conveyance of 50% of the common element interest to purchasers, an association shall hold a meeting and the unit owners other than the declarant shall elect at least 33 1/3% of the directors of the executive board.

(e) *Calculation of percentage.* The calculation of the percentage of common element interest conveyed to purchasers under pars. (c) and (d) shall be based on the percentage of undivided interest appertaining to each unit which has been conveyed assuming that all the units to be completed are included in the condominium.

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

(3) POWERS OF THE ASSOCIATION. (a) *Powers.* An association has the power to:

1. Adopt budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from unit owners;
2. Employ and dismiss employees and agents;
3. Sue on behalf of all unit owners; and
4. Exercise any other power conferred by the condominium instruments or bylaws.

(b) *Conditional powers.* Subject to any restrictions and limitations specified by the declaration, an association may:

1. Make contracts and incur liabilities, including borrowing funds in the name of the association in the manner specified in the bylaws under s. 703.10 (2) (f).
2. Regulate and impose charges for the use of common elements.
3. Cause additional improvements to be made as a part of the common elements.
4. Acquire, hold, encumber and convey any right, title or interest in or to real property.
5. Grant easements through or over the common elements.
6. Receive any income derived from payments, fees or charges for the use, rental or operation of the common elements.

7. Grant or withhold approval of any action by a unit owner or other person which would change the exterior appearance of the unit or of any other portion of the condominium.

8. Purchase goods and services jointly with other condominium associations or other persons.

(4) ROSTER OF UNIT OWNERS; MEETINGS OF ASSOCIATION. (a) An association shall maintain a current roster of names and addresses of every unit owner to which notice of meetings of the association shall be sent.

(b) Every unit owner shall furnish the association with his or her name and current mailing address. No unit owner may vote at meetings of the association until this information is furnished.

(c) No regular or special meeting of the association may be held except on at least 10 days' written notice delivered or mailed to every unit owner at the address shown on the roster or unless waivers are duly executed by all unit owners.

(d) 1. At meetings of the association every unit owner is entitled to cast the number of votes appurtenant to his or her unit, as established in the declaration under s. 703.09 (1) (f). Unit owners may vote by proxy, but, the proxy is effective only for a maximum period of 180 days following its issuance, unless granted to a mortgagee or lessee. If only one of multiple owners of a unit is present at a meeting of the association, the owner is entitled to cast the votes allocated to that unit.

2. If more than one of the multiple owners is present, the votes allocated to that unit may be cast proportionally among the owners unless the condominium instruments expressly provide otherwise, but unanimous agreement is conclusively presumed if any one of them purports to cast the votes allocated to that unit without protest being made promptly by any of the others to the person presiding over the meeting or until any one of the multiple owners files a statement with the secretary of the association stating that thereafter the vote must be cast proportionally.

(e) Unless otherwise provided in this chapter, and subject to provisions in the bylaws requiring a different majority, decisions of an association shall be made on a majority of votes of the unit owners present and voting.

(5) UNIT OWNER'S INTEREST IN ASSOCIATION'S PROPERTY. No unit owner may have any right, title or interest in any property owned by the association other than as holder of a percentage interest in common elements appurtenant to its unit.

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

Advising Developers in Operating Community Associations. Pardon. Wis. Law. March 2004.

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.

(7) **REPRESENTATION OF CONDOMINIUM OR NONCONDOMINIUM PROPERTY.** A master association may represent condominium or noncondominium property on behalf of one or more condominiums and property under a different form of ownership or for the benefit of the unit owners of one or more condominiums and the owners of other property.

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.16 Common expenses and common surpluses.

(1) **DISPOSITION OF COMMON SURPLUSES.** All common surpluses of the association shall be credited to the unit owners' assessments for common expenses in proportion to their percentage interests in the common elements or as otherwise provided in the declaration or shall be used for any other purpose as the association decides.

(2) (a) **FUNDS FOR PAYMENT OF COMMON EXPENSES OBTAINED BY ASSESSMENTS.** Funds for the payment of common expenses and for the creation of reserves for the payment of future common expenses shall be obtained by assessments against the unit owners in proportion to their percentage interests in the common elements or as otherwise provided in the declaration.

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

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

A condominium land contract recorded before the making of an assessment lien has priority as a first mortgage under sub. (6) (b). *Towne Realty, Inc. v. Edwards*, 156 Wis. 2d 344, 456 N.W.2d 651 (Ct. App. 1990).

The definition of "unit" under s. 703.01 (15) encompasses a property on which there is no constructed unit. *Aluminium Industries v. Camelot Trails*, 194 Wis. 2d 575, 535 N.W.2d 74 (Ct. App. 1995).

In a foreclosure action under sub. (8) based on a failure to pay condominium fees, s. 846.10 (1) could not be applied sensibly to require a statement of installments to become due because monthly assessments were in varying amounts. The 12-month redemption period under s. 846.10 (2) is applicable to such foreclosures. *Geneva National Community Association, Inc. v. Friedman*, 228 Wis. 2d 572, 598 N.W.2d 600 (Ct. App. 1999), 98–1010.

703.161 Annual budget. (1) APPLICATION. This section applies to any condominium that includes at least one unit that is restricted to residential use.

(2) **REQUIREMENT.** An association annually shall adopt and distribute to all unit owners an annual budget setting forth all of the following:

(a) All anticipated common expenses and any amounts to be allocated to a statutory reserve account under s. 703.163 and to any other funds for future expenditures.

(b) The amount and purpose of any other anticipated association expenditure.

(c) The amount in any statutory reserve account under s. 703.163 or any other funds held for future expenditures.

(d) Any common surpluses.

(e) The amount and source of any income, other than unit owner assessments.

(f) The aggregate amount of any assessment to be levied against unit owners and the purpose of the assessment.

History: 2003 a. 283.

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.163 Statutory reserve account. (1) DEFINITIONS. In this section:

(a) "Reserve funds" means funds derived from assessments against unit owners that are deposited in a statutory reserve account. The term does not include funds for ordinary operations, including amounts held for operational contingencies.

(b) "Statutory reserve account" means a separate account established under this section to hold reserve funds.

(c) "Statutory reserve account statement" means a statement indicating whether a statutory reserve account has been established for a condominium and, if there is no statutory reserve account, how it is anticipated that future expenditures for the repair and replacement of common elements will be funded.

(2) **APPLICATION; OTHER RESERVE ACCOUNTS NOT AFFECTED.** (a) 1. Except as provided in subs. 2. and 3., this section applies to condominiums consisting exclusively of units that are restricted to residential uses.

2. This section does not apply to a small condominium unless the declarant or the association, with the written consent of a majority of the unit votes, elects to be governed by this section.

3. This section applies to a condominium consisting of both residential and nonresidential units if the declarant or the association, with the written consent of a majority of the unit votes of the residential units and a majority of the unit votes of the nonresidential units, elects to be governed by this section.

(b) This section does not affect a reserve account or a similar account existing on November 1, 2004, or a reserve account or similar account established on or after November 1, 2004, that is not a statutory reserve account.

(3) **NEW CONDOMINIUMS; ESTABLISHMENT OF STATUTORY RESERVE ACCOUNT BY DECLARANT.** (a) Except as provided in par. (c), the declarant of a condominium that is created on or after November 1, 2004, shall establish a statutory reserve account when the condominium is created and shall execute a statutory reserve account statement. The declarant shall determine the annual amount to be assessed unit owners for reserve funds after considering the factors under sub. (7) (a) to (e) and, if the condominium is a conversion condominium with more than 4 units, the report prepared under s. 703.33 (2) (cm) 1.

(b) Reserve fund assessments for the reserve account established under par. (a) may first be assessed on a particular unit when a certificate of occupancy has been issued that applies to that unit. The declarant may elect to defer payment of the accrued assessments for a particular unit until the first conveyance of that unit. The declarant may not defer payment of accrued reserve fund assessments for more than 5 years from the date the exterior con-

struction of the building in which the unit is located is completed. The declarant is liable for all reserve fund assessments on a unit that accrue before the unit is conveyed. If there are accrued reserve fund assessments against a unit, the declarant shall disclose in writing to the first purchaser of the unit whether the declarant has included any accrued reserve fund assessments in the purchase price of the unit or, if not included, how any accrued assessment will be paid.

(c) The declarant may elect not to establish a statutory reserve account under par. (a) at the time the condominium is created or, at any time thereafter, may elect to terminate a statutory reserve account during the period of declarant control under s. 703.15 (2) (c). An election under this paragraph shall be made by executing a statutory reserve account statement.

(4) NEW CONDOMINIUM; DETERMINATION BY ASSOCIATION TO ESTABLISH STATUTORY RESERVE ACCOUNT. If a declarant has elected under sub. (3) (c) not to establish a statutory reserve account or to terminate an account, establishment of a statutory reserve account shall be addressed at the first annual meeting of the association held after, or at a special meeting of the association held within one year after, the expiration of any period of declarant control under s. 703.15 (2) (c). A statutory reserve account is established under this subsection with the written consent of a majority of the unit votes. If a statutory reserve account is established under this subsection, the association shall execute a statutory reserve account statement.

(5) EXISTING CONDOMINIUMS; STATUTORY RESERVE ACCOUNT UNLESS ELECT OTHERWISE. The association for a condominium created before November 1, 2004, shall, within 18 months after November 1, 2004, or within 18 months after the expiration of any period of declarant control under s. 703.15 (2) (c), whichever is later, establish a statutory reserve account unless the association, with the written consent of a majority of the unit votes, elects not to establish a statutory reserve account. Upon the establishment of or the election not to establish a statutory reserve account, the association shall execute a statutory reserve account statement.

(6) ELECTION BY ASSOCIATION TO ESTABLISH OR TERMINATE STATUTORY RESERVE ACCOUNT. (a) If an association elects not to establish a statutory reserve account under sub. (4) or (5), or if an association elects to terminate a statutory reserve account under par. (b), the association may at any time thereafter elect to establish a statutory reserve account with the written consent of a majority of the unit votes.

(b) An association may, at any time with the written consent of a majority of the unit votes, terminate a statutory reserve account established under par. (a) or sub. (3) (a), (4), or (5) except that a statutory reserve account established by a declarant under sub. (3) (a) may not be terminated until after the expiration of any period of declarant control under s. 703.15 (2) (c).

(c) Upon the establishment or termination of a statutory reserve account, the association shall execute a statutory reserve account statement.

(7) RESERVE FUND. If there is a statutory reserve account for the condominium, the annual budget adopted under s. 703.161 shall provide for reserve funds. Reserve funds may be used as provided in sub. (8). The association shall determine the amount to be assessed unit owners for reserve funds after considering all of the following:

(a) The reserve funds currently in the statutory reserve account.

(b) The estimated cost of repairing or replacing common elements, other than routine maintenance.

(c) The estimated remaining useful life of common elements.

(d) The approximate proportion of the estimated cost of repairing or replacing common elements that will be covered by the statutory reserve account and the approximate proportion that will be funded by other means.

(e) Any other factor that the association considers relevant.

(8) USE OF STATUTORY RESERVE ACCOUNT. (a) Except as provided in par. (b), funds in a statutory reserve account may be used for the repair and replacement of common elements, other than routine maintenance.

(b) Funds in a statutory reserve account may be used for normal repair or maintenance, customary services, or other operational costs in excess of amounts budgeted and any contingency funds available for these purposes, with the written consent of at least two-thirds of the unit votes. Funds from the statutory reserve account used under this paragraph must be replaced within 3 years from the date of withdrawal.

(9) PERMITTED INVESTMENT OF RESERVE FUNDS. Reserve funds may be invested in any of the investments listed under s. 66.0603 (1m) (a).

(10) LIABILITY IMMUNITY. No declarant, unit owner, association, or director, officer, manager, or employee of an association is liable in connection with the establishment or termination of, or decision not to establish or terminate, a statutory reserve account or for any deficiencies in the statutory reserve account that relate to the determination of amounts to be assessed for reserve funds. This subsection is in addition to any other liability protection available under law.

(11) RECORDING OF STATUTORY RESERVE ACCOUNT STATEMENT. Each statutory reserve account statement executed under this section shall bear the name of the condominium as it appears on the declaration, shall be prepared in the standard format for recorded documents under s. 59.43 (2m), and shall be recorded with the register of deeds of the county where the condominium instruments are recorded.

History: 2003 a. 283.

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.165 Lien for unpaid common expenses, unpaid damages, and unpaid penalties. (1) DEFINITION. In this section, “assessments” means regular and special assessments for common expenses and charges, fines, or assessments against specific units or unit owners for damages to the condominium or for penalties for violations of the declaration, bylaws, or association rules.

(2) LIABILITY FOR ASSESSMENTS. A unit owner shall be liable for all assessments, or installments thereof, coming due while owning a unit, including any assessments coming due during the pendency of any claim by the unit owner against the association or during any period in which the unit is not occupied by the unit owner or is leased or rented to any other person. In a voluntary grant, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his or her share of the common expenses up to the time of the voluntary grant for which a statement of condominium lien is recorded, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee for such assessments. Liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

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

ment of the assessment for which the lien is claimed, the unit owner shall be entitled to a satisfaction of the lien that may be filed with the clerk of circuit court.

(4) STATEMENT. Any grantee of a unit is entitled to a statement from the association or the executive board, setting forth the amount of unpaid assessments against the grantor. The grantee is not liable for, nor shall the unit conveyed be subject to a lien that is not filed under sub. (3) for, any unpaid assessment against the grantor in excess of the amount set forth in the statement. If an association or a board of directors does not provide such a statement within 10 business days after the grantee's request, they are barred from claiming under any lien that is not filed under sub. (3) prior to the request for the statement against the grantee.

(5) PRIORITY OF LIEN. A lien under this section is prior to all other liens except:

- (a) Liens of general and special taxes.
- (b) All sums unpaid on a first mortgage recorded prior to the making of the assessment.
- (c) Mechanic's liens filed prior to the making of the assessment.
- (d) All sums unpaid on any mortgage loan made under s. 45.80, 1989 stats.
- (e) A lien under s. 292.31 (8) (i) or 292.81.

(6) INTEREST ON UNPAID ASSESSMENT. Any assessment, or installment thereof, not paid when due shall bear interest, at the option of the association, from the date when due until paid at a rate not exceeding the highest rate permitted by law as stated in the bylaws.

(7) ENFORCEMENT OF LIEN. A lien may be enforced and foreclosed by an association or any other person specified in the bylaws, in the same manner, and subject to the same requirements, as a foreclosure of mortgages on real property in this state. An association may recover costs and actual attorney fees. An association may, unless prohibited by the declaration, bid on the unit at foreclosure sale and acquire, hold, lease, mortgage and convey the unit. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. Suit for any deficiency following foreclosure may be maintained in the same proceeding. No action may be brought to foreclose the lien unless brought within 3 years following the recording of the statement of condominium lien. No action may be brought to foreclose the lien except after 10 days' prior written notice to the unit owner given by registered mail, return receipt requested, to the address of the unit owner shown on the books of the association.

(8) FORM OF STATEMENT OF CONDOMINIUM LIEN. A statement of condominium lien is sufficient for the purposes of this chapter if it contains the following information and is substantially in the following form:

Statement of Condominium Lien

This is to certify that owner(s) of unit No. in Condominium (is) (are) indebted to the association in the amount of \$..... as of, (year) for (his) (her) (its) (their) (proportionate share of common expenses of the Condominium) (damages to the condominium) (penalties for violation of condominium declaration, bylaws, or rules) for the period from (date) to (date), plus interest thereon at the rate of%, costs of collection, and actual attorney fees.

Association
By:
Officer's title (or agent)
Address
Phone number

I hereby affirm under penalties of perjury that the information contained in the foregoing Statement of Condominium Lien is true and correct to the best of my knowledge, information, and belief.

.....

Officer (or agent)

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.17 Insurance. (1) An association shall obtain insurance for the property against loss or damage by fire and such other hazards for not less than full replacement value of the property insured and a liability policy covering all claims commonly insured against. Insurance coverage shall be written on the property in the name of the association as trustee for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses. Provisions for such insurance shall be without prejudice to the right of each unit owner to insure his or her own unit for personal benefit.

(2) Insurance proceeds shall first be disbursed by the trustees for the repair or restoration of the damaged common elements, and the unit owners and mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless the association has determined not to rebuild, or the court has ordered partition of the condominium property, or there is a surplus of insurance proceeds after the common elements have been completely repaired or restored.

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

703.18 Repair or reconstruction. (1) A declaration shall provide for the repair or reconstruction of the common elements in the event of damage to all or part of the common elements of the condominium.

(2) (a) Unless otherwise provided in the declaration, in the event of damage to or destruction of common elements of a condominium, the association shall promptly undertake to repair or reconstruct it to a condition compatible with the remainder of the condominium. All cost of the repair or reconstruction in excess of available insurance proceeds shall be a common expense.

(b) However, if a condominium is damaged to an extent more than the available insurance proceeds, the condominium shall be subject to an action for partition upon obtaining the written consent of the unit owners having 75% or more of the votes. In the case of partition, the net proceeds of sale together with any net proceeds of insurance shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage interests in the common elements, and shall be distributed in accordance with the priority of interests in each unit.

History: 1977 c. 407.

703.19 Eminent domain. (1) DEFINITION. In this section, "taking under the power of eminent domain" includes any sale in settlement of any pending or threatened condemnation proceeding.

(2) ALLOCATION OF AWARD; PROVISIONS IN DECLARATION OR BYLAWS. A declaration or bylaws may provide for an allocation of any award for a taking under the power of eminent domain of all or part of the condominium. A declaration or bylaws also may provide for:

(a) Reapportionment or other change of the percentage interests appurtenant to each unit remaining after any taking; and

(b) Rebuilding, relocation or restoration of any improvements so taken in whole or in part.

(3) ALLOCATION OF AWARD; IN ABSENCE OF PROVISIONS IN DECLARATION OR BYLAWS. Unless otherwise provided for in a declaration or bylaws, any damages for a taking of all or part of a condominium shall be awarded as follows:

(a) Every unit owner is entitled to the entire award for the taking of all or part of their respective unit and for consequential damages to their unit.

(b) Any award for the taking of limited common elements shall be allocated to the unit owners of the units to which the use of those limited common elements is restricted in proportion to their respective percentage interests in the common elements.

(c) In the event no reconstruction is undertaken, any award for the taking of common elements shall be allocated to all unit owners in proportion to their respective percentage interests in the common elements.

(4) RECONSTRUCTION FOLLOWING TAKING. Following the taking of all or a part of the common elements, an association shall promptly undertake to restore the improvements of the common elements to an architectural whole compatible with the existing structure. Any costs of such restoration in excess of the condemnation award shall be a common expense. However, if the taking under the power of eminent domain is to the extent where the remaining condominium portion has been diminished to the extent that reconstruction or restoration is not practical, a condominium shall be subject to an action for partition upon obtaining the written consent of the unit owners having 75% or more of the vote. In the case of partition, the net proceeds of sale, together with any net proceeds of the award for taking, shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage interest in the common elements and shall be distributed in accordance with the priority of interests in each unit.

(5) ADJUSTMENT OF PERCENTAGE INTERESTS FOLLOWING TAKING; EFFECT OF TAKING ON VOTES APPURTENANT TO UNIT. Following the taking of all or a part of any unit, the percentage interests appurtenant to the unit shall be adjusted in proportion as provided in the condominium instruments or bylaws. The association promptly shall prepare and record an amendment to the declaration reflecting the new percentage interests appurtenant to the unit. Subject to sub. (7), following the taking of part of a unit, the votes appurtenant to that unit shall be appurtenant to the remainder of that unit, and following the taking of all of a unit, the right to vote appurtenant to the unit shall terminate.

(6) PRIORITY IN DISTRIBUTION OF DAMAGES FOR EACH UNIT. All damages for each unit shall be distributed in accordance with the priority of interests at law or in equity in each respective unit.

(7) TAKING NOT TO INCLUDE PERCENTAGE INTERESTS OR VOTES. A taking of all or part of a unit may not include any of the percentage interests or votes appurtenant to the unit.

(8) PRESERVATION OF THE RIGHT OF APPEAL. The owner of each unit taken may appeal the necessity of the taking and the condemnation award made for the taking. A unit owner may appeal the necessity of the taking, and the condemnation award made for the taking, of the owner's interest in the common elements. The unit owners having an interest in the ownership of limited common elements may individually or as a group appeal the necessity of the taking or the condemnation award made for the taking of the limited common elements.

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.195 Acquisition of common elements by condemnors. (1) DEFINITIONS. In this section:

(a) "Acquire" means to obtain title to real property by purchase or condemnation.

(b) "Common elements" means all of a condominium except its units and any limited common elements.

(c) "Condemnor" means a person specified in s. 32.01 (1) who has the authority to condemn property under ch. 32.

(2) APPLICABILITY. This section applies to the acquisition by a condemnor of a portion of the common elements of a condominium that is created 6 months or more after November 1, 2004. This section is in addition to any applicable provision in ch. 32.

(3) NOTICE TO UNIT OWNERS AND ASSOCIATION. A condemnor who seeks to acquire a portion of the common elements of a condominium and who wishes to negotiate with the association instead of with each unit owner shall notify the association and each unit owner of the proposed acquisition, in writing, at least 30 days before delivery of the appraisal required under s. 32.05 (2)

(b) or 32.06 (2) (b). The notice to the unit owners shall be sent by certified mail, requesting a return receipt signed by the addressee only. Notice is deemed complete on the date the addressee acknowledges receipt. The notice required under this subsection is in addition to any notice required under s. 32.05 or 32.06 and shall be provided simultaneously with the pamphlets that are prepared under s. 32.26 (6) and provided under ss. 32.05 (2a) and 32.06 (2a). The condemnor is responsible for the expense of sending the notice under this subsection.

(4) CONTENT OF NOTICE TO UNIT OWNERS. The notice to the unit owners required under sub. (3) shall, at a minimum, contain all of the following:

(a) The name and address of the condemnor.

(b) The legal description of the property to be acquired.

(c) The public purpose for which the property is being acquired and a statement that the condemnor in good faith intends to use the property for that purpose.

(d) The following statement in substantially identical language, in at least 12–point bold type, if printed, or in capital letters, if typewritten:

THIS NOTICE IS REQUIRED BY SECTION 703.195 OF THE WISCONSIN STATUTES. SECTION 703.195 OF THE WISCONSIN STATUTES PROVIDES THAT THE CONDOMINIUM ASSOCIATION OF WHICH YOU ARE A MEMBER MUST ACT AS YOUR AGENT TO CONVEY YOUR INTEREST IN THE AFFECTED PORTION OF THE CONDOMINIUM'S COMMON ELEMENTS IF YOU WISH. HOWEVER, YOU HAVE THE RIGHT TO NEGOTIATE WITH THE (NAME OF ACQUIRING AGENCY) ON YOUR OWN AND MAY REFUSE TO BE REPRESENTED BY THE ASSOCIATION.

IN ORDER FOR YOU TO PROCEED TO NEGOTIATE WITH THE (NAME OF ACQUIRING AGENCY) ON YOUR OWN, YOU MUST WITHIN 30 DAYS AFTER RECEIPT OF THIS NOTICE SIGN THIS DOCUMENT AT THE INDICATED LOCATION AND DEPOSIT IT IN THE UNITED STATES MAIL. (NAME OF ACQUIRING AGENCY) HAS ENCLOSED FOR YOUR CONVENIENCE A POSTAGE PREPAID, ADDRESSED ENVELOPE FOR THIS PURPOSE. FAILURE TO SIGN AND RETURN THIS NOTICE MEANS THAT YOU CONSENT TO THE ASSOCIATION ACTING AS YOUR AGENT TO NEGOTIATE AND CONVEY YOUR INTEREST IN THE AFFECTED PORTION OF THE CONDOMINIUM'S COMMON ELEMENTS.

IF THE ASSOCIATION ACTS AS YOUR AGENT, YOU WILL BE LEGALLY BOUND BY ANY DECISION OF THE ASSOCIATION'S BOARD OF DIRECTORS RELATING TO THE CONVEYANCE OF YOUR INTEREST IN THE AFFECTED PORTION OF THE CONDOMINIUM'S COMMON ELEMENTS. REGARDLESS OF WHETHER YOU CHOOSE TO NEGOTIATE ON YOUR OWN OR TO ALLOW THE ASSOCIATION OR ANY OTHER PERSON OR ENTITY TO NEGOTIATE ON YOUR BEHALF, YOU WILL RETAIN ALL RIGHTS TO CHALLENGE THE RIGHT OF CONDEMNATION, THE NECESSITY OF CONDEMNATION, OR ANY AMOUNT OF COMPENSATION AVAILABLE TO YOU UNDER CHAPTER 32 OF THE WISCONSIN STATUTES.

(e) A prominent place for the unit owner to sign his or her name to indicate the unit owner's objection to the association acting as the agent for the unit owner in the conveyance of the common elements at issue.

(5) METHOD OF OBJECTING BY UNIT OWNER. A unit owner who objects to the association acting as the agent for the owner shall indicate the objection as provided on the form under sub. (4) (e) and send the form, within 30 days after the notice under sub. (3) is received, to the condemnor by U.S. mail to the address indicated on the notice. The objection is made when the completed form is mailed to the condemnor. Before initiating negotiations with the

unit owner under s. 32.05 (2a) or 32.06 (2a), the condemnor shall provide the association and those unit owners who have objected a written list of all of the unit owners who have objected.

(6) NO OBJECTION BY UNIT OWNER; ASSOCIATION AS AGENT. If a unit owner does not timely object under sub. (5), the unit owner is deemed to have consented to the association acting as the unit owner's agent in the conveyance of the common elements at issue and the association shall act as the agent for the unit owner in the conveyance to the condemnor of the unit owner's interest in the common elements at issue. Failure of the unit owner to object within the required time does not affect any other rights of the unit owner under ch. 32.

(7) METHOD OF CONVEYANCE. The association shall execute any conveyance under this section as the agent for each of the unit owners who did not timely object under sub. (5). Those unit owners shall be identified, by name, on the conveyance.

(8) OBJECTION BY UNIT OWNER; UNIT OWNER RETAINS RIGHTS. A unit owner who timely objects under sub. (5) retains all of his or her rights under ch. 32 with regard to the acquisition of the common elements at issue and to unit ownership.

History: 2003 a. 283.

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.20 Books of receipts and expenditures.

(1) RECORD KEEPING; AVAILABILITY FOR EXAMINATION. An association shall keep detailed, accurate records using standard book-keeping procedures of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours.

(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.

(3) DECLARANT RESPONSIBILITIES FOR RECORDS. During the period of declarant control under s. 703.15 (2) (c), the declarant is responsible for creating and maintaining the financial and operational records of the association and shall turn the records over to the directors elected under s. 703.15 (2) (f). During the period of declarant control under s. 703.15 (2) (c) and for one year thereafter, upon written request to the association by the lesser of 3 unit owners or the owners of 10% of the units, not including units owned by the declarant, the association shall arrange for an independent audit of its financial records at the association's expense. The cost of any audit requested within 36 months after the completion of a previous audit shall be paid for by the requesting unit owners.

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.21 Separate taxation. (1) Every unit and its percentage of undivided interest in the common elements shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit and special district for all types of taxes authorized by law including, but not limited to, special levies based on the value of property and special assessments. Neither the building, the property nor any of the common elements shall be deemed to be a parcel separate from the unit.

(2) The rights, duties and obligations of unit owners under this chapter shall inure to and be binding upon grantees under tax deeds and persons acquiring title by foreclosure of tax liens and their successors in interest.

History: 1977 c. 407; 1979 c. 110.

703.22 Mechanics' and suppliers' liens. (1) Subsequent to recording a declaration under this chapter and while the prop-

erty remains subject to this chapter, any and all liens will exist only against individual units and the percentage of undivided interest in the common elements appurtenant to such unit, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

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

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

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

Because the statute is silent as to the amount each unit should pay when a blanket lien is filed, application of the equitable principal that the lien should be applied proportionately against each unit was appropriate. *Torke/Wirth/Pujara v. Lakeshore Towers*, 192 Wis. 2d 481, 531 N.W.2d 419 (Ct. App. 1995).

703.23 Resident agent; exemption of unit owners from liability.

(1) APPOINTMENT OF RESIDENT AGENT; CHANGE IN NAME OR ADDRESS. When any property is submitted to a condominium declaration, the declarant shall appoint a resident agent for the condominium who shall be a citizen and actual resident of the state or corporation duly registered or qualified to do business in the state. The declarant shall file the name and address of the resident agent with the department of financial institutions. The name or address of the resident agent may be changed by the association or other proper authority of the condominium in the same manner and to the same extent that names and addresses of registered agents may be changed by corporations. If the association is incorporated, the registered agent for the association shall be the registered agent for the condominium.

(2) INDEX OF NAMES AND ADDRESS OF RESIDENT AGENTS. The department of financial institutions shall keep an index of the names and addresses of resident agents and shall make the information available to the public on request.

(3) SUITS BROUGHT BY SERVICE ON RESIDENT AGENT. Suit may be brought by service on the resident agent in actions against an association, or which arise through any cause relating to the common elements.

(4) EXEMPTION OF UNIT OWNERS FROM LIABILITY FOR CERTAIN CLAIMS. Except in proportion to his or her percentage interest in the common elements, no unit owner personally is liable for damages as a result of injuries arising in connection with the common elements solely by virtue of his or her ownership of a percentage interest in the common elements, or for liabilities incurred by the association.

History: 1977 c. 407; 1995 a. 27.

703.24 Remedies for violations by unit owner or tenant of a unit owner. (1) DEFINITION. In this section, "violation" means failure to comply with this chapter or the declaration, bylaws, or association rules.

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

(3) LIABILITY FOR VIOLATION BY TENANT. (a) If a tenant of a unit commits a violation that results in a charge, fine, or assessment imposed by the association pursuant to the bylaws or association rules, the tenant is liable for the charge, fine, or assessment.

(b) If the association complies with the notice requirement of sub. (4), the owner of the unit occupied by the tenant when the violation occurred is liable for any charges, fines, or assessments imposed by the association for which the tenant is liable under par. (a) that are not paid by the tenant within 30 days after receiving the notice under sub. (4). This paragraph does not affect the liability of the tenant to the unit owner for any charges, fines, or assessments paid by the unit owner under this paragraph.

(4) NOTICE REQUIREMENT FOR VIOLATION BY TENANT. If an association imposes a charge, fine, or assessment as a result of a violation by a tenant of a unit in the condominium, the association shall give notice to the tenant by any method under s. 704.21 (1) (a) to (e) and to the owner of the unit occupied by the tenant by any method under s. 704.21 (2) (a) to (d). The notice shall include all of the following:

(a) The amount of charges, fines, or assessments for which the tenant is liable.

(b) Notice that if the tenant fails to pay the association the amount for which the tenant is liable within 30 days after the tenant receives the notice, the owner is liable to the association for the amount unpaid by the tenant although the tenant may be liable to the unit owner for any amounts the unit owner pays.

(5) OTHER LIABILITY NOT AFFECTED. This section does not otherwise affect the liability of a unit owner or tenant who commits a violation.

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.25 Tort and contract liability. (1) An action for tort alleging a wrong done by any agent or employee of a declarant or of an association, or in connection with the condition of any portion of a condominium which a declarant or an association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue of its ownership of an undivided interest in the common elements or by reason of its membership in the association or its status as an officer.

(2) An action arising from a contract made by or on behalf of an association shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved under the declaration. No unit owner shall be precluded from bringing such an action by reason of its membership in the association or its status as an officer.

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

History: 1977 c. 407.

Sections 703.25 (3) and 840.10 (1) permit the filing of a *lis pendens* in an action for a money judgment against a condominium association as a judgment will be a lien against each condominium unit although their owners are not defendants in the action. *Interlaken Service Corporation v. Interlaken Condominium Association*, 222 Wis. 2d 299, 588 N.W.2d 262 (Ct. App. 1998), 97–1107.

703.26 Expanding condominiums. (1) DECLARANT MAY RESERVE RIGHT TO EXPAND. A declarant may reserve the right to expand a condominium by subjecting additional property to the condominium declaration in such a manner that as each additional property is subjected to the condominium declaration, the percentage of undivided interests in the common elements of the preceding and new property shall be reallocated between the unit owners on the basis of the aggregate undivided interest in the common elements appertaining to the property.

(2) CONDITIONS TO WHICH RESERVATION SUBJECT. A reservation of the right to expand a condominium is subject to the conditions provided in this subsection.

(a) A declaration establishing a condominium shall describe each parcel of property which may be added to the condominium.

(b) A declaration establishing a condominium shall show the maximum number of units which may be added, and the percentage interests in the common elements, the liabilities for common expenses and the rights to common surpluses, and the number of votes appurtenant to each unit following the addition of property to the condominium, if added. The percentage interests in the common elements, the liabilities for common expenses and the rights to common surpluses, and the number of votes that each unit owner will have may be shown by reference to a formula or other appropriate method of determining them following each expansion of the condominium.

(c) A condominium plat for an original condominium shall include, in general terms, the outlines of the land, buildings, and common elements of new property that may be added to the condominium.

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

(3) RECORDATION OF AMENDMENTS TO DECLARATION AND PLAT.

(a) If the conditions of sub. (2) are complied with, property may be added to a condominium if the declarant records an amendment to the declaration, showing the new percentage interests of the unit owners, and the votes which each unit owner may cast in the condominium as expanded, and records an addendum to the condominium plat that includes the detail and information concerning the new property as required in the original condominium plat.

(b) On recording of an amendment of a declaration and an addendum to a plat, each unit owner, by operation of law, has the percentage interests in the common elements, liabilities in the common expenses, rights to common surpluses, and shall have the number of votes, set forth in the amendment to the declaration. Following any expansion, the interest of any mortgagee shall attach, by operation of law, to the new percentage interests in the common elements appurtenant to the unit on which it is a lien.

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

Substantial compliance with formal requirements as permitted by s. 703.30 (2) is limited to the condominium status of the property and title of the unit owners. It does not apply to a project's status as an expanding condominium under this section. *Rock Lake Estates Unit Owners Association, Inc. v. Town of Lake Mills*, 195 Wis. 2d 348, 536 N.W.2d 415 (Ct. App. 1995), 94–2488.

703.265 Addendum to plat to reflect changes in building codes or zoning ordinances. (1) If the revision or adoption of a building code or zoning ordinance prevents or substantially affects the construction of a unit or common elements as platted, the declarant may reasonably modify the condominium plat, by addendum, to the extent necessary to comply with the code or ordinance in order to construct the unit or common elements.

(2) If the revision or adoption of a building code or zoning ordinance prevents or substantially affects the reconstruction of a unit or common element as platted, the declarant, unit owner, or association, as appropriate, may reasonably modify the condominium plat, by addendum, to the extent necessary to comply with the code or ordinance in order to reconstruct the unit or common elements.

(3) An addendum made under this section shall be recorded as provided under s. 703.095.

History: 2003 a. 283.

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.27 Zoning and building regulations. (1) A zoning or other land use ordinance or regulations may not prohibit the condominium form of ownership or impose any requirements upon a condominium that it would not impose if the development were under a different form of ownership. No provision of a state or local building code may be applied differently to a building in a condominium than it would be applied if the building were under a different form of ownership unless the different application is expressly permitted in that provision and the different application

is reasonably related to the nature of condominium ownership. No subdivision ordinance may apply to any condominium unless the ordinance is, by its express terms, applicable to condominiums and the application is reasonably related to the nature of condominium ownership.

(2) No county, city, or other jurisdiction may enact any law, ordinance, or regulation that would impose a greater burden or restriction on a condominium or provide a lower level of services to a condominium than would be imposed or provided if the condominium were under a different form of ownership.

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.275 Merger or consolidation of condominiums.

(1) **AGREEMENT; LEGAL EFFECT.** Any 2 or more condominiums, including 2 or more small condominiums or any combination of small condominiums and other 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. The resultant condominium must bear the name of one of the preexisting condominiums.

(2) **REALLOCATION OF INTERESTS.** (ac) In this subsection, “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.

(bc) The merger or consolidation agreement shall provide for the reallocation 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:

1. The reallocations or the formulas upon which they are based.
2. 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 75% of the votes in each preexisting association are allocated. If the declaration of a preexisting association specifies that a percentage greater than 75% 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.** Both a restatement of the declaration of the resultant condominium that includes the merger agreement and an addendum to the condominium plat of the resultant condominium shall be recorded as provided in s. 703.07. The register of deeds shall reference the document number, volume and page of the plat of the resultant condominium on the plat of the preexisting condominium and shall note that the preexisting condominium has been merged.

History: 1985 a. 188; 1997 a. 333; 2003 a. 283.

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.28 Removal from provisions of this chapter.

(1) All of the unit owners may remove all or any part of the property from the provisions of this chapter by a removal instrument, duly recorded, provided that the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property.

(1m) (a) If the merger of 2 or more condominiums under s. 703.275 would result in the creation of a new plat for the resultant condominium, the property of the preexisting condominiums shall first be removed from the provisions of this chapter by recording a removal instrument.

(b) Before a certified survey map, condominium plat, subdivision plat or other plat may be recorded and filed for the same property, the condominium shall first be removed from the provisions of this chapter by recording a removal instrument.

(2) Upon removal of any property from this chapter, the property shall be deemed to be owned in common by the unit owners. The undivided interest in the property owned in common which appertains to each unit owner shall be the percentage of undivided interest previously owned by the owner in the common elements.

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

703.29 Removal no bar to subsequent resubmission.

The removal provided for in s. 703.28 shall in no way bar the subsequent resubmission of the property to this chapter.

History: 1977 c. 407.

703.30 Rules of construction. (1) **CERTAIN RULES OF LAW NOT APPLICABLE.** Neither the rule of law known as the rule against perpetuities nor the rule of law known as the rule restricting unreasonable restraints on alienation may be applied to defeat or invalidate any provision of this chapter or of any condominium instruments, bylaws or other instrument made pursuant to this chapter.

(2) **SUBSTANTIAL CONFORMITY OF CONDOMINIUM INSTRUMENTS AND BYLAWS SUFFICIENT.** The provisions of any condominium instruments and bylaws filed under this chapter shall be liberally construed to facilitate the creation and operation of the condominium. So long as the condominium instruments and bylaws substantially conform with the requirements of this chapter, no variance from the requirements shall affect the condominium status of the property in question nor the title of any unit owner to his or her unit, votes and percentage interests in the common elements and in common expenses and common surpluses.

(3) **PROVISIONS OF CONDOMINIUM INSTRUMENTS AND BYLAWS SEVERABLE.** All provisions of condominium instruments and bylaws are severable and the invalidity of one provision does not affect the validity of any other provision.

(4) **CONFLICTS IN PROVISIONS.** If there is any conflict between any provisions of a declaration and provisions of a condominium plat or any provisions of the bylaws, the provisions of the declaration shall control. If there is any conflict between any provisions of any condominium instruments and any provisions of any bylaws, the provisions of the condominium instruments shall control. If there is any conflict between any provisions of any condominium instruments or any provisions of any bylaws and any provisions of this chapter, the provisions of this chapter shall control.

(5) **INSTRUMENTS CONSTRUED TOGETHER.** Condominium instruments shall be construed together and are determined to incorporate one another to the extent that any requirement of this chapter applying to one instrument is satisfied if the deficiency can be corrected by reference to any of the others.

History: 1977 c. 407.

The application of this section is limited to the condominium status of the property and title of the unit owners. It does not apply to a project's status as an expanding condominium under s. 703.26. Rock Lake Estates Unit Owners Association, Inc. v. Town of Lake Mills, 195 Wis. 2d 348, 536 N.W.2d 415 (Ct. App. 1995), 94–2488.

703.31 Personal application. (1) All unit owners, tenants of the owners, employees of owners and tenants or any other persons that in any manner use property or any part thereof subject

to this chapter shall be subject to this chapter and to the declaration and bylaws of the association adopted under this chapter.

(2) All agreements, decisions and determinations lawfully made by an association in accordance with the voting percentages established in this chapter, declaration or bylaws, shall be deemed to be binding on all unit owners.

History: 1977 c. 407.

703.315 Lease or rental agreements for residential units. (1) DEFINITIONS. In this section:

(a) “Condominium rental agreement” means an agreement, whether oral or written, for the rental or lease of a residential condominium unit by the same tenant for a period of more than one month.

(b) “Tenant” means any of the following:

1. A person occupying or entitled to present or future occupancy of a residential condominium unit under a condominium rental agreement.

2. A periodic tenant, as defined in s. 704.01 (2), of a residential condominium unit that pays rent on a month-to-month or greater recurring interval of time.

(c) “Unit owner” means the owner of a unit that is rented or leased under a condominium rental agreement or by a periodic tenant.

(2) AGREEMENT FOR COMPLIANCE. Entering into a condominium rental agreement constitutes an agreement by the tenant, as a condition of the condominium rental agreement, to comply with this chapter, the rules and bylaws of the association, and the provisions of the declaration. Entitlement to occupancy of a unit as a periodic tenant, as described in sub. (1) (b) 2., constitutes an agreement by the periodic tenant, as a condition of the tenancy, to comply with this chapter, the rules and bylaws of the association, and the provisions of the declaration.

(3) COPY OF WRITTEN AGREEMENT TO ASSOCIATION. Within 5 business days after entering into or renewing a written condominium rental agreement, the unit owner shall provide a copy of the agreement to the association. The association shall keep a copy of any condominium rental agreement on file while the agreement is in effect.

(4) CONTACT OF UNIT OWNER AND TENANT BY ASSOCIATION. The association may contact or give notice to the tenant or unit owner by:

(a) Making the contact or giving the notice by the means indicated by the tenant or unit owner in writing to the association.

(b) If par. (a) does not apply, by any method under s. 704.21 (1) (a) to (e), in the case of the tenant, or by any method under s. 704.21 (2) (a) to (d), in the case of the unit owner.

(5) COPY OF CONDOMINIUM DOCUMENTS TO TENANT. Before a tenant occupies a unit, the unit owner shall provide a copy of the declaration and the association bylaws and rules to the tenant or place the information in the unit.

(6) TIME SHARE NOT COVERED. This section does not apply to a time-share unit governed under ch. 707.

History: 2003 a. 283.

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.32 Easements and encroachments. (1) PRESUMPTION AS TO EXISTING PHYSICAL BOUNDARIES. Any existing physical boundaries of any unit or common elements constructed or reconstructed in substantial conformity with the condominium plat shall be conclusively presumed to be its boundaries, regardless of the shifting, settlement or lateral movement of any building and regardless of minor variations between the physical boundaries as described in the declaration or shown on the condominium plat and the existing physical boundaries of any such unit or common element. This presumption applies only to encroachments within the condominium.

(2) ENCROACHMENT AS RESULT OF AUTHORIZED CONSTRUCTION, RECONSTRUCTION OR REPAIR. If any portion of any common ele-

ment encroaches on any unit or if any portion of a unit encroaches on any common element, as a result of the duly authorized construction, reconstruction or repair of a building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the building stands.

(3) EASEMENTS INCLUDED IN GRANT OF UNIT. A grant or other disposition of a condominium unit shall include and grant and be subject to any easement arising under the provisions of this section without specific or particular reference to the easement.

(4) ASSOCIATION’S RIGHT OF ENTRY TO MAKE REPAIRS. An association shall have an irrevocable right and an easement to enter units to make repairs to common elements when the repairs reasonably appear necessary for public safety or to prevent damage to other portions of the condominium. Except in cases involving manifest danger to public safety or property, an association shall make a reasonable effort to give notice to the owner of any unit to be entered for the purpose of such repairs. No entry by an association for the purposes specified in this subsection may be considered a trespass.

History: 1977 c. 407.

703.33 Disclosure requirements. (1) MATERIAL TO BE FURNISHED BY SELLER TO PURCHASER BEFORE CLOSING. Not later than 15 days prior to the closing of the sale of a unit to a member of the public, the seller shall furnish to 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.

(d) A copy of the projected annual operating budget for the condominium including reasonable details concerning the estimated monthly payments by the purchaser for assessments, and monthly charges for the use, rental or lease of any facilities not part of the condominium.

(e) A copy of any lease to which it is anticipated the unit owners or the association will be a party following closing.

(f) A description of any contemplated expansion of the condominium with a general description of each stage of expansion and the maximum number of units that can be added to the condominium.

(g) A copy of the floor plan of the unit together with the information that is necessary to show the location of the common elements and other facilities to be used by the unit owners and indicating which facilities will be part of the condominium and which facilities will be owned by others.

(h) An executive summary setting forth in clear plain language the following information or location within the disclosure materials described in pars. (a) to (g) where the information may be found:

1. ‘Condominium identification.’ The name of the condominium.

2. ‘Expansion plans.’ A description of the declarant’s expansion plan for the condominium and deadline for implementation and the identity of the condominium management during the expansion period.

3. ‘Governance.’ The name and address of the condominium association; whether the association is self-managed or has hired or retained management; and the name, address, and telephone number of the individual or individuals who may be contacted regarding the condominium in general.

4. ‘Special amenities.’ A description of any special amenities, such as an athletic club or golf course, and a statement of the obligation of a unit owner to join or support the amenity.

5. ‘Maintenance and repair of units.’ A description of an owner’s responsibilities for the repair and maintenance of the unit.

6. ‘Maintenance, repair, and replacement of common elements.’ The identity of the person responsible for the maintenance, repair, and replacement of common elements and limited common elements and whether repairs or replacements will be funded from unit owner assessments, reserve funds, or both.

7. ‘Rental of units.’ Whether unit owners may rent their units and any restrictions on rentals.

8. ‘Unit alterations.’ A description of any rules, restrictions, or procedures governing a unit owner’s authority to alter the unit or use or enclose limited common elements.

9. ‘Parking.’ A description of the availability, restrictions, and costs of parking.

10. ‘Pets.’ A description of rules relating to unit owners’ pets.

11. ‘Reserves.’ Whether the association maintains reserves for repairs and replacement of common elements beyond routine maintenance and, if so, whether a statutory reserve account under s. 703.163 is maintained.

11m. ‘Fees on new units.’ 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 the declarant’s control, and any other provisions in the declaration, bylaws, or budget addressing the levying and payment of assessments on units during the period of the declarant’s control.

11q. ‘Amendments.’ 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.

12. ‘Other restrictions or features.’ At the option of the declarant or association a description of other restrictions or features of the condominium.

(1m) PREPARATION OF EXECUTIVE SUMMARY. The executive summary under sub. (1) (h) shall be prepared, and subsequently revised whenever a change is made in the disclosure materials described in sub. (1) (a) to (g) that requires a revision of a statement in the summary, by the declarant or the association, whichever is in control of the condominium when the executive summary is prepared or revised.

(2) DISCLOSURE FORM. The materials required in sub. (1) shall be delivered to a prospective purchaser with cover sheet, index, and tables of contents as prescribed in this section. A cover sheet and index shall precede all other materials required in sub. (1). The executive summary required under sub. (1) (h) shall appear immediately following the index. A table of contents shall precede the section to which it applies.

(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, WITH THE EXCEPTION OF THE EXECUTIVE SUMMARY, BE RELIED UPON AS CORRECT AND BINDING. FOR A COMPLETE UNDERSTANDING OF THE EXECUTIVE SUMMARY, CONSULT THE DISCLOSURE DOCUMENTS TO WHICH A PARTICULAR

EXECUTIVE SUMMARY STATEMENT PERTAINS. 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. IF THE SELLER DELIVERS LESS THAN ALL OF THE DOCUMENTS REQUIRED, YOU MAY, WITHIN 5 BUSINESS DAYS FOLLOWING RECEIPT OF THE DOCUMENTS, DELIVER A REQUEST FOR ANY MISSING DOCUMENTS. IF YOU TIMELY DELIVER A REQUEST FOR MISSING DOCUMENTS, YOU MAY, AT ANY TIME WITHIN 5 BUSINESS DAYS FOLLOWING THE EARLIER OF EITHER THE RECEIPT OF THE REQUESTED DOCUMENTS OR THE SELLER’S DEADLINE TO DELIVER THE REQUESTED 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 seller is required by law to provide to each prospective condominium purchaser contains the following documents and exhibits:

1c. ‘Executive summary.’ The executive summary highlights for a buyer of a condominium unit essential information regarding the condominium. The executive summary begins on page

1m. ‘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 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

(c) *Tables of contents and page numbers.* In addition to an index required by par. (b), tables of contents for the declaration and bylaws shall be provided, identifying each section of these documents and providing a page number for each section. Each section of disclosure material required in sub. (1) shall, on the first page of that material, identify contents of that section but, with the

exception of the declaration and bylaws, is not required to have a table of contents. Each section of disclosure material shall be separately identified by a letter, tab, or number. Pages within each section shall be consecutively numbered with an indication of the section as part of the pagination.

(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.

(d) *Additions or exclusions.* All materials required by this section shall be delivered to a prospective purchaser with disclosure materials required under sub. (1) except that articles of incorporation, leases and expansion plans of the index need not be included if they clearly do not apply.

(3c) DELIVERY OF INCOMPLETE SET OF DISCLOSURE MATERIALS. If the seller delivers disclosure materials that include the cover sheet required in sub. (2) (a), but that do not include all of the documents required under sub. (1), the purchaser may, within 5 business days from receipt of the disclosure materials, request any documents that were required to be delivered under sub. (1), but that were not timely delivered. If no executive summary required under subs. (1) (h) and (1m) has been prepared, the seller may so inform the purchaser when the seller delivers the disclosure materials to the seller. The seller has 5 business days following receipt of the purchaser's request to deliver the requested documents to the purchaser.

(3m) CHANGE IN MATERIAL FOLLOWING DELIVERY TO PURCHASER. Any material furnished under sub. (1) may not be changed or amended following delivery to a purchaser, if the change or amendment would affect materially the rights of the purchaser, without first obtaining approval of the purchaser. A copy of amendments shall be delivered promptly to the purchaser.

(4) PURCHASER'S RIGHT TO RESCIND CONTRACT OF SALE. (a) Any purchaser may at any time within 5 business days following receipt of all of the documents required under sub. (1) and within 5 business days following receipt of all of the amendments required under sub. (3m), rescind in writing a contract of sale without stating any reason and without any liability on his or her part.

(b) If the disclosure materials delivered by the seller do not include all the documents required under sub. (1), the purchaser may rescind in writing a contract of sale without stating any reason and without any liability on his or her part as follows:

1. If the purchaser does not give notice requesting missing documents under sub. (3c), the purchaser may rescind within 5 business days following receipt of the incomplete disclosure materials.

2. If the purchaser gives notice requesting missing documents under sub. (3c), the purchaser may rescind within 5 business days following the earlier of receipt of the requested documents or the deadline, under sub. (3c), for the seller's delivery of the requested missing documents.

(c) A purchaser who timely rescinds under par. (a) or (b) is entitled to the return of any deposits made under the contract.

(5) UNTRUE STATEMENT OR OMISSION OF MATERIAL FACT. Any 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.

(6) WAIVER OF PURCHASER'S RIGHT. Rights of purchasers under this section may not be waived in the contract of sale and any attempt to waiver is void. However, if the purchaser proceeds to closing, the purchaser's right under this section to rescind is terminated.

(7) SALE OF UNIT FOR NONRESIDENTIAL PURPOSES. Requirements of this section do not apply to a sale of any unit which is primarily intended to be occupied and used for nonresidential purposes.

(8) LOCATION OF CONDOMINIUM IMMATERIAL. Requirements of this section shall apply to a sale of any unit offered for sale in this state without regard to the location of a condominium.

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

Tips for Representing Condominium Sellers. Hagopian. Wis. Law. May 1993.

703.34 Blanket mortgages and other blanket liens affecting a unit at time of first conveyance. As a condition to the first transfer of title to each unit:

(1) Every mortgage and other lien affecting such unit, including the undivided interest in the common areas and facilities appurtenant to such unit, shall be paid and satisfied of record;

(2) A unit being transferred and an undivided interest in the common areas and facilities appurtenant thereto shall be released by partial release duly recorded; or

(3) A mortgage or other lien shall provide for or be amended to provide for a release of the unit and the undivided interest in the common areas and facilities appurtenant thereto from the lien of a mortgage or other lien upon the payment of a sum certain.

History: 1977 c. 407.

703.35 Termination of contracts and leases. If entered into before the officers elected by the unit owners under s. 703.10 take office, any management contract, employment contract, lease of recreational or parking areas or facilities, any contract or lease to which a declarant or any person affiliated with the declarant is a party and any contract or lease which is not bona fide or which was not commercially reasonable to unit owners when entered into under the circumstances then prevailing, may be terminated by the association or its executive board at any time without penalty upon not less than 90 days' notice to the other party thereto. This section does not apply to any lease the termination of which would terminate the condominium.

History: 1977 c. 407.

To be terminable under this section as a "contract or lease to which a declarant or any person affiliated with the declarant is a party," the contract must presently bind the condominium association contractually to the person or entity that declared the condominium or to some person or entity affiliated with the declarant. *Hunt Club Condominiums, Inc. v. Mac-Gray Services, Inc.* 2006 WI App 167, 295 Wis. 2d 780, 721 N.W.2d 117, 05–1674.

703.36 Provisions requiring employment of declarant or vendor to effect sale. Any provision of a declaration or other instrument made pursuant to this chapter which requires the owner of a unit to engage or employ the declarant or any subsidiary or affiliate of the declarant for the purpose of effecting a sale or lease of any unit is void. Any provision of any contract for a sale of any unit which requires a purchaser to engage or employ the vendor or any subsidiary or affiliate of the vendor for the purpose of effecting a sale or lease of any unit is void. This section applies to declarations, instruments and contracts made prior to and after August 1, 1978.

History: 1977 c. 407.

703.365 Small condominiums. **(1) APPLICABILITY.** (a) The declaration for a small condominium may provide that any or

all of subs. (2) to (8) or any parts of those subsections apply to the small 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 condominium in the same manner and to the same extent as to other condominiums.

(2) DECLARATION. (a) The declaration for a small 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 condominium is allocated equally among the units.

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

(d) Commercial activity is permitted in a small condominium that consists solely of units restricted to residential uses only to the extent that commercial activity is permitted in residences in a zoning ordinance adopted under s. 59.69, 60.61, 61.35, or 62.23.

(e) All actions taken under this chapter that 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 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 condominium shall be delegated to the board of directors, which may retain a manager, including a master association under s. 703.155, for the small 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 all units of a small condominium, and the bylaws shall so specify.

(c) Section 703.10 (2) (d) does not apply to a small 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 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 condominium.

(3m) AGREEMENT IN LIEU OF BYLAWS. If approved by written consent of all of the unit votes of a small condominium, an agreement may be substituted for the bylaws under sub. (3). The terms of the agreement shall include the requirements of sub. (3) (a) to (d) and shall be consistent with this section. An amendment to an agreement may be made with the affirmative vote or written consent of all the unit votes of the small 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 that are part of the small 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 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 agreement, 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 condominium and the declarant shall have rights in the association only as an owner of a unit or units.

(b) Directors of a small 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 condominium.

(6) EXPENSES; MAINTENANCE; OPERATION. (a) Paragraphs (b) to (e) apply to a small 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 condominium that 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 condominium.

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

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.37 Interpretation. For purposes of interpretation of this chapter, a condominium is a form of ownership, not a form of land use, and is not a subdivision as defined in ch. 236.

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

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.38 Applicability to existing condominiums.

(1) Except as otherwise provided in this section and s. 30.1335, this chapter is applicable to all condominiums, whether established before or after August 1, 1978. However, with respect to condominiums existing on August 1, 1978, the declaration, bylaws or condominium plat need not be amended to comply with the requirements of this chapter.

(2) Section 703.10 (5) is not applicable to a condominium existing on August 1, 1978 if the existing declaration or bylaws provide otherwise.

(3) Section 703.15 (4) (c) and (d) 2. are not applicable to a condominium existing on August 1, 1978 if the existing declaration or bylaws provide otherwise.

(4) Section 703.18 is applicable only to those condominiums which are damaged or destroyed on or after August 1, 1978.

(5) Section 703.19 is applicable only to those eminent domain proceedings filed on or after August 1, 1978.

(6) Unless a declarant elects to conform to the requirements of s. 703.26, s. 703.26 is not applicable to those condominiums created prior to August 1, 1978 under circumstances where the declarant reserved the right to expand the condominium.

(7) Section 703.33 is applicable only to contracts executed after August 1, 1978.

(8) Section 703.35 is applicable only to leases or management and similar contracts executed after August 1, 1978.

(9) Unless the declaration is amended as provided under s. 703.09 (2), 1983 stats., to provide otherwise, a condominium created prior to April 22, 1986, is subject to s. 703.09 (2), 1983 stats., rather than s. 703.09 (2).

(10) (a) Except as provided in par. (b), s. 703.02 (14m), 2001 stats., and s. 703.365, 2001 stats., apply to condominiums created on or after April 22, 1986, and before November 1, 2004, and to condominiums created before April 22, 1986, that elect to be subject to s. 703.02 (14m), 2001 stats., and s. 703.365, 2001 stats.

(b) Sections 703.02 (14m) and 703.365 apply to condominiums created on or after November 1, 2004, and to condominiums created before November 1, 2004, that elect to be subject to ss. 703.02 (14m) and 703.365.

History: 1977 c. 407; 1985 a. 188; 2003 a. 283; 2007 a. 20.

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.