STANDING COMMITTEES:
Natural Resources & Energy, Chair
Transportation & Local Government, Vice-Chair

ROBERT L. COWLES
Wisconsin State Senator
2nd Senate District

JOINT COMMITTEES:
Audit Committee, Co-Chair

Testimony on 2021 Senate Bill 561

Senator Robert Cowles
Senate Committee on Housing, Commerce and Trade
December 7th, 2021

Thank you, Chairman Jagler and Committee Members, for holding a hearing and allowing me to submit testimony on 2021 Senate Bill 561. This bill authorizes a unit owner to access the financial records of their condo association.

Over the past couple of decades, Wisconsin has seen a surge in condominium developments. As residents buying into condos can attest, there's many benefits to owning a condo, but there may be downsides as well, including the trust that a unit owner must have in efforts taken by the condominium association taken on their behalf. While many unit owners and condominium associations have strong, mutually-beneficial relationships, unfortunately some of these relationships have led to frustration, mistrust, and even hardship for unit owners. Building off the success of 2019 Act 168 which established a statutory dispute resolution process to help aggrieved unit owners and condominium association leaders avoid costly and lengthy litigation, Senate Bill 561 continues the efforts we're taking to safeguard against a souring of these relationships.

A few years back, constituents with condos in Northeast Wisconsin approached my office and Representative Kitchens' office to discuss the troubles they've been having with their condominium association. These constituents had concerns over specific decisions the board had made, and despite efforts to alleviate their concerns, they ended up having to seek relief from the court system just for some basic information. The reason this was necessary, despite years of paying into the condominium association, was because condo unit owners had no guaranteed legal access to financial records. And even if they could access those records, they still have no way to challenge financial statements with an audit if they feel there are discrepancies.

While this story of an unaccountable condominium association is rare, it's not the only example. Senate Bill 561 guarantees that condominium associations maintain relevant financial records for the past six-years and provides residents of condo complexes access to the financial records of their condominium associations. Smaller condominium associations are simply required to make these records available and may charge reasonable fees for copies of these records. Larger associations with 100 or more units must maintain the records on a website that's available to unit owners upon request but inaccessible to the general public.

This legislation also ensures that, beginning one-year after the expiration of declarant control of a condominium association, a majority of unit owners may request that the association arrange and pay for an independent financial audit. However, if an audit has been conducted anytime in the past three-years, the unit owners must pay for the audit. This change extends current law provisions allowing for requests for audits under declarant control or for up to one-year after. Finally, Senate Bill 561 ensures that, after the bill's effective date, condominium associations are not organized as profit seeking entities.

Office:
Wisconsin State Capitol
118-South
P.O. Box 7882
Madison, WI 53707-7882

608-266-0484
Toll-Free: 1-800-334-1465
Fax: 608-267-0304
Sen.Cowles@legis.wisconsin.gov
legis.wi.gov/senate/02/cowles

Home:
300 W. St. Joseph Street
Unit #23
Green Bay, WI 54301-2328
920-448-5092

In short, this legislation establishes the ability of a unit owner to access records about the financial standing of the condominium association – organizations which they fund. By providing this ability, we can help to resolve disputes before they even arise by providing more accountability and transparency in association decisions. In other words, we believe Senate Bill 561 ensures that Wisconsinites who are unit owners in condominium associations have their basic property rights protected.

JOEL KITCHENS

STATE REPRESENTATIVE • 1ST ASSEMBLY DISTRICT

Testimony for the Senate Committee on Housing, Commerce and Trade
Senate Bill 561
Tuesday, Dec. 7, 2021

Thank you Chairman Jagler and committee members for holding a public hearing and giving me the opportunity to testify on Senate Bill 561, bipartisan legislation that builds better partnerships between condominium associations and unit owners and protects basic property rights.

While many unit owners and condominium associations have strong, mutually-beneficial relationships, not all are this fortunate. Several years ago, a group of constituents from the 2nd Senate District who have condos in the 1st Assembly District approached our offices to discuss the difficulties they had been facing with their condominium association.

These constituents had concerns over specific decisions the condo association board had made, and despite efforts to alleviate their issues, they ended up having to seek relief from the court system just to get some basic information. This is because condo unit owners have no guaranteed legal access to financial records and no way of challenging those financial statements with an audit if they feel there are discrepancies.

SB 561 requires that condominium associations maintain relevant financial records for the past six years and provide their residents with access to those records. Smaller condominium associations must make these records available and may charge reasonable fees for copies. Larger associations with 100 or more units must maintain the records on a website that is inaccessible to the general public but available to unit owners upon request.

This legislation also ensures that, beginning one year after the expiration of declarant control of a condominium association, a majority of unit owners may request that the association arrange and pay for an independent financial audit. However, if an audit has been conducted anytime in the past three years, the unit owners must cover the costs.

With the ability to review financial records and request audits, we are confident that we can help resolve disputes before they even arise by providing more accountability and transparency in association decisions.

SB 561 builds off the efforts of our 2019 Act 168, which established a statutory dispute resolution process to help aggrieved unit owners and condominium association leaders avoid costly and lengthy litigation.

I would like to thank you for taking the time to listen to my testimony and I hope you consider supporting SB 561. I would also like to thank Sen. Cowles and his office for all the work they put into this legislation. I would be happy to answer any questions if you have them.

Capitol Office: Post Office Box 8952 • Madison, WI 53708-8952 • (608) 266-5350 • Toll-Free: (888) 482-0001 • Fax: (608) 282-3601
Rep.Kitchens@legis.wi.gov

Dear Chairman Jagler and Members of the Committee on Housing, Commerce and Trade,

My name is Jeffrey M. Petsinger, and I have owned Unit #2108 at the Landmark since 2015. I am writing to provide testimony in support of LRB 1843/1.

The unit I purchased had been completely destroyed by the previous tenant who lived there full time. Due to the poor condition of the condo, I was able to buy it at half price, with the intention of completely remodeling it. Since the previous tenant had drilled holes in the doors and cabinets, and burned the countertops with cigarettes, I decided to gut the interior, including the carpet, cabinets, window treatments, appliances, and discard all of the furniture. I closed on the unit in February and my goal was to begin renting it in May. This forced me to move very fast, and not always in the most cost efficient manner since lost rental income would cost more than spending a little extra to have it renting by May.

At this same time, the Landmark Rental Company was forcing all of their constituents to remodel their units. They were offering four standard interior design options from which to choose, and it would have been the path of least resistance for me to purchase one of their packages. However, I didn't like any of the packages they offered, and the timeline for receiving the furniture would have meant unacceptable delays since my unit was not in rentable condition. Consequently, I chose to use Door County Interiors to create a custom design.

The interior designer at Door County Interiors had extensive experience working with the Landmark. I instructed her that I wanted to purchase high quality furniture, carpet and window treatments that met or exceeded the durability and fire retardant properties of the furniture the Landmark was ordering so that my unit would qualify to enter the rental program at some time in the future if I decided not to rent privately or to sell the unit. The key point is that everything I purchased was of equal or better quality than the packages the Landmark was offering to its owners.

In the course of undertaking this extensive remodel. I gained direct insight into the real costs associated with various elements. At the time, the person in charge of the Rental Program remodeling project, who is also an interior designer and has extensive contacts in the industry, was telling the owners about the great quality of the furniture and carpet while emphasizing what a great deal they were getting due to the negotiating leverage of buying in quantity and his personal connections in the business. They were also offering packages for new appliances, cabinet refinishing and countertops. A recurring theme was that I was able to purchase the same or better quality furniture, carpet, and window treatments as an individual through a high priced interior design service with an additional premium to expedite the job at the same price the Landmark was offering their packages to the owners at. I have purchased furniture in the past from High Point "drop shippers" who will sell furniture to an individual for at least a 40% discount and drop ship directly to your home. It would seem that the Landmark could have secured at least this level of discount or better by buying in quantity. Instead, they charged the owners the same price I paid as an individual while telling the owners they were getting a great deal. This begs the question why they were not able to negotiate a better price for the owners, or if they did, what happened to the difference.

The same story played out for the countertops and cabinets. I went with their countertop package because I like the styles they offered, the price was only a couple hundred dollars more than a quote I had received as an individual, and the logistics were simpler. But, the price of their countertops was MORE than I could get as an individual. They were also offering cabinet re-facing at the time. I also quoted this as an individual, and again saw that the Landmark was charging a premium while telling the owners they had negotiated a great deal for them. I ultimately decided to put all new cabinets in, which only cost slightly more than what the Landmark was charging for re-facing the old ones. When I was selecting the stain color of the cabinets, the cabinet supplier informed me that she could not sell me cabinets in any color that was not "approved" of by the Landmark interiors committee. Even though I was contracting directly with her company to install cabinets on my own property, I was not allowed to select any color I wanted. Fortunately, I liked one of the colors that was "approved".

One of things that the Landmark does is control which contractors they will allow into your property to do work. Even if you supply a certificate of insurance to remove any liability concerns, they insist on limiting the work to contractors they have "approved". In doing so, they create artificial monopolies in every category of work. They claim they do this to secure better pricing for the owners, but if they were bargaining in good faith, the prices would be lower instead of higher. **If any owner asks to see the quotes they received for different goods and services, they are stalled and eventually denied access to that information.**

Another issue is that the Landmark has claimed that the insurance policies they have in place demand that the private rental people to get additional insurance to protect the Landmark and the rental company. We asked to see the Landmark's insurance policies that we paid for with our quarterly association fees, and some of us contacted the insurance company to request copies of the insurance policy. Both the Landmark and the insurance company refused to allow us to see the insurance policies. Under oath, the current President of the Association testified that the insurance policy they have covers everybody, meaning they were lying in the public meetings, and using the insurance issue as a tool of harassment of the private rental owners. I am now paying over $300 per year in extra insurance I probably don't need, but have no way of verifying.

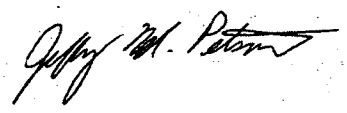
A massive lighting project was recently completed which was desperately needed. We were told that the original quote for the work, prior to a lawsuit brought by a small group of owners against the board, was over 1 million dollars. After the lawsuit, which brought more scrutiny to their financial dealings, the price was cut almost in half, even though several years had passed and the price should have gone up. The board regularly solicits volunteers for various committees in the public meetings, but on large expense projects, such as the lighting project, they restrict participation to a small group. I volunteered for the lighting and the annexation committee, but was never asked to participate.

Annexation of the Landmark into the town of Egg Harbor is a huge issue that is still a threat. The Landmark has an onsite sewage system in which sewage is collected at various points and pumped up to a holding tank, and then trucked down to the Egg Harbor Waste Water Treatment Plant for processing. Although this is an admittedly clumsy process, it yields very reasonable monthly sewer bills, and works just fine. The Landmark association began telling the owners that the PVC pipes in the ground were over 30 years old, and they were only meant to last 25 years. I have a masters degree in mechanical engineering, and this didn't sound right to me. After researching PVC sewer pipes, I discovered that they are considered the premium material for carrying sewage. They are a relatively new material, so

they don't have actual data, but the tests they have performed on existing pipes indicate they could last as long as 300 years. It would be the height of incompetence to tear out PVC pipes with 90% of their lifespan left and replace them with anything else. Their solution to this non-problem was to annex the Landmark into Egg Harbor and pay to run a sewer pipe all the way from the Landmark to a lift station in town. The job was estimated to cost approximately $10,000 per owner, and would increase our monthly sewer bills and triple our property taxes. It didn't make sense on any level, and still doesn't. I wrote a letter to all of the owners explaining that if we are going to pay $10,000 apiece, there should an engineering study done to confirm that there is a genuine problem with the onsite sewer system. The Association backed away from the issue, and claimed that they did an engineering that showed there was no problem with the pipes. When I asked to see a copy of the report, they never supplied it. I think that is because they didn't actually do it. They just backed away from the issue because I brought pressure on them and drew attention to it with the other owners. I attempted to get more information from the Egg Harbor Village President, but he stonewalled me as well, claiming that they were in negotiations and he wasn't at liberty to discuss it. This story may or may not be relevant to the current legislation, but it highlights the history of operating in secret, soliciting secrecy from insurance companies and public officials, refusing to provide documents and quotes that owners have a right to see, and pursuing projects that seem illogical and overpriced.

I have been alluding to it throughout this testimony, but I would prefer to say it directly. Although the owners have not been able to access the documents necessary to prove it, the pattern of behavior by the Landmark Association and Rental Management Company suggests that they have been treating the owners as profit centers. Every undertaking at the Landmark seems to include extra expense above and beyond what the job should cost. It may be that the Landmark's representatives have been the world's worst negotiators. It might be that the extra money is being put back into the operating fund and has been a mechanism to extract more money out of owners without raising the quarterly assessments. Under this second scenario, it is also possible that funds are being transferred illegally between the Association and the Rental Management Company to financially prop one or the other up given their history of blurring the lines between the two entities. Or, it could be that individuals on the various boards and in senior management have been personally profiting from the overcharges. These are serious accusations that I cannot prove because the Landmark has refused to provide the documentation to confirm or dispel them, and has never opened its books to a complete audit. What is needed is complete and absolute transparency, with unfettered access to all quotes, invoices, engineering studies and communications. I would love for my suspicions to be proved wrong because I find most of the board members to be sincere, likeable people volunteering their time to make the Landmark a better place. But their pattern of behavior suggests otherwise.

Sincerely,



Jeffrey M. Petsinger

Owner of Landmark Resort Unit 2108 12/06/2021

December 1, 2021

Dear Chairman Jagler and Members of the Committee on Housing, Commerce and Trade,

In April 2016, we purchased a two-bedroom condo at The Landmark in Egg Harbor, WI believing this would be a vacation destination we would enjoy as a family for years to come.

Shortly after our purchase we began the work of remodeling the inside of our condo. It was mandated that items such as appliances and mattresses had to be purchased through the Landmark. Our first experience with financial secretiveness at The Landmark occurred when we were then invoiced for those purchases at a greater cost then what was listed in the Owners Handbook that we were provided at our new owner orientation just months earlier. We of course questioned the discrepancy of the invoice with the stated costs in the Owners Handbook but our questions would go unanswered by Landmark Management or our Association Board of Directors. This was the beginning of our realization that this was not just bad management but rather a concerted effort by Management and our Board of Directors not to answer questions or provide relevant information regarding any kind of finances when requested by an owner of The Landmark.

During our first summer as owners, we were customers of The Landmarks "Rental Management Program" which is a wholly owned subsidiary of the Owners Association. Through the Rental Management Program, we rented our condo to others and as part of that contract, at the end of each rental we were charged a cleaning fee of $35. The expenses of participating in the Rental Management Program were quite high. Among other fees, we were also charged and paid a Management Fee of 48% of the proceeds we made on each rental to the Rental Management Program. Our requests asking for an accounting of the fees we were paying were met with silence. After a few months, we decided to leave the Rental Program and we rented our condo on our own using a vacation rental platform. Our cleaning fee was then increased from $35 to $112.50 for the same cleanout. We attended a board meeting of the Rental Management Company to ask why our cleaning fees had increased more than three fold. The only answer the board would give was, "it was the true cost of cleaning a two-bedroom condo". When asked how they arrived at the "true cost", they would not share their formula.

Moving forward, we decided to become more involved with attending the Condo Association Board meetings and we became more familiar with our Declaration, By Laws and Rules and Regulations. We learned that our By Laws contained rules to make leadership transparent and accountable including a Finance Committee made up of owners (which the Board voted to dissolve years prior and "incorporate as a responsibility of the Board of Directors"), and a detailed yearly budget that was to

be submitted to owners prior to the owners annual meeting. However, the Board willingly chose NOT to follow our very own By Laws. Owners were not allowed to seek or ask questions regarding budgets, financial statements, bids, invoices, receipts, expenditures, etc. Results of audits were not shared.

We also learned that the Rental Management Company was a wholly owned subsidiary of the Condo Association. All of the owners had a financial stake in the Rental Management Company. Yet, the Condo Association Board and the Rental Management Board which conducted joint meetings, refused to share any of the finances of the Rental Management Company (which owned an on site restaurant) even after it was revealed in a letter to condo owners in 2006 by the General Manager that the Rental Management Company had a loss of 1.6 million dollars in the past 5 year period with the majority coming from the restaurant.

It became a priority of several condo owners to determine a way to force the Landmark board to follow its own By Laws. After reviewing Wisconsin State Condo Law, it was clear that there was nothing to help condo owners who were dealing with a rogue board. Other than expensive litigation, we were at an end point how to resolve the situation. In June of 2018, Landmark condo owners reached out to their state representatives to share the details of the dire situation at The Landmark and asked for legislative help to remedy a situation that had no other available alternatives.

While waiting for the legislative process to work out solutions for condo owners, a group of owners committed to attending all meetings of the Condo Association as well as the Rental Management Company. It was standard practice for Condo Association and Rental Management Company Board Minutes not to be posted for months after their approval on the owners secure websites. But as a direct result of committed owners attending board meetings, the Condo Association Board began to meet additionally as an "Executive Board" becoming even more secretive and protective of not only financial and insurance information but of their discussions and decision making surrounding the operation and management of The Landmark. Neither agendas nor minutes were published for Executive Board meetings.

Our experience at The Landmark has been a living nightmare and not the relaxing vacation destination we were dreaming of when we made the purchase. Condo owners in the State of Wisconsin desperately need laws that support and protect them if and when their Association Boards willfully choose not to follow their own By Laws, Declaration and Rules and Regulations.

Thank you in advance for your consideration and support of Senate Bill 561.

Sincerely,

Dave and Penny Albers
3911 St. Croix Circle E.
Green Bay, WI 54301

November 30, 2021

LRB 1843/1

Condominium Association's obligation to maintain records

Dear Chairman Jagler and Members of the Committee on Housing, Commerce and Trade,

We owned a condominium for more than 15 years in Door County, WI at the Landmark Resort. It is a full ownership condo. We, as owners, paid our assessed condo fees quarterly for common costs. Year after year our fees increased, to where we were paying several thousand dollars each quarter.

We, like others, rented our condo when we were not using it. When we decided to take over this responsibility on our own, rather than having Landmark management team do it, we suddenly ran into new rules, regulations, increased costs and scrutiny. Among the requirements was a rule to have the Landmark rental team continue cleaning our condo, at a cost that was 3x what they had charged us previously. When we started paying attention to these increased dollars and questioned where they were going: we ran into excuses and dead ends as to why we could not see the financial books. We were promised that we could under certain conditions, but the managers never made it possible. This was so frustrating, as the owners' dollars were the funds being used to manage the property. There are no outside investors. We asked to see bids for projects, and we were denied. In our opinion, financial transparency did not exist.

We finally filed for a declaratory judgement over this and other issues. Our attorneys were allow to then view the books for a set time. However they could not take copies or we could not see the information, even though we owned our property. We ended up selling our property after our issues were not resolved through the courts.

We have never understood why we couldn't see the financial information freely. We have never understood why the State of Wisconsin would not agree that owners have a right to the information, without having to go through the courts. We wish that the State would protect all condominium property owners from the same frustrations we faced.

Sean and Cami Wright

Green Bay, WI

WISCONSIN BUILDERS ASSOCIATION

Brad Boycks
Executive Director
bboycks@wisbuild.org
(608) 242-5151 ext.16

Robert C. Procter
General Counsel
Axley Brynelson, LLP
rprocter@axley.com
(608) 283-6762

RE: **2021 SENATE BILL 561 / CONDOMINIUM ASSOCIATIONS**
TO: Senate Committee Housing, Commerce and Trade
DATE: December 7, 2021

The Wisconsin Builders Association (WBA) opposes 2021 Senate Bill 561 in its current form. The WBA would support the bill with a minor change that would make clear how the requirements as they apply to the declarant. Specifically, the Bill should make clear that the requirements that apply to the declarant to maintain the financial and operational records of the association during declarant control only applies to receipts and expenditures affecting the common elements that are paid by the association and charged to the unit owners as common expenses.

The Wisconsin Builders Association generally supports the effort to provide more clarity and transparency to the operations of condominium associations. However, the proposed changes may impose requirements on developers of condominiums that do not reflect the reality of the financing and construction of condominiums, and would require a developer to share what is generally its confidential, financial information with unit owners.

It is clear under the statute that the declarant must retain and make available the records subject to this bill.

The bill at Section 14 amends it to say:

> 703.20 (3) DECLARANT RESPONSIBILITIES FOR RECORDS; FINANCIAL AUDITS. 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 described under sub. (1) 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 percent of the units, not including units owned by the declarant, the association shall arrange for an independent audit of its the association's financial records at the association's expense. The cost of any If unit owners request an audit requested within 36 months after the completion of a previous audit shall be paid for by, the requesting unit owners shall pay the cost of the audit.

The new bill under Sections 8, 9, and 10 creates the list of records subject to the new 703.20(3). It creates a very expansive list of documents. For example, Section 8 requires that accurate records "using standard bookkeeping 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."

Section 10 includes a laundry list of records that must be maintained:

> SECTION 10. 703.20 (1) (b) 2. to 9. of the statutes are created to read:
> 703.20 (1) (b) 2. Annual budgets described under s. 703.161.
> 3. Financial statements.
> 4. Bank statements and account statements, including statements for reserve accounts, created within the past 6 years.
> 5. Income and expense statements.
> 6. Insurance policies issued within the past 6 years.

7. The most recent audit of the association's financial records, if any.
8. Contracts entered into within the past 6 years and any bids for those contracts received within the past 3 years.
9. Invoices and expense records created within the past 6 years.

The issue for the developer during declarant control is that the developer will be building out common elements, which costs will be paid by the developer. The developer should not be required to maintain and provide such records regarding the developer's expenses incurred during declarant control that are part of the initial development of the property, and not passed through as a common expense to the unit owners.

An example of a real development may be helpful. A common condominium development could consist of 24 separate two-unit buildings (i.e., 48 units in 24 buildings). The "unit" would include everything from the "studs in". This would mean that the unit would be a cubicle of air that included the drywall, the floor of the bottom level, and the ceiling of the upper level. The unit is what the condominium owner owns in fee simple. Everything else would be "common elements," which each unit owner would own a percentage interest in common with the other unit owners, but subject to the management of the association. This would include the studs, framing, insulation, exterior walls, siding, roofing, yards, stormwater ponds, sidewalks, driveway, pools, parking lot, etc.

The common elements exist as soon as the Declaration and Plat are recorded, but the construction of the 24 two-unit buildings may take multiple years to complete. In other words, the common elements will be built out over years. The declarant will build out the development in phases, which may include building out the buildings, stormwater, landscaping, private drives, and parking for a set number of units each year.

In the example above, eight buildings / 16 units may be built in year one. During this process, the declarant is financing, contracting, completing, and maintaining the common elements. The bill requires that the declarant, during declarant control, maintain 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. It arguably requires the declarant to maintain its construction contracts, expenditures, and other documents relating to the initial construction and maintenance of the common elements even though these are not expenses that are passed on to unit owners as common expenses.

There is an easy fix. The declarant should not have to provide, the association should not have to maintain, and the unit owners should not have a right to obtain or audit, the declarant's records during declarant control of the association except for records related to the general and special assessments imposed against the unit owners by the association to pay for common expenses. If it is an expense that the declarant incurred or paid, it should not be considered part of the association's records.