

2014 End of Session Report

The LAC continued its work to modify Chapter 703, the states condominium act. The proposed amendments include:

1. Improving the definitions in Section 703.02 Wis. Stat. to include the following subsection:5b) "construction begun" or "construction began" means the date a building permit was issued for the construction of the unit or units. (5c) "completed" means the earlier date of when the unit is either occupied or an occupancy permit has been issued.
2. Making a lender under Section 703.09(2) Wis. Stat. respond in writing to a proposed declaration amendment within 45 days, and if they don't respond, then lender will be deemed for all purposes to have approved the actions specified in the notice.
3. Amending Section 703.10(4) Wis. Stat. so as to prohibit anyone who is not paying the full amount of assessments under Ch. 703.16 from voting.
4. Amending Section 703.16(2)(a) to require vacant land to pay assessments equal to 10% of what would be due if construction were complete, 50% while construction is occurring and require construction to be completed within 24 months.
5. Amend Section 703.16(2)(b) Wis. Stat. to limit the amount of assessments for which a Unit Owner can be liable to their proportionate share of the budget during any period that another Unit Owner is exempt from assessments.
6. Amend Section 703.165(5) Wis. Stat. so that any first mortgagee foreclosing on a Unit liable for the assessments for the preceding twelve months.

Below is more detail on the problems and proposed solution related to the proposed amendment.

Amendment to Section 703.09(2)

Current Problem. The law requires a mortgagee's (secured lender) approval to amendments to the Declaration, but many mortgagees, even when the amendment would be beneficial, don't respond in any fashion to a requested amendment. This makes it almost impossible for most associations to amend their declaration.

Proposal. If the mortgagee does not provide a response within 45 days, then the secured lender will be deemed for all purposes to have approved the proposed declaration amendment.

Amendment to Section 703.10(4)

Current Problem. Declarants or more commonly their successors (often banks via foreclosure) allow the period of declarant control to pass, so they are not required to pay any assessments on un-built units, but they have full voting power for every un-built unit. For practical purposes this often gives them control of the association, even though they are not paying assessments. This makes no sense and is not equitable.

Proposal. After the period of declarant control under s. 703.15(2)(c), a unit owner shall have no voting rights until the unit is paying the full amount of an assessment that would be due if the unit were completed, sold and occupied.

Amendment to Section 703.16(2)(a)

Current Problem. After the period of declarant control under s. 703.15(2)(c), declarants still often construct units and use the common element (e.g. model units), especially the roads on which very heavy construction vehicles pass, yet they often pay no assessments. This is because the developer has not yet sold the particular unit. For such units, even if vacant land, the owner should pay some assessment.

Proposal. After the period of declarant control under s. 703.15(2)(c), owners of units that have:

1. Not yet had construction begun shall pay assessments of 10% of the amount that would be due if the unit were completed, sold and occupied; or
2. Had construction begun, but are not yet completed, shall pay assessments of 50% of the amount that would be due if the unit were completed, sold and occupied. Once construction has begun, all units are deemed completed 24 months after the date that construction began, such that full assessments shall be due at that time.

Amendment to Section 703.16(2)(a)

Current Problem. While associations are under declarant control, the declarant is required to pay any shortfall from the budgeted amount of assessments. The assessments paid on the sold units are collected monthly as the expenses are due monthly, but the declarant's shortfall is not owed until after the end of the year. This, at times, effectively puts the burden for all of the current year's expenses on the existing unit owners despite the statute. This is not equitable and the developer should pay monthly just like all of the other unit owners.

Proposal. Declarant or successors of exempt units must pay any shortfall monthly with everything adjusted annually. This is simply fairer to everyone.

Amendment to Section 703.165(5)

Current Problem. When a unit goes into foreclosure, the first mortgage holder does NOT pay assessment, but upon completion of the foreclosure, the first mortgage holder gets the benefit of the association (the other unit owner's) keeping the property up. Since the bank is getting the benefit, it should pay its fair share in the same fashion that 22 other states have recently changed their lien priority statute to require banks to pay from 6 months to unlimited months of the back assessments.

Proposal. Make the first mortgage holder liable for the unit's proportionate assessments during the period of the foreclosure, but not more than 12-months, while the other unit owners are paying to keep the common elements maintained.

For any association that has had a bank foreclose of a unit owner, the passage of the amendment, assuming a 12-month lien priority and a \$200 per monthly assessment, would put \$2,400 into the association's accounts. Accordingly, the more foreclosures that you have had, the more these amendments would likely benefit your association.