



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-4832/1
PJK/PG/RPN:cjs:pg

2001 SENATE BILL 412

February 4, 2002 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to
Committee on Universities, Housing, and Government Operations.

1 **AN ACT to repeal** 703.02 (1d), 703.255 and 703.38 (11); **to renumber** 703.16 (2),
2 703.275 (2), 703.33 (2) (b) (form) 1., 703.33 (3) and 709.02; **to renumber and**
3 **amend** 703.08 (1), 703.09 (1) (k), 703.16 (3) to (9), 703.33 (4) and 703.38 (10);
4 **to amend** 703.02 (7), 703.02 (14m), 703.06, 703.08 (2) (intro.), 703.09 (1) (g),
5 703.09 (1) (h), 703.09 (2), 703.11 (2) (c), 703.13 (5) (a), 703.13 (6) (c) and (d),
6 703.15 (1), 703.15 (3) (b) 1., 703.15 (4) (d) 1., 703.19 (8), 703.27, 703.275 (1),
7 703.33 (2) (intro.), 703.33 (2) (a) (form) 2., 703.33 (2) (a) (form) 3., 703.33 (2) (c),
8 703.365 (title), (1), (2) and (3), 703.365 (4), (5), (6) (a) (intro.) and (c), (7) and (8)
9 and 703.37; **to repeal and recreate** 703.24; and **to create** 703.08 (1) (a), (b)
10 and (c), 703.08 (3), 703.09 (1f), 703.09 (1m), 703.09 (4), 703.093, 703.10 (2g),
11 703.11 (5), 703.13 (5m), 703.13 (8), 703.15 (3) (b) 8., 703.155 (7), 703.16 (2) (b),
12 703.161, 703.163, 703.165 (title) and (1), 703.195, 703.20 (3), 703.25 (4),
13 703.265, 703.275 (2) (ac), 703.315, 703.33 (1) (h), 703.33 (1m), 703.33 (2) (b)
14 (form) 1c., 703.33 (3c), 703.33 (4) (b) and (c), 703.365 (3m), 703.38 (10) (b),

SENATE BILL 412

1 709.02 (2) and 823.015 of the statutes; **relating to:** revisions and additions to
2 condominium law.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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

PREFATORY NOTE: This bill was developed by the joint legislative council's special committee on condominium law review. The provisions of the bill are described throughout the bill in NOTES to individual provisions.

3 **SECTION 1.** 703.02 (1d) of the statutes is repealed.

NOTE: Repeals the definition of "allocated interests" from the general definitions section of ch. 703. The term is used only in s. 703.275, relating to merger or consolidation of condominiums. Consequently, the term is defined by this bill in s. 703.275 for purposes of s. 703.275. See SEC. 45 of the bill.

4 **SECTION 2.** 703.02 (7) of the statutes is amended to read:

5 703.02 (7) "Declarant" means any owner who subjects his or her property to a
6 condominium declaration established under this chapter. The term includes an
7 assignee of the declarant under s. 703.09 (4).

NOTE: The term "declarant" will include an assignee of the declarant if the conditions of new sub. (4) of current s. 703.09 are met. See SEC. 15 of the bill.

8 **SECTION 3.** 703.02 (14m) of the statutes is amended to read:

9 703.02 (14m) "Small residential condominium" means a condominium with no
10 more than ~~4~~ 12 units, ~~all of which are restricted to residential uses.~~

NOTE: Revises the definition of "small residential condominium" by increasing the maximum number of units from 4 to 12 and eliminating the requirement that all the units be restricted to residential uses. As a result, the defined term is changed to "small condominium". See also SECS. 59 to 61 of the bill, which make related changes to current s. 703.365, relating to small residential condominiums.

The expanded availability of the streamlined regulations for the creation and operation of "small" condominiums under s. 703.365 reflects the utility and acceptance of the regulations, enacted in 1986.

11 **SECTION 4.** 703.06 of the statutes is amended to read:

SENATE BILL 412

1 **703.06 Alterations prohibited.** Except as otherwise provided in this
2 chapter, no unit owner may ~~do~~ make any alteration which ~~that~~ would jeopardize the
3 soundness or safety of the property, reduce the value thereof, ~~or~~ impair any easement
4 or hereditament, or change the exterior appearance of a unit or any other portion of
5 the condominium not part of the unit.

NOTE: For convenience, adds reference in this section to the general prohibition in
s. 703.13 (5) (a) against changing the exterior appearance of a unit or of any other portion
of the condominium without permission of the association board of directors.

6 **SECTION 5.** 703.08 (1) of the statutes is renumbered 703.08 (1) (intro.) and
7 amended to read:

8 703.08 (1) (intro.) Residential real property may not be converted to a
9 condominium unless the owner of the residential real property gives ~~120 days'~~ prior
10 written notice of the conversion to each of the tenants of the building or buildings
11 scheduled for conversion. ~~A tenant has the exclusive option to purchase the unit for~~
12 ~~a~~ During the 60-day period of 60 days immediately following the date of delivery of
13 the notice a tenant has the first right to purchase the unit, if the unit is offered for
14 sale at any time during that period, for any of the following:

NOTE: See the NOTE to SEC. 7, below.

15 **SECTION 6.** 703.08 (1) (a), (b) and (c) of the statutes are created to read:

16 703.08 (1) (a) The price at which the unit is being offered on the market.

17 (b) The price contained in any accepted offer to purchase the unit.

18 (c) The price otherwise agreed to by the tenant and the seller.

NOTE: See the NOTE to SEC. 7, below.

19 **SECTION 7.** 703.08 (2) (intro.) of the statutes is amended to read:

SENATE BILL 412

1 703.08 (2) (intro.) A tenant may not be required to vacate the property during
2 the 120-day period immediately following the date of delivery of the notice required
3 under sub. (1) except for:

NOTE: Under current law, residential property may not be converted to a condominium unless the property owner gives 120 days' prior written notice of the conversion to each of the tenants of the building scheduled for conversion. A tenant has the "exclusive option to purchase" the unit for a period of 60 days following the date of delivery of the notice. SECTIONS 5 to 8 of this bill revise current law by:

1. Providing that the property may be converted to a condominium immediately upon completion of the notice requirement, rather than 120 days after notice. However, the tenant's rights relating to occupying and purchasing the property are preserved.

2. Clarifying that during the 60-day period immediately following the date of delivery of the conversion notice, a tenant has the "first right to purchase" (not the "exclusive option to purchase") the unit if the unit is offered for sale at any time during the 60-day period:

a. For the price at which the unit is being offered on the market.

b. For the price contained in any accepted offer to purchase the unit (from any prospective purchaser, not just the tenant).

c. For the price otherwise agreed to by the tenant and the seller.

3. Expressly authorizing the tenant to waive in writing his or her occupancy right and first right to purchase.

4 **SECTION 8.** 703.08 (3) of the statutes is created to read:

5 703.08 (3) A tenant may waive in writing his or her first right of purchase under
6 sub. (1), his or her right to remain on the property under sub. (2), or both.

NOTE: See the NOTE to SEC. 7, above.

7 **SECTION 9.** 703.09 (1) (g) of the statutes is amended to read:

8 703.09 (1) (g) Statement of the purposes for which the building and each of the
9 units are intended and restricted as to use, including any requirement applicable to
10 or restriction on the rental of residential units or reference to any such requirement
11 or restriction in the bylaws.

NOTE: Requires the condominium declaration to include any requirement applicable to or restriction on the rental of residential condominium units or reference to any such requirement or restriction in the bylaws.

12 **SECTION 10.** 703.09 (1) (h) of the statutes is amended to read:

SENATE BILL 412

1 703.09 (1) (h) ~~The name of the person to receive service of process in the cases~~
2 ~~provided in this chapter, together with the and address of that person and the method~~
3 ~~by which the association may designate a successor to the person the resident agent~~
4 ~~under s. 703.23.~~

NOTE: Substitutes reference to the “resident agent under s. 703.23” for the current requirement that the declaration include the name of the person “to receive service of process in the cases provided in this chapter”. Since s. 703.23, stats., also provides for changing the resident agent, the bill also removes the requirement that the declaration indicate the method by which the association may designate a successor to the person designated to receive service of process.

5 **SECTION 11.** 703.09 (1) (k) of the statutes is renumbered 703.09 (1c) and
6 amended to read:

7 703.09 (1c) A condominium declaration shall be signed by the owners of the
8 property and any first mortgagee of the property or the holder of an equivalent
9 security interest in the property in the same manner as required in conveyances of
10 real property.

NOTE: Requires the declaration to be signed by any first mortgagees of the property or the holders of an equivalent security interest, in addition to the owners of the property. This requirement applies only to the declaration submitted for recording under s. 703.07 (1) in order to establish the condominium; it does not apply to amendments to the declaration.

11 **SECTION 12.** 703.09 (1f) of the statutes is created to read:

12 703.09 (1f) A condominium declaration may provide for mandatory arbitration
13 under ch. 788 of disputes arising out of the declaration, bylaws, or rules involving the
14 interests of the declarant, unit owners, association, or board of directors. A
15 mandatory arbitration provision in a declaration constitutes a written agreement
16 between or among the declarant, association, and board to submit to arbitration a
17 dispute covered by the arbitration provision in the declaration. Acceptance of a
18 conveyance of a condominium unit constitutes an agreement by the unit owner to

SENATE BILL 412

1 submit to arbitration a dispute covered by an arbitration provision that is included
2 in the declaration at the time of the conveyance.

NOTE: Expressly allows the declaration to provide for mandatory arbitration under ch. 788, stats., of disputes involving the interests of the declarant, unit owners, association, or board of directors when the disputes arise out of the declaration, bylaws, or rules.

3 **SECTION 13.** 703.09 (1m) of the statutes is created to read:

4 703.09 (1m) (a) In this subsection, "violation" means a failure to comply with
5 the declaration, bylaws, or rules of the condominium association or any act or
6 omission that constitutes grounds for eviction under ch. 704.

7 (b) A condominium declaration may provide that a unit owner, as a condition
8 of the rental or lease of the unit owner's residential unit, grants the association power
9 of attorney to bring an eviction action against a tenant of the unit owner who has
10 committed a violation if the unit owner, after being requested by the association to
11 evict the tenant, fails to take reasonable action to evict the tenant. Giving notice
12 terminating, or not renewing, a tenant's lease or rental agreement within 60 days
13 after an eviction request constitutes reasonable action to evict the tenant for
14 purposes of this subsection. The declaration may specify notice and procedural
15 requirements for the exercise of power of attorney by the association and the
16 allocation of responsibility for eviction-related costs between the unit owner and the
17 association. An eviction action brought by an association is subject to chs. 704 and
18 799.

19 (c) This subsection applies only to leases or rental agreements that are entered
20 into or renewed after 3 years after the effective date of this paragraph [revisor
21 insert date].

NOTE: Expressly authorizes the condominium declaration to allow the condominium association, under specified circumstances, to bring an eviction action against a tenant who fails to comply with the declaration, bylaws, or association rules or

SENATE BILL 412

when there are any grounds for eviction under current law (a “violation”). Specifically, a declaration may provide that a unit owner, as a condition of renting or leasing his or her residential unit, grants the association power of attorney to bring an eviction action against a tenant of the unit owner who commits a violation if the unit owner fails to take reasonable action to evict the tenant after being requested to do so by the association. If within 60 days after the eviction request the unit owner gives notice terminating or does not renew the tenant’s lease or rental agreement, that constitutes reasonable action to evict a tenant. The declaration may specify notice and procedural requirements for the exercise of power of attorney by the association and the allocation of responsibility for eviction-related costs between the unit owner and the association. An eviction action brought by an association is subject to chs. 704 and 799, stats.

1 **SECTION 14.** 703.09 (2) of the statutes is amended to read:

2 703.09 (2) Except as provided in ~~s. sub. (4) and ss. 703.093, 703.13 (6) (c) and~~
3 (d) and (8) (b), and 703.26, a condominium declaration may be amended with the
4 written consent of at least two-thirds of the unit owners aggregate of the votes
5 established under sub. (1) (f) or a greater percentage if provided in the declaration.
6 An amendment becomes effective when it is recorded in the same manner as the
7 declaration. The document submitting the amendment for recording shall state that
8 the required consents and approvals for the amendment were received. A unit
9 owner’s written consent is not effective unless it is approved in writing by the first
10 mortgagee of the unit, or the holder of an equivalent security interest, if any.
11 Approval from the first mortgage lender or equivalent security interest holder, or the
12 person servicing the first mortgage loan or its equivalent on a unit, constitutes
13 approval of the first mortgagee or equivalent security interest holder under this
14 subsection.

NOTE: 1. Amends the exception clause to add reference to s. 703.09 (4), created by SEC. 15 of the bill; to s. 703.093, created by SEC. 16 of the bill; and to s. 703.13 (6) (c) and (d) and (8) (b), treated by SECS. 22 and 23 of the bill. The added references contain different declaration amendment procedures than the general procedure contained in s. 703.09 (2).

2. Clarifies that reference to “two-thirds of the unit owners” is to two-thirds of the aggregate of the votes (established under current s. 703.09 (1) (f)). The current reference is ambiguous.

SENATE BILL 412

3. Provides that the required mortgagee approval applies to first mortgagees only and must be in writing and that approval by the person serving the first mortgage loan constitutes approval by the first mortgagee.

4. Requires the document submitting the declaration amendment for recording to state that the required consents and approvals for the amendment were received.

See SEC. 16 of the bill for a new alternative procedure for amending the declaration.

1 **SECTION 15.** 703.09 (4) of the statutes is created to read:

2 **703.09 (4)** A declarant may assign his or her rights and obligations as a
3 declarant under this chapter by recording an amendment to the declaration that
4 includes the assignment and an acceptance of the assignment that is signed by the
5 assignee and acknowledged. A declarant may not assign under this subsection less
6 than all of his or her rights and obligations as a declarant under this chapter.

NOTE: Gives express authorization for a declarant to assign all of his or her rights and obligations as a declarant under ch. 703 if the declarant records an amendment to the declaration that includes the assignment and an acceptance of the assignment that is signed by the assignee and acknowledged. Inclusion of this express authority is not intended to imply that a declarant currently may not assign rights and obligations.

7 **SECTION 16.** 703.093 of the statutes is created to read:

8 **703.093 Alternative procedure for amending declaration.** (1) As an
9 alternative to s. 703.09 (2), a condominium declaration may be amended under this
10 section if at least two-thirds of the aggregate of the votes established under s. 703.09
11 (1) (f), or a greater percentage if provided in the declaration, consent to the
12 amendment in writing and those consents are approved by the mortgagees or holders
13 of equivalent security interests in the units. An amendment becomes effective when
14 it is recorded in the same manner as the declaration.

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

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

SENATE BILL 412

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

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

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

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

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

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

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

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

23 (d) State that a ballot signed by only one owner shall count as the ballot of that
24 unit, unless more than one ballot is received by the association for that unit, in which
25 case all ballots received for that unit must concur in the vote cast or the ballots,

SENATE BILL 412

1 collectively, shall be treated as a vote in opposition to the proposed amendment by
2 that unit.

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

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

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

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

15 **(6)** The association may rely on the list of owners of record set forth in a title
16 report obtained as of the date the affidavit is recorded under sub. (2), unless the
17 association receives a written notice, signed and notarized by both the previous
18 owner and the new owner, advising the association that ownership of the unit has
19 changed. The association shall send a copy of the notice under sub. (3) to the new
20 owner of a unit and any mortgagee or equivalent security interest holder promptly
21 after receiving notice of the transfer of ownership. It is the responsibility of the new
22 unit owner to comply with this section. If the previous owner had voted prior to the
23 change in ownership, the new owner may execute the ballot included in the notice
24 under sub. (3), which ballot, when returned by the new owner, shall supersede and
25 replace any ballot cast by the previous owner if the required approval of any

SENATE BILL 412

1 mortgagee or equivalent security interest holder is also timely received. The
2 180-day period applicable to receipt of the ballot for the unit shall be extended to a
3 date 14 days after the ballot is mailed by the association if the ballot is mailed within
4 14 days before the end of the 180-day period.

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

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

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

- 22 (a) The title report under sub. (6) relied upon by the association.
23 (b) All of the ballots received by the association from unit owners.
24 (c) All written approvals or objections received by the association from
25 mortgagees and equivalent security interest holders.

SENATE BILL 412**SECTION 16**

NOTE: Provides an alternative procedure for amending the declaration. The key feature is that the association has 180 days to secure the required consents and approvals and may rely on the list of owners of record contained in a title report at the beginning of the 180-day period. (The current amendment procedure does not include this 180-day "window," but there is no limit on how long the current procedure may take. Provision is made for notice of the proposed amendment to new unit owners and lienholders during the 180-day period and for the new owners and lienholders to cast a ballot replacing the ballot of the previous owner and lienholder. Provision is made to extend the 180-day period 14 days if the ballot is mailed to the new owner and lienholder within 14 days before the end of the 180-day period.

The procedure contains substantial detail concerning the commencement of the 180-day period; required notice; voting by unit owners and lienholders and subsequent unit owners and lienholders; recording the amended declaration; and retention of materials related to the amendment for 2 years.

1 **SECTION 17.** 703.10 (2g) of the statutes is created to read:

2 703.10 **(2g)** OCCUPANCY REQUIREMENTS FOR BOARD MEMBERS. The bylaws may
3 provide that a unit owner may not serve as a director unless the owner occupies his
4 or her unit or may specify the proportion of nonoccupant unit owners who may serve
5 as directors.

NOTE: Expressly provides that the condominium bylaws may provide that a unit owner may not serve as a director of the condominium association unless the unit owner occupies his or her unit or may specify the proportion of nonoccupant unit owners who may serve as directors. Note that under current s. 703.10 (2) (d), stats., not more than one "nonunit owner" may be on the board.

6 **SECTION 18.** 703.11 (2) (c) of the statutes is amended to read:

7 703.11 **(2)** (c) ~~Diagrammatic floor plans~~ Plans that show the location of each
8 building located or to be located on the property ~~which show~~ and, if there are units
9 in a building, that show the perimeters, approximate dimensions, floor area
10 approximate square footage, and location of each unit in it the building. Common
11 elements shall be shown graphically to the extent feasible.

NOTE: Simplifies the required content of a condominium plat by substituting "plans showing the location of each building" for "diagrammatic floor plans of each building", adding "perimeters", and substituting "approximate square footage" for "floor area". Also makes editorial changes. Reference in the revised provision to "plans" is not intended to include the construction plans for the building, including all the separate plans that comprise the construction plans.

12 **SECTION 19.** 703.11 (5) of the statutes is created to read:

SENATE BILL 412

1 703.11 (5) AMENDMENT. Except as provided in s. 703.265, amendment of a
2 condominium plat by an addendum that is not included as part of an amendment to
3 the declaration shall be accomplished in the same manner as an amendment to the
4 declaration under s. 703.09 (2).

NOTE: Clarifies that an amendment of a condominium plat (addendum) that is not included as part of an amendment to the declaration is to be accomplished in the same manner as an amendment to the declaration.

5 **SECTION 20.** 703.13 (5) (a) of the statutes is amended to read:

6 703.13 (5) (a) A unit owner may make any improvements or alterations within
7 his or her unit that do not impair the structural integrity or lessen the support of any
8 portion of the condominium and that do not create a nuisance substantially affecting
9 the use and enjoyment of other units or the common elements. A unit owner may not
10 change the exterior appearance of a unit or of any other portion of the condominium
11 without permission of the board of directors of the association.

NOTE: For convenience, expressly limits the unit improvements or alterations that a unit owner may make to exclude those that create a nuisance in the use and enjoyment of other units or the common elements. Reference to "nuisance" is intended to include both nuisance under common law and nuisance under other law, e.g., ch. 823, stats.

12 **SECTION 21.** 703.13 (5m) of the statutes is created to read:

13 703.13 (5m) IMPROVEMENTS TO LIMITED COMMON ELEMENTS. (a) If permitted by
14 the condominium instruments and subject to par. (b) and to any restrictions or
15 limitations specified in the condominium instruments, a unit owner may improve,
16 including the enclosure of, the limited common elements appurtenant exclusively to
17 that owner's unit if all of the following conditions are met:

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

SENATE BILL 412

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

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

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

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

NOTE: Allows a unit owner, at the owner's expense, to improve limited common
elements appurtenant exclusively to that owner's unit if permitted by the condominium
instruments and if the specified conditions are met.

14 **SECTION 22.** 703.13 (6) (c) and (d) of the statutes are amended to read:

15 703.13 (6) (c) An amendment to a declaration shall identify the units involved
16 and shall state that the boundaries between those units are being relocated by
17 agreement of the unit owners thereof. The amendment shall contain words of
18 conveyance between those unit owners, and when recorded shall also be indexed in
19 the name of the grantor and grantee. If the adjoining unit owners have specified in
20 their written application the reallocation between their units of the aggregate
21 undivided interest in the common elements appertaining to those units, the
22 amendment to the declaration shall reflect that reallocation. An amendment to a
23 declaration under this paragraph shall be adopted, at the option of the adjoining unit

SENATE BILL 412

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

NOTE: Current s. 703.13 (6), stats., contains a procedure for changing boundaries between adjoining condominium units when the condominium instruments permit a relocation and the adjoining unit owners desire the relocation. One element of that procedure is an amendment to the declaration, describing the boundary change and any reallocation of interests in the adjoining unit owners' respective interests in the common elements. [s. 703.13 (6) (c), stats.]

Section 703.13 (6) (c) is amended to allow a declaration amendment under the boundary change procedure to be accomplished simply with the approval of the adjoining unit owners and the mortgagees of the adjoining units, if any. (The general method of amending the declaration under s. 703.09 (2) may, at the option of the adjoining unit owners, continue to be used instead of the simplified procedure.)

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

NOTE: The procedure for relocating boundaries between adjoining condominium units also provides that if the adjoining unit owners have specified in the written application a reasonable allocation, as determined by the board of directors, of the number of votes in the association or liabilities for future common expenses not specially assessed that pertain to the units, an amendment to the condominium instruments is to reflect those reallocations. This bill provides that an amendment to a declaration under this provision is adopted in the same manner as described in paragraph 2 of the NOTE immediately above.

9 **SECTION 23.** 703.13 (8) of the statutes is created to read:

10 703.13 (8) MERGER OF UNITS. (a) If any condominium instruments expressly
11 permit the merger of 2 or more adjoining units into one unit, a merger shall be made
12 in accordance with this subsection and any restrictions and limitations specified in
13 the condominium instruments.

14 (b) If the unit owners of adjoining units that may be merged desire to merge
15 the units, the unit owners, after 30 days' written notice to all other unit owners, shall

SENATE BILL 412

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

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

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

SENATE BILL 412

NOTE: Provides a procedure for merging adjoining condominium units based on current procedures for: relocating boundaries between adjoining condominium units [s. 703.13 (6), stats.]; and separation of a unit into one or more units [s. 703.13 (7), stats.]. The procedure includes a simplified means of amending the declaration.

1 **SECTION 24.** 703.15 (1) of the statutes is amended to read:

2 703.15 (1) LEGAL ENTITY. The affairs of every condominium shall be governed
3 by an association ~~which~~ that, even if unincorporated, is constituted a legal entity for
4 all purposes. Except for matters reserved to the association members or unit owners
5 by this chapter, the declaration, or the bylaws, all policy and operational decisions
6 of the association, including interpretation of the condominium instruments,
7 bylaws, rules, and other documents relating to the condominium or the association,
8 shall be made by its board of directors. This subsection does not affect the deference
9 accorded to, or the standard of review of, an action of the board of directors by a court.

NOTE: Clarifies the prevailing, but not always known, view of the role of the association board of directors: with the exception of matters reserved to association members or unit owners by ch. 703, the declaration, or bylaws, all policy and operational decisions of the association are made by the board. Policy and operational decisions include, but are not limited to, interpretation of condominium instruments, bylaws, rules, and other documents relating to the condominium or the association.

10 **SECTION 25.** 703.15 (3) (b) 1. of the statutes is amended to read:

11 703.15 (3) (b) 1. Make contracts and incur liabilities, including borrowing funds
12 in the name of the association in the manner specified in the bylaws under s. 703.10
13 (2) (f).

NOTE: For illustrative purposes, expressly provides that a condominium association, subject to any restrictions and limitations specified by the declaration, may borrow funds in the name of the association in the manner specified in the bylaws as part of its general authority to make contracts and incur liabilities. The exercise of this authority by an association is subject to current s. 703.25, relating to the tort and contract liability of an association.

14 **SECTION 26.** 703.15 (3) (b) 8. of the statutes is created to read:

15 703.15 (3) (b) 8. Purchase goods and services jointly with other condominium
16 associations or other persons.

SENATE BILL 412

NOTE: Expressly authorizes a condominium association, subject to any restrictions and limitations specified by the declaration, to purchase goods and services jointly with other condominium associations or other persons.

1 **SECTION 27.** 703.15 (4) (d) 1. of the statutes is amended to read:

2 703.15 (4) (d) 1. At meetings of the association every unit owner is entitled to
3 cast the number of votes appurtenant to his or her unit, as established in the
4 declaration under s. 703.09 (1) (f). Unit owners may vote by proxy, but, the proxy is
5 effective only for a maximum period of 180 days following its issuance, unless
6 granted to a mortgagee or lessee. If only one of multiple owners of a unit is present
7 at a meeting of the association, the owner is entitled to cast the votes allocated to that
8 unit.

NOTE: For convenience, indicates by cross-reference that the number of votes appurtenant to a condominium unit is established in the declaration.

9 **SECTION 28.** 703.155 (7) of the statutes is created to read:

10 703.155 (7) REPRESENTATION OF CONDOMINIUM OR NONCONDOMINIUM PROPERTY. A
11 master association may represent condominium or noncondominium property on
12 behalf of one or more condominiums and property under a different form of
13 ownership or for the benefit of the unit owners of one or more condominiums and the
14 owners of other property.

NOTE: Clarifies the authority of a master association to represent either condominium property or noncondominium property: (a) on behalf of one or more condominiums and property under a different form of ownership; or (b) for the benefit of the unit owners of one or more condominiums and the owners of other property.

15 **SECTION 29.** 703.16 (2) of the statutes is renumbered 703.16 (2) (a).

16 **SECTION 30.** 703.16 (2) (b) of the statutes is created to read:

17 703.16 (2) (b) During the period of declarant control of the association under
18 s. 703.15 (2) (c), if any unit owned by the declarant is exempt from assessments for
19 common expenses until the unit is sold, the total amount assessed against units that
20 are not exempt from assessments may not exceed the amount that equals nonexempt

SENATE BILL 412

1 units' projected percentage share of common expenses, based on the anticipated
2 common expenses set forth in the annual budget under s. 703.161 (2) (a). The
3 declarant is liable for the balance of the actual common expenses.

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

4 **SECTION 31.** 703.16 (3) to (9) of the statutes are renumbered 703.165 (2) to (8),
5 and 703.165 (2), (4), (5) (intro.) and (8) (form), as renumbered, are amended to read:
6 703.165 (2) LIABILITY FOR ASSESSMENTS. A unit owner shall be liable for all
7 assessments, or instalments thereof, coming due while owning a unit, including any
8 assessments coming due during the pendency of any claim by the unit owner against
9 the association or during any period in which the unit is not occupied by the unit
10 owner or is leased or rented to any other person. In a voluntary grant, the grantee
11 shall be jointly and severally liable with the grantor for all unpaid assessments
12 against the grantor for his or her share of the common expenses up to the time of the
13 voluntary grant for which a statement of condominium lien is recorded, without
14 prejudice to the rights of the grantee to recover from the grantor the amounts paid
15 by the grantee for such assessments. Liability for assessments may not be avoided
16 by waiver of the use or enjoyment of any common element or by abandonment of the
17 unit for which the assessments are made.

NOTE: Expressly provides that a condominium unit owner is liable for any assessments coming due during the pendency of any claim by the unit owner against the association or during any period the unit is not occupied by the unit owner or is leased or rented to any other person. While the new language is within the scope of current language, it is added for clarification.

18 (4) STATEMENT. Any grantee of a unit is entitled to a statement from the
19 association or the executive board, setting forth the amount of unpaid assessments
20 against the grantor ~~and the~~. The grantee is not liable for, nor shall the unit conveyed

SENATE BILL 412

1 be subject to a lien ~~which~~ that is not filed under sub. ~~(4)~~ (3) for, any unpaid assessment
2 against the grantor in excess of the amount set forth in the statement. If an
3 association or a board of directors does not provide such a statement within 10
4 business days after the grantee's request, they are barred from claiming under any
5 lien ~~which~~ that is not filed under sub. ~~(4)~~ (3) prior to the request for the statement
6 against the grantee.

7 **(5) PRIORITY OF LIEN.** (intro.) ~~All sums assessed by an association but unpaid~~
8 ~~for the share of the common expenses chargeable to any unit constitutes a lien on the~~
9 ~~unit and on the undivided interest in the common elements appurtenant thereto~~ A
10 lien under this section is prior to all other liens except:

11 **(8)** (form)

Statement of Condominium Lien

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

19 Association

20 By:

21 Officer's title (or agent)

22 Address

23 Phone number

SENATE BILL 412

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

4
5 Officer (or agent)

NOTE: See SEC. 34 of the bill, which creates an expanded definition of "assessments"
for purposes of the above lien provisions.

6 **SECTION 32.** 703.161 of the statutes is created to read:

7 **703.161 Annual budget. (1) APPLICATION.** This section applies to any
8 condominium that includes at least one unit that is restricted to residential use.

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

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

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

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

17 (d) Any common surpluses.

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

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

NOTE: Requires the condominium association for condominiums that include at
least one unit that is restricted to residential use to annually adopt and distribute to all
unit owners an annual budget setting forth:

1. All anticipated common expenses and any amounts to be allocated to a statutory
reserve account and to any other funds for future expenditures.

2. The amount and purpose of any other anticipated association expenditure.

SENATE BILL 412

3. The amount in any statutory reserve account or any other funds held for future expenditures.

4. Any common surpluses.

5. The amount and source of any income, other than unit owner assessments.

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

If there is a statutory reserve account for the condominium, the annual budget must provide reserve funds for the account. See s. 703.163 (8) (intro.), created by SEC. 33 of the bill, below.

1 **SECTION 33.** 703.163 of the statutes is created to read:

2 **703.163 Statutory reserve account. (1) DEFINITIONS.** In this section:

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

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

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

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

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

18 3. This section applies to a condominium consisting of both residential and
19 nonresidential units if the declarant or the association, with the written consent of

SENATE BILL 412

1 a majority of the unit votes of the residential units and a majority of the unit votes
2 of the nonresidential units, elects to be governed by this section.

3 (b) This section does not affect a reserve account or a similar account existing
4 on the effective date of this paragraph [revisor inserts date], or a reserve account
5 or similar account established on or after the effective date of this paragraph
6 [revisor inserts date], that is not a statutory reserve account.

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

15 (b) Reserve fund assessments for the reserve account established under par. (a)
16 may first be assessed on a particular unit when a certificate of occupancy has been
17 issued that applies to that unit. The declarant may elect to defer payment of the
18 accrued assessments for a particular unit until the first conveyance of that unit. The
19 declarant may not defer payment of accrued reserve fund assessments for more than
20 5 years from the date the exterior construction of the building in which the unit is
21 located is completed. The declarant is liable for all reserve fund assessments on a
22 unit that accrue before the unit is conveyed. If there are accrued reserve fund
23 assessments against a unit, the declarant shall disclose in writing to the first
24 purchaser of the unit whether the declarant has included any accrued reserve fund

SENATE BILL 412

1 assessments in the purchase price of the unit or, if not included, how any accrued
2 assessment will be paid.

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

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

17 **(5) EXISTING CONDOMINIUMS; STATUTORY RESERVE ACCOUNT UNLESS ELECT**
18 **OTHERWISE.** The association for a condominium created before the effective date of
19 this subsection [revisor inserts date], shall, within 18 months after the effective
20 date of this subsection [revisor inserts date], or within 18 months after the
21 expiration of any period of declarant control under s. 703.15 (2) (c), whichever is later,
22 establish a statutory reserve account unless the association, with the written
23 consent of at least two-thirds of the unit votes, elects not to establish a statutory
24 reserve account. Upon the establishment of or the election not to establish a

SENATE BILL 412

1 statutory reserve account, the association shall execute a statutory reserve account
2 statement.

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

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

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

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

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

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

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

SENATE BILL 412

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

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

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

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

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

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

22 **(11) RECORDING OF STATUTORY RESERVE ACCOUNT STATEMENT.** Each statutory
23 reserve account statement executed under this section shall bear the name of the
24 condominium as it appears on the declaration and shall be recorded with the register
25 of deeds of the county where the condominium instruments are recorded.

SENATE BILL 412

NOTE: Requires a declarant or association to establish a “statutory reserve account” to fully or partially fund repairs and replacements of common elements other than routine maintenance, unless the declarant or association elects not to establish an account.

The statutory reserve account provisions generally apply only to exclusively residential condominiums, other than small condominiums. Small condominiums and mixed-use (residential and nonresidential units) condominiums may choose to be governed by the statutory reserve account provisions.

The statutory reserve account provisions expressly do not affect: (1) existing reserve accounts or similar accounts; or (2) reserve accounts or similar accounts that are not statutory reserve accounts established on or after the effective date of the bill.

The declarant must establish a statutory reserve account for a new condominium (a condominium established on or after the effective date of the bill) but the declarant may opt out of the requirement. If the declarant establishes a statutory reserve account, assessments for the account may first be assessed against a particular unit when a certificate of occupancy has been issued that applies to that unit. The declarant may defer payment of assessments on a particular unit until the unit is conveyed, but for not more than 5 years from the date the exterior construction of the building in which the unit is located is completed. If there are accrued reserve fund assessments against a unit, the declarant must disclose to the first purchaser of the unit whether any of the accrued assessments are included in the purchase price and, if not, how any accrued assessment will be paid.

If the declarant has opted out, establishment of an account must be addressed at the first annual meeting of the association held after, or at a special meeting held within one year of, termination of declarant control. A statutory reserve account is established by the association with the written consent of a majority of the unit votes. If the declarant has not opted out of the statutory reserve account requirement for a new condominium, the association at any time after the expiration of declarant control may elect to terminate the account with the written consent of at least two-thirds of the unit votes.

Existing condominiums (condominiums established before the effective date of the bill) must, within 18 months after the bill’s effective date, or within 18 months after the expiration of declarant control, whichever is later, establish a statutory reserve account unless, with the written consent of at least two-thirds of the unit votes, the association elects not to establish an account.

More generally, an association may at any time elect to establish a statutory reserve account, with the written consent of a majority of the unit votes, or to terminate a statutory reserve account, with the written consent of at least two-thirds of the unit votes.

Factors that a declarant or association is to consider in determining the amount to be assessed unit owners for the statutory reserve account include: funds currently in the account; the estimated cost of repairing or replacing common elements, other than routine maintenance; the estimated remaining useful life of common elements; the approximate proportion of the estimated cost of repairing or replacing common elements that will be covered by the account and the approximate proportion that will be funded by other means; and any other factor considered relevant. In the case of a conversion condominium, the declarant must also consider the required report of an independent architect or engineer.

Funds in a statutory reserve account may be invested in any investment in which local governments are generally authorized to invest by statute.

Funds in a statutory reserve account may be used only for the repair and replacement of common elements, other than routine maintenance, unless there is

SENATE BILL 412

written consent of at least two-thirds of the unit votes to use the funds for normal repair or maintenance, customary services or other operational costs in excess of amounts budgeted. If used for the latter purposes, the funds must be replaced within 3 years from the date of withdrawal from the account.

A "statutory reserve account statement" must be executed when a statutory reserve account is established or an election is made not to have or to terminate a statutory reserve account. If an election not to establish, or to terminate, a statutory reserve account is made, the statement must indicate how it is anticipated that future expenditures for repairs and replacements of common elements will be funded. The statement must be recorded with the register of deeds.

Finally, a declarant, unit owner, association, or director, officer, manager or employee of an association is not liable in connection with the establishment or termination, or decision not to establish or terminate, a statutory reserve account or for any deficiencies in a statutory reserve account that relate to the determination of amounts to be assessed for reserve funds.

1 **SECTION 34.** 703.165 (title) and (1) of the statutes are created to read:

2 **703.165 (title) Lien for unpaid common expenses, unpaid damages, and**
3 **unpaid penalties.**

4 **(1) DEFINITION.** In this section, "assessments" means regular and special
5 assessments for common expenses and charges, fines, or assessments against
6 specific units or unit owners for damages to the condominium or for penalties for
7 violations of the declaration, bylaws, or association rules.

NOTE: Creates a title for new s. 703.165 and a definition of assessment for use throughout the section. The definition expands the scope of the lien provisions of current s. 703.16 (3) to (9) (renumbered s. 703.165 (2) to (8) by SEC. 31 of the bill). Currently, those lien provisions apply to failure to pay assessments for common expenses. The new definition, in combination with the treatment of s. 703.16 (3) to (9) by SEC. 31 of the bill, expands the coverage of the lien provisions to include failure to pay charges, fines, or assessments for damages to the condominium and for violations of the declaration, bylaws, or association rules.

8 **SECTION 35.** 703.19 (8) of the statutes is amended to read:

9 **703.19 (8) PRESERVATION OF THE RIGHT OF APPEAL.** The owner of each unit taken
10 ~~shall have the individual right of may appeal of the necessity of taking and of the~~
11 ~~condemnation award made for the taking. An association shall have the right of A~~
12 ~~unit owner may appeal of the necessity of taking of the common elements and the~~
13 ~~right of appeal of, and the condemnation award made for the taking, of the owner's~~

SENATE BILL 412

1 ~~interest in the common elements. An appeal by an association shall be binding upon~~
2 ~~the individual unit owners for the necessity of taking or the condemnation award~~
3 ~~made for the taking of the common elements.~~ The unit owners having an interest
4 in the ownership of limited common elements may individually or as a group appeal
5 the necessity of taking or the condemnation award made for the taking of the limited
6 common elements.

NOTE: Repeals the right of an association to appeal the necessity of taking, and the condemnation award made for the taking, of the common elements and the binding effect of the appeal upon individual unit owners. The revision reflects the policy judgment that individual unit owners should have the right of appeal. See also s. 703.195, created by SEC. 36 of the bill, below, for a related provision.

7 **SECTION 36.** 703.195 of the statutes is created to read:

8 **703.195 Acquisition of common elements by condemnors. (1)**

9 DEFINITIONS. In this section:

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

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

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

16 **(2) APPLICABILITY.** This section applies to the acquisition by a condemnor of a
17 portion of the common elements of a condominium that is created 6 months or more
18 after the effective date of this subsection [revisor inserts date]. This section is in
19 addition to any applicable provision in ch. 32.

20 **(3) NOTICE TO UNIT OWNERS AND ASSOCIATION.** A condemnor who seeks to acquire
21 a portion of the common elements of a condominium and who wishes to negotiate
22 with the association instead of with each unit owner shall notify the association and

SENATE BILL 412

1 each unit owner of the proposed acquisition, in writing, at least 30 days before
2 delivery of the appraisal required under s. 32.05 (2) (b) or 32.06 (2) (b). The notice
3 to the unit owners shall be sent by certified mail, requesting a return receipt signed
4 by the addressee only. Notice is deemed complete on the date the addressee
5 acknowledges receipt. The notice required under this subsection is in addition to any
6 notice required under s. 32.05 or 32.06 and shall be provided simultaneously with the
7 pamphlets that are prepared under s. 32.26 (6) and provided under ss. 32.05 (2a) and
8 32.06 (2a). The condemnor is responsible for the expense of sending the notice under
9 this subsection.

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

12 (a) The name and address of the condemnor.

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

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

16 (d) The following statement in substantially identical language, in at least
17 12-point bold type, if printed, or in capital letters, if typewritten:

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

SENATE BILL 412

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

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

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

24 **(5) METHOD OF OBJECTING BY UNIT OWNER.** A unit owner who objects to the
25 association acting as the agent for the owner shall indicate the objection as provided

SENATE BILL 412

1 on the form under sub. (4) (e) and send the form, within 30 days after the notice under
2 sub. (3) is received, to the condemnor by U.S. mail to the address indicated on the
3 notice. The objection is made when the completed form is mailed to the condemnor.
4 Before initiating negotiations with the unit owner under s. 32.05 (2a) or 32.06 (2a),
5 the condemnor shall provide the association and those unit owners who have
6 objected a written list of all of the unit owners who have objected.

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

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

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

NOTE: Provides a procedure for a condemnor who wishes to negotiate with the association instead of with each unit owner for the acquisition of a portion of the common elements (excluding limited common elements) for a public project. The procedure is based on a Florida statute. [West's F.S.A. s. 73.073 (2001 Supplement).] "Acquisition" refers to obtaining title to real property by purchase or condemnation.

In general terms, a condemnor who seeks to acquire a portion of the common elements is required to notify the association and each unit owner. If a unit owner fails to object to the association representing the unit owner in the property acquisition within 30 days after receiving the notice, the owner is deemed to have agreed to that representation in any subsequent proceeding relating to the acquisition of the common elements at issue.

SENATE BILL 412

A unit owner who timely objects to representation by the association in the acquisition retains all of his or her rights with regard to the acquisition and all other rights pertaining to unit ownership.

The optional procedure may be used only to acquire a portion of the common elements of a condominium that is created 6 months or more after the effective date of the bill.

1 **SECTION 37.** 703.20 (3) of the statutes is created to read:
2 703.20 (3) DECLARANT RESPONSIBILITIES FOR RECORDS. During the period of
3 declarant control under s. 703.15 (2) (c), the declarant is responsible for creating and
4 maintaining the financial and operational records of the association and shall turn
5 the records over to the directors elected under s. 703.15 (2) (f). During the period of
6 declarant control under s. 703.15 (2) (c) and for one year thereafter, upon written
7 request to the association by the lesser of 3 unit owners or the owners of 10% of the
8 units, not including units owned by the declarant, the association shall arrange for
9 an independent audit of its financial records, but no request may be made for an audit
10 within 24 months after the completion of a previous audit.

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

Also, during the period of declarant control and one year thereafter, requires the association to arrange for an independent audit of the association's financial records if requested by the lesser of 3 unit owners or the owners of 10% of the units (not including units owned by the declarant). A limit is provided on the frequency of requesting an audit.

11 **SECTION 38.** 703.24 of the statutes is repealed and recreated to read:
12 **703.24 Remedies for violations by unit owner or tenant of a unit owner.**
13 **(1) DEFINITION.** In this section, "violation" means failure to comply with this chapter
14 or the declaration, bylaws, or association rules.
15 **(2) LIABILITY FOR UNIT OWNER VIOLATION.** A unit owner who commits a violation
16 is liable for any charges, fines, or assessments imposed by the association pursuant

SENATE BILL 412

1 to the bylaws or association rules as a result of the violation and may be subject to
2 a temporary or permanent injunction.

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

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

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

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

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

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

SENATE BILL 412

NOTE: 1. Repeals and recreates s. 703.24, relating to liability of a unit owner for damages or injunctive relief caused by the failure of the unit owner to comply with ch. 703, the declaration, or bylaws. Current s. 703.24 provides as follows:

“If any unit owner fails to comply with this chapter, the declaration or bylaws, the unit owner may be sued for damages caused by the failure or for injunctive relief, or both, by the association or by any other unit owner.”.

2. Subsection (2) revises current s. 703.24. It makes a unit owner who fails to comply with ch. 703, the declaration, the bylaws, or the association rules liable for any resulting charges, fines or assessments imposed pursuant to association bylaws or rules. Deletion of the current reference to suing a unit owner for damages for failure to comply is not intended to change the liability of a unit owner to the association or any other unit owner for damages caused by failure to comply with ch. 703, the declaration, bylaws, or rules. In this regard, see sub. (5).

3. Subsections (3) and (4) are new. The provisions make a tenant who commits a violation liable for any charges, fines, or assessments imposed by the association for the violation. Subsection (3) (b) provides that 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 association charges, fines, or assessments for which the tenant is liable that remain unpaid 30 days after the tenant received notice. Double recovery by an association of any charges, fines, or assessments is not intended. Subsection (4) sets forth the notice requirement for holding the unit owner liable for a tenant’s violation if the tenant does not pay the charges, fines, or assessments within the specified time.

See, also, SECS. 31 and 34, which expand the lien provisions of current s. 703.16 (3) to (9) (renumbered s. 703.165) to also include, among other things, unpaid assessments for penalties for violations of the declaration, bylaws, or association rules.

1 **SECTION 39.** 703.25 (4) of the statutes is created to read:

2 703.25 (4) An action to abate a nuisance may be brought against an association
3 as provided under s. 823.015.

NOTE: For convenience, cross-references the provision created by the bill in ch. 823. See SEC. 68 of the bill.

4 **SECTION 40.** 703.255 of the statutes is repealed.

NOTE: Repeals the current provision that deals with uncompleted units (other than those included in an expanding condominium under s. 703.26, stats.). Under that provision, if a declarant fails to complete any unit described in the declaration within 5 years after recording the declaration, the declarant must obtain the agreement of at least 75% of the unit owners permitting completion of the units within 5 years of the date of the agreement. If the agreement is not obtained, the declarant loses the uncompleted units (the declarant must remove the units from the declaration and adjust percentage interests and votes accordingly).

5 **SECTION 41.** 703.265 of the statutes is created to read:

6 **703.265 Addendum to plat to reflect changes in building codes or**
7 **zoning ordinances. (1)** If the revision or adoption of a building code or zoning

SENATE BILL 412

1 ordinance prevents or substantially affects the construction of a unit or common
2 elements as platted, the declarant may reasonably modify the condominium plat, by
3 addendum, to the extent necessary to comply with the code or ordinance in order to
4 construct the unit or common elements.

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

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

NOTE: Allows for the amendment of a condominium plat if the revision or adoption of a building code or zoning ordinance prevents or substantially affects the construction or reconstruction of a unit or common elements (including limited common elements) as platted. If such a revision or adoption of a building code or zoning ordinance occurs, the declarant, unit owner, or association, as appropriate, may reasonably modify the condominium plat to the extent necessary to comply with the code or ordinance in order to construct or reconstruct the unit or common elements. An amendment under this section is not subject to s. 703.11 (5); see SEC. 17 of the bill.

12 **SECTION 42.** 703.27 of the statutes is amended to read:

13 **703.27 Zoning and building regulations.** (1) A zoning or other land use
14 ordinance or regulations may not prohibit the condominium form of ownership or
15 impose any requirements upon a condominium ~~which~~ that it would not impose upon
16 a ~~physically identical~~ if the development were under a different form of ownership.
17 No provision of a state or local building code may be applied differently to a building
18 in a condominium than it would be applied to a ~~if the building of similar structure~~
19 ~~or occupancy~~ were under a different form of ownership unless the different
20 application is expressly permitted in that provision and the different application is
21 reasonably related to the nature of condominium ownership. No subdivision

SENATE BILL 412

1 ordinance may apply to any condominium unless the ordinance is, by its express
2 terms, applicable to condominiums and the application is reasonably related to the
3 nature of condominium ownership.

4 (2) No county, city, or other jurisdiction may enact any law, ordinance, or
5 regulation ~~which~~ that would impose a greater burden or restriction on a
6 condominium ~~that is not imposed on all other property of similar character not~~
7 ~~subjected to a condominium declaration~~ or provide a lower level of services to a
8 condominium than would be imposed or provided if the condominium were under a
9 different form of ownership.

NOTE: 1. Clarifies, with editorial changes, the prohibition on imposing requirements under zoning or other land use ordinances or regulations that discriminate against the condominium form of ownership.

2. Clarifies the prohibition on applying a provision of a state or local building code 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 by the building code. Further clarifies that if the different application is expressly permitted, it must be reasonably related to the nature of condominium ownership. Similarly, clarifies that no subdivision ordinance may apply to a condominium unless, as currently required, the ordinance is expressly applicable to condominiums and, as added by the bill, its application is reasonably related to the nature of condominium ownership.

3. Clarifies the prohibition against enactment of any law, ordinance or regulation that would impose a burden or restriction on a condominium that is not imposed on all other property of similar character not subjected to a condominium declaration to specify that the law, ordinance or regulation may not impose a "greater" burden or restriction and, additionally, may not provide a lower level of service to a condominium than would be imposed or provided if the condominium were under a different form of ownership.

10 **SECTION 43.** 703.275 (1) of the statutes is amended to read:

11 703.275 (1) AGREEMENT; LEGAL EFFECT. Any 2 or more condominiums, including
12 2 or more small condominiums or any combination of small condominiums and other
13 condominiums, by agreement of the unit owners as provided in this section, may be
14 merged or consolidated into a single condominium. Unless the agreement otherwise
15 provides, the condominium resulting from a merger or consolidation is, for all
16 purposes, the legal successor of all of the preexisting condominiums and the

SENATE BILL 412

1 operations and activities of all associations of the preexisting condominiums shall be
2 merged or consolidated into a single association which shall hold all powers, rights,
3 obligations, assets and liabilities of the preexisting associations. The resultant
4 condominium must bear the name of one of the preexisting condominiums.

NOTE: Authorizes 2 or more small condominiums, or any combination of small
condominiums and other condominiums, to merge, as provided under the current merger
provision--s. 703.275, stats.

5 **SECTION 44.** 703.275 (2) of the statutes is renumbered 703.275 (2) (bc).

6 **SECTION 45.** 703.275 (2) (ac) of the statutes is created to read:

7 703.275 (2) (ac) In this subsection, "allocated interests" means the undivided
8 percentage interest in the common elements, the liability for common expenses, and
9 the number of votes at meetings of the association appurtenant to each unit.

NOTE: Relocates the defined term from the general definition section of ch. 703 (s.
703.02) to s. 703.275, the only provision within the chapter that uses the defined term.

10 **SECTION 46.** 703.315 of the statutes is created to read:

11 **703.315 Lease or rental agreements for residential units. (1)**

12 DEFINITIONS. In this section:

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

16 (b) "Tenant" means any of the following:

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

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

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

SENATE BILL 412

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

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

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

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

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

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

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

NOTE: Provides a measure of regulation relating to agreements, whether oral or
written, for the rental or lease of a residential condominium unit by the same tenant for

SENATE BILL 412

a period of more than one month and to periodic tenancies with a recurring interval of time of one month or more.

Under sub. (2), a tenant who enters into a covered condominium rental agreement or who is entitled to occupancy under a covered periodic tenancy agrees to comply with ch. 703 (condominiums), the rules and bylaws of the association, and the provisions of the declaration. By making agreement to comply a matter of law, failure of a tenant to comply with the chapter, declaration, bylaws, or rules will trigger the provisions of ch. 704 (landlord and tenant) that relate to breach of a rental agreement or lease by a tenant.

Under sub. (3), if a written condominium rental agreement is entered into, the unit owner must provide a copy within five business days to the association. The association must keep a copy of the agreement on file while the agreement is in effect.

Subsection (4) provides a means of contacting or giving notice to a tenant or unit owner who is party to a covered condominium rental agreement or periodic tenancy. Contact or notice may be made or given by the means indicated by the tenant or unit owner in writing to the association or, if that does not apply, by any method currently provided under statutory landlord and tenant law for giving notice to a tenant or landlord.

Subsection (5) provides that a unit owner must provide a copy of the declaration and the association bylaws and rules to a covered tenant before the tenant occupies the unit or must place the information in the unit before the tenant occupies the unit.

Under sub. (6), the section expressly does not apply to a time-share unit governed under ch. 707. The inclusion of sub. (6) is not intended to affect or raise any inference concerning the meaning of current s. 707.09, stats., relating to the relationship of ch. 703, condominiums, and ch. 707, time shares.

Section 703.315, as created by this SECTION, first applies to condominium rental agreements renewed or entered into approximately 3 months after the effective date of the bill. See SEC. 69 (10) of the bill.

1 **SECTION 47.** 703.33 (1) (h) of the statutes is created to read:

2 703.33 (1) (h) An executive summary setting forth in clear plain language the
3 following information or location within the disclosure materials described in pars.
4 (a) to (g) where the information may be found:

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

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

9 3. ‘Governance.’ The name and address of the condominium association;
10 whether the association is self-managed or has hired or retained management; and

SENATE BILL 412

1 the name, address, and telephone number of the individual or individuals who may
2 be contacted regarding the condominium in general.

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

6 5. 'Maintenance and repair of units.' A description of an owner's
7 responsibilities for the repair and maintenance of the unit.

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

12 7. 'Rental of units.' Whether unit owners may rent their units and any
13 restrictions on rentals.

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

17 9. 'Parking.' A description of the availability, restrictions, and costs of parking.

18 10. 'Pets.' A description of rules relating to unit owners' pets.

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

22 12. 'Other restrictions or features.' At the option of the declarant or association
23 a description of other restrictions or features of the condominium.

NOTE: SECTIONS 47 to 49 require an executive summary highlighting important disclosure items to be included as the first document, following the index, in the disclosure materials that must be furnished by a seller of a condominium unit to a buyer.

SENATE BILL 412

The executive summary is prepared and revised by the declarant or association, whichever is in control of the condominium. The executive summary must contain the following information, or indicate where the information may be found in the disclosure materials:

1. The name of the condominium.
2. A description of the declarant's expansion plans for the condominium, if any, and deadline for implementation.
3. Information identifying the condominium association and management authority and the individual who may be contacted regarding the condominium.
4. A description of special amenities such as an athletic club or golf course and the obligation of an owner to join or support the amenity.
5. A description of an owner's responsibilities relating to the repair and maintenance of the unit.
6. The identity of the person responsible for the maintenance, repair, and replacement of common elements and limited common elements and whether the repair or replacement will be funded from unit owner assessments or reserve funds.
7. Whether unit owners may rent their units and any restrictions on rentals.
8. 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. A description of the availability, restrictions, and costs of parking.
10. A description of rules relating to unit owners' pets.
11. Whether reserves are maintained by the association and, if so, whether a statutory reserve account is maintained.
12. At the option of the declarant or association of unit owners, a description of other restrictions or features of the condominium.

See SEC. 69 (11) for the delayed applicability of the executive summary requirement.

1 **SECTION 48.** 703.33 (1m) of the statutes is created to read:

2 703.33 **(1m)** PREPARATION OF EXECUTIVE SUMMARY. The executive summary

3 under sub. (1) (h) shall be prepared, and subsequently revised whenever a change

4 is made in the disclosure materials described in sub. (1) (a) to (g) that requires a

5 revision of a statement in the summary, by the declarant or the association,

6 whichever is in control of the condominium when the executive summary is prepared

7 or revised.

NOTE: Imposes an obligation on the declarant or association to prepare the executive summary and to revise it consistent with changes in the required disclosure materials.

SENATE BILL 412

1 **SECTION 49.** 703.33 (2) (intro.) of the statutes is amended to read:

2 703.33 **(2)** DISCLOSURE FORM. (intro.) The materials required in sub. (1) shall
3 be delivered to a prospective purchaser with cover sheet, index, and tables of contents
4 as prescribed in this section. A cover sheet and index shall precede all other
5 materials required in sub. (1). The executive summary required under sub. (1) (h)
6 shall appear immediately following the index. A table of contents shall precede the
7 section to which it applies.

NOTE: Specifies the location of the executive summary: immediately following the
index at the beginning of the disclosure materials.

8 **SECTION 50.** 703.33 (2) (a) (form) 2. of the statutes is amended to read:

9 703.33 **(2)** (a) (form) 2. THESE DISCLOSURE MATERIALS GIVEN TO YOU
10 AS REQUIRED BY LAW MAY, WITH THE EXCEPTION OF THE EXECUTIVE
11 SUMMARY, BE RELIED UPON AS CORRECT AND BINDING. FOR A
12 COMPLETE UNDERSTANDING OF THE EXECUTIVE SUMMARY, CONSULT
13 THE DISCLOSURE DOCUMENTS TO WHICH A PARTICULAR EXECUTIVE
14 SUMMARY STATEMENT PERTAINS. ORAL STATEMENTS MAY NOT BE
15 LEGALLY BINDING.

16 **SECTION 51.** 703.33 (2) (a) (form) 3. of the statutes is amended to read:

17 703.33 **(2)** (a) (form) 3. YOU MAY AT ANY TIME WITHIN 5 BUSINESS DAYS
18 FOLLOWING RECEIPT OF THESE DOCUMENTS, OR FOLLOWING NOTICE
19 OF ANY MATERIAL CHANGES IN THESE DOCUMENTS, CANCEL IN
20 WRITING THE CONTRACT OF SALE AND RECEIVE A FULL REFUND OF ANY
21 DEPOSITS MADE. IF THE SELLER DELIVERS LESS THAN ALL OF THE
22 DOCUMENTS REQUIRED, YOU MAY, WITHIN 5 BUSINESS DAYS
23 FOLLOWING RECEIPT OF THE DOCUMENTS, DELIVER A REQUEST FOR

SENATE BILL 412

1 ANY MISSING DOCUMENTS. IF YOU TIMELY DELIVER A REQUEST FOR
2 MISSING DOCUMENTS, YOU MAY, AT ANY TIME WITHIN 5 BUSINESS DAYS
3 FOLLOWING THE EARLIER OF EITHER THE RECEIPT OF THE REQUESTED
4 DOCUMENTS OR THE SELLER'S DEADLINE TO DELIVER THE REQUESTED
5 DOCUMENTS, CANCEL IN WRITING THE CONTRACT OF SALE AND
6 RECEIVE A FULL REFUND OF ANY DEPOSITS MADE.

NOTE: SECTIONS 50 and 51 revise 2 of the disclosure statements that must appear in bold face type and capital letters on the cover sheet of the disclosure form given to a prospective purchaser of a condominium unit to indicate: (1) that the executive summary (when required; see SEC. 69 (11) of the bill) may not be relied upon as correct and binding and that the purchaser should consult the disclosure documents to which a particular executive summary statement pertains; and (2) that a buyer may request missing disclosure documents within 5 business days following receipt of the other documents and that, if a request is made, the 5-day cancellation period does not start to run until the earlier of the receipt of any missing documents that have been requested by the purchaser or the seller's deadline for delivery of the missing documents. (See SECS. 56 and 58 of the bill.)

7 **SECTION 52.** 703.33 (2) (b) (form) 1. of the statutes is renumbered 703.33 (2) (b)
8 (form) 1m.

9 **SECTION 53.** 703.33 (2) (b) (form) 1c. of the statutes is created to read:

10 703.33 (2) (b) (form) 1c. *Executive summary.* The executive summary
11 highlights for a buyer of a condominium unit essential information regarding the
12 condominium. The executive summary begins on page

NOTE: Places the executive summary required under this bill first in the list of items included in the index of disclosure materials that follows the cover sheet to the disclosure materials.

13 **SECTION 54.** 703.33 (2) (c) of the statutes is amended to read:

14 703.33 (2) (c) *Tables of contents and page numbers.* In addition to an index
15 required by par. (b), ~~there shall be provided~~ tables of contents for the declaration, and
16 ~~bylaws and articles of incorporation which shall identify~~ shall be provided,
17 identifying each section of these documents and ~~provide~~ providing a page number for
18 each section. Each section of disclosure material required in sub. (1) shall, on the first

SENATE BILL 412

1 page of that material, identify contents of that section but, with an the exception of
2 the declaration, and bylaws and articles of incorporation, shall, is not be required to
3 have a table of contents. ~~Each page of disclosure materials shall contain a page~~
4 ~~number sufficient to identify it within the body of disclosure materials. Page~~
5 ~~numbers for the declaration, bylaws and articles of incorporation required in par. (b)~~
6 ~~shall be the first page of the table of contents for that section. All other page numbers~~
7 ~~required in the index shall refer to the first page of that section on which the title~~
8 ~~appears. Each section of disclosure material shall be separately identified by a letter,~~
9 ~~tab, or number. Pages within each section shall be consecutively numbered with an~~
10 ~~indication of the section as part of the pagination.~~

NOTE: Clarifies that the entire body of disclosure materials furnished to purchasers of residential units need not be consecutively paginated by providing that the consecutive pagination requirement only applies to each section within the body of disclosure materials. Removes the requirement of a table of contents for the articles of incorporation. Also makes editorial changes.

11 **SECTION 55.** 703.33 (3) of the statutes is renumbered 703.33 (3m).

12 **SECTION 56.** 703.33 (3c) of the statutes is created to read:

13 703.33 (3c) DELIVERY OF INCOMPLETE SET OF DISCLOSURE MATERIALS. If the seller
14 delivers disclosure materials that include the cover sheet required in sub. (2) (a), but
15 that do not include all of the documents required under sub. (1), the purchaser may,
16 within 5 business days from receipt of the disclosure materials, request any
17 documents that were required to be delivered under sub. (1), but that were not timely
18 delivered. If no executive summary required under subs. (1) (h) and (1m) has been
19 prepared, the seller may so inform the purchaser when the seller delivers the
20 disclosure materials to the seller. The seller has 5 business days following receipt
21 of the purchaser's request to deliver the requested documents to the purchaser.

NOTE: Authorizes the purchaser to request any documents that are not included in the disclosure materials within 5 business days of receipt of the materials. The seller

SENATE BILL 412

has 5 business days following receipt of the request to deliver the requested documents.
See, also, SEC. 58 of the bill.

1 **SECTION 57.** 703.33 (4) of the statutes is renumbered 703.33 (4) (a) and
2 amended to read:

3 703.33 (4) (a) Any purchaser may at any time within 5 business days following
4 receipt of all ~~information~~ of the documents required under sub. (1) and within 5
5 business days following receipt of all ~~information~~ of the amendments required under
6 sub. (3) ~~(3m)~~, rescind in writing a contract of sale without stating any reason and
7 without any liability on his or her part, ~~and the purchaser is entitled to the return~~
8 ~~of any deposits made in account of the contract.~~

9 **SECTION 58.** 703.33 (4) (b) and (c) of the statutes are created to read:

10 703.33 (4) (b) If the disclosure materials delivered by the seller do not include
11 all the documents required under sub. (1), the purchaser may rescind in writing a
12 contract of sale without stating any reason and without any liability on his or her
13 part as follows:

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

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

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

NOTE: Provides that the purchaser's 5-day cancellation period does not start to run
until the earlier of the receipt of any missing disclosure documents that have been

SENATE BILL 412

requested by the purchaser or 5 business days following the receipt by the seller of a request for the missing documents.

1 **SECTION 59.** 703.365 (title), (1), (2) and (3) of the statutes are amended to read:

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

NOTE: Revises a defined term to reflect the revision of that term by SEC. 3 of the bill. See the NOTE to that SECTION. This change is made throughout provisions of s. 703.365, relating to small condominiums.

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

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

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

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

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

NOTE: Revised to reflect the revised defined term and the change in substance of that term.

20 (e) All actions taken under this chapter ~~which~~ that require a vote of units or
21 unit owners must be approved by an affirmative vote or written consent of at least

SENATE BILL 412

1 75% of the unit votes of a small residential condominium, or a greater percentage if
2 required by the declaration or this chapter.

3 (3) BYLAWS. (a) Notwithstanding s. 703.10 (2) (a), all aspects of the
4 management, operation, and duties of the association of a small residential
5 condominium shall be delegated to the board of directors, which may retain a
6 manager, including a master association under s. 703.155, for the small residential
7 condominium, and the bylaws shall so specify.

NOTE: Expressly allows a small condominium to utilize a master association.

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

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

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

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

18 **SECTION 60.** 703.365 (3m) of the statutes is created to read:

19 703.365 (3m) AGREEMENT IN LIEU OF BYLAWS. If approved by written consent of
20 all of the unit votes of a small condominium, an agreement may be substituted for
21 the bylaws under sub. (3). The terms of the agreement shall include the
22 requirements of sub. (3) (a) to (d) and shall be consistent with this section. An
23 amendment to an agreement may be made with the affirmative vote or written
24 consent of all the unit votes of the small condominium.

SENATE BILL 412

NOTE: Authorizes a small condominium, if approved by written consent of all of the unit votes, to substitute an agreement for the bylaws. The terms of the agreement must include the requirements of current s. 703.365 (3) and must otherwise be consistent with s. 703.365. An amendment to an agreement may be made with affirmative vote or written consent of all of the unit votes of the small condominium. Compare ss. 180.1823 and 180.1825, stats., relating to agreements in place of bylaws for statutory close corporations.

1 **SECTION 61.** 703.365 (4), (5), (6) (a) (intro.) and (c), (7) and (8) of the statutes
2 are amended to read:

3 703.365 (4) CONDOMINIUM PLAT. (a) The survey under s. 703.11 (2) (b) shall be
4 an as-built survey of the property described in the declaration, building, and other
5 improvements on the land ~~which~~ that are part of the small residential condominium.

6 (b) The floor plans under s. 703.11 (2) (c) need only show the location and
7 designation of each unit in the building and the limited common elements
8 appurtenant to each unit of a small residential condominium. These plans may be
9 supplemented by an agreement among all unit owners and mortgagees regarding the
10 allocation of use and enjoyment of common elements, ~~which~~ agreement, in both its
11 original and any amended form, shall be recorded.

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

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

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

19 **(6)** (a) (intro.) Paragraphs (b) to (e) apply to a small residential condominium
20 if any of the following criteria is met:

SENATE BILL 412

1 (c) The unit owner or owners may challenge the decision after reconsideration
2 by the board of directors under par. (b) only in an arbitration proceeding under ch.
3 788. Acceptance of a conveyance of a small ~~residential~~ condominium ~~which~~ that is
4 subject to pars. (b) to (e) is deemed to constitute an agreement by the unit owner to
5 submit challenges to decisions of the board of directors to arbitration.

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

8 (8) DISCLOSURE REQUIREMENTS. The disclosure required for a small ~~residential~~
9 condominium under s. 703.33 ~~shall be~~ is limited to the disclosure required under s.
10 703.33 (1) (a) to (e), if applicable, and a copy of the condominium plat.

11 **SECTION 62.** 703.37 of the statutes is amended to read:

12 **703.37 Interpretation.** For purposes of interpretation of this chapter, a
13 condominium is a form of ownership, not a form of land use, and is not a subdivision
14 as defined in ch. 236.

NOTE: Clarifies the current interpretation directive which provides that, for
purposes of interpreting ch. 703, a condominium is not a subdivision under ch. 236, stats.,
by adding the statement that a condominium is "a form of ownership, not a form of land
use".

15 **SECTION 63.** 703.38 (10) of the statutes is renumbered 703.38 (10) (a) and
16 amended to read:

17 703.38 (10) (a) ~~Section~~ Except as provided in par. (b), s. 703.02 (14m), 1999
18 stats., and s. 703.365 applies, 1999 stats., apply to condominiums created on or after
19 April 22, 1986, and before the effective date of this paragraph ... [revisor inserts
20 date], and to condominiums created before April 22, 1986, that elect to be subject to
21 s. 703.02 (14m), 1999 stats., and s. 703.365, 1999 stats.

22 **SECTION 64.** 703.38 (10) (b) of the statutes is created to read:

SENATE BILL 412

1 703.38 (10) (b) Sections 703.02 (14m) and 703.365 apply to condominiums
2 created on or after the effective date of this paragraph ... [revisor inserts date], and
3 to condominiums created before the effective date of this paragraph ... [revisor
4 inserts date], that elect to be subject to ss. 703.02 (14m) and 703.365.

5 **SECTION 65.** 703.38 (11) of the statutes is repealed.

6 **SECTION 66.** 709.02 of the statutes is renumbered 709.02 (1).

7 **SECTION 67.** 709.02 (2) of the statutes is created to read:

8 709.02 (2) In regard to a transfer of a condominium unit, as defined in s. 703.02
9 (15), the owner shall furnish, in addition to and at the same time as the information
10 required under sub. (1), all the following information as an addendum to the real
11 estate condition report under s. 709.03:

12 (a) The name of the condominium and the date the condominium was created
13 by recording condominium instruments with the register of deeds under s. 703.07;
14 the unit number of the property offered for sale; and the name, address, and
15 telephone number of the seller or the seller's agent.

16 (b) The name and address of the condominium association; a statement
17 specifying whether the association is self-managed or has hired or retained
18 management; and the name, address, and telephone number of the individual who
19 may be contacted as a representative of the association regarding this sale, in
20 particular, or the condominium, in general.

21 (c) The amount of current condominium assessments, fees, special
22 assessments, or other charges for which a unit owner is responsible and whether the
23 current charges for the unit have been paid.

24 (d) A copy of the executive summary required under s. 703.33 (1) (h).

SENATE BILL 412

NOTE: Requires an owner of a condominium unit who is transferring ownership of the unit to include certain information in an addendum to the real estate condition report pertaining to the condominium unit. The information must include the name of the condominium and other identifying information; the condominium association and management authority; and the amount of current condominium assessments, fees, and other charges for which a unit owner is responsible and whether the current charges have been paid. The addendum must also include a copy of the executive summary under s. 703.33 (1) (h), stats., as created in SEC. 47 of the bill, if an executive summary is required under the initial applicability schedule set forth in SEC. 69 (11) of the bill.

1 **SECTION 68.** 823.015 of the statutes is created to read:

2 **823.015 Action against condominium association.** If a city, village, town,
3 or county may bring an action under this chapter to abate a nuisance and the failure
4 of a condominium association under ch. 703 to perform its duties to maintain and
5 control the common elements is a reason the nuisance has not been abated, the action
6 may be brought against the condominium association whether it is incorporated or
7 unincorporated.

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

8 **SECTION 69. Initial applicability.**

9 (1) The treatment of section 703.08 (2) (intro.) of the statutes, the renumbering
10 and amendment of section 703.08 (1) of the statutes, and the creation of section
11 703.08 (1) (a), (b), and (c) and (3) of the statutes first apply to notices to convert
12 residential real property to a condominium that are delivered on the effective date
13 of this subsection.

14 (2) The treatment of section 703.09 (1) (k) of the statutes first applies to
15 condominium declarations that are submitted for recording on the effective date of
16 this subsection.

SENATE BILL 412

1 (2m) The treatment of section 703.09 (2) and (4) of the statutes first applies to
2 condominium declaration amendments that are submitted for recording on the
3 effective date of this subsection.

4 (3) The treatment of section 703.11 (2) (c) of the statutes first applies to plats,
5 or amendments to plats, that are submitted for recording on the effective date of this
6 subsection.

7 (4) The treatment of section 703.11 (5) of the statutes first applies to addenda
8 that are submitted for recording on the effective date of this subsection.

9 (5) The treatment of section 703.13 (6) (c) and (d) of the statutes first applies
10 to boundary relocations for which written application is made on the effective date
11 of this subsection.

12 (5m) The treatment of section 703.13 (8) of the statutes first applies to mergers
13 for which notice is provided on the effective date of this subsection.

14 (6) The renumbering of section 703.16 (2) of the statutes and the creation of
15 section 703.16 (2) (b) of the statutes first applies to condominiums that are created
16 on the effective date of this subsection.

17 (6m) The treatment of section 703.19 (8) of the statutes first applies to
18 condemnation proceedings commenced on the effective date of this subsection.

19 (7) The treatment of section 703.20 (3) of the statutes first applies to
20 condominiums that are created on the effective date of this subsection.

21 (8) The treatment of section 703.24 of the statutes first applies to violations
22 that are committed on the effective date of this subsection.

23 (9) The treatment of section 703.265 of the statutes first applies with respect
24 to revisions or adoptions of building codes or zoning ordinances that take effect on
25 the effective date of this subsection.

SENATE BILL 412

1 (10) The treatment of section 703.315 of the statutes first applies to
2 condominium rental agreements that are renewed or entered into, or periodic
3 tenancies that are commenced, on the first day of the 4th month beginning after the
4 effective date of this subsection.

5 (11) The treatment of section 703.33 (1) (h), (1m), and (2) (intro.), (a) (form) 2.,
6 and (b) (form) 1. and 1c. of the statutes first applies to all of the following:

7 (a) With respect to condominiums that are created on or after the first day of
8 the 6th month beginning after the effective date of this paragraph, to closings of sales
9 of units that are scheduled to occur on the first day of the 6th month beginning after
10 the effective date of this paragraph.

11 (b) With respect to condominiums that are created before the first day of the
12 6th month beginning after the effective date of this paragraph, to closings of sales
13 of units that are scheduled to occur on the first day of the 19th month beginning after
14 the effective date of this paragraph.

15 (11m) The treatment of section 703.33 (2) (a) (form) 3. and (c), (3), and (3c) of
16 the statutes, the renumbering and amendment of section 703.33 (4) of the statutes,
17 and the creation of section 703.33 (4) (b) and (c) of the statutes first apply to closings
18 of sales of units that are scheduled to occur on the effective date of this subsection.

19 (12) The renumbering of section 709.02 of the statutes and the creation of
20 section 709.02 (2) of the statutes first applies to contracts of sale or option contracts,
21 with respect to condominium units, that are accepted on the effective date of this
22 subsection.

23 **SECTION 70. Effective date.**

