

4-20-04

John Day
letter from
Realtors Assoc.

on Condo bill
saying good
job



Memorandum

WISCONSIN REALTORS ASSOCIATION

To: Interested Parties

From: Michael Theo, WRA Vice President of Public Affairs
Debbi Conrad, WRA Director of Legal Services

Date: February 23, 2004

RE: AMENDMENT TO AB 254 -- CONDOMINIUM LAW REVISIONS

The Wisconsin REALTORS® Association supports the simple amendment being offered to AB 254, regarding condominium law revisions. These changes represent technical changes sought by the Register of Deeds and other revisions sought by interested parties. We believe the amendment is consistent with, and an improvement to, AB 254.

The amendment makes the following improvements:

1. Power of Attorney for Evictions. The condominium association may be granted the ability to act as power of attorney for unit owners who rent their units only in (a) new condominiums and (b) existing condominiums where all unit owners consent to a declaration amendment giving the association this ability. (AB 254, Section 13, page 6). The intent of this change is to avoid the fundamental change of authorizing the association to evict tenants in existing condominiums until all unit owners are in support.
2. Votes to Reject Establishment or Terminate Statutory Reserves. The required vote for an existing condominium to reject the establishment of a statutory reserve account and for any condominium to terminate an existing statutory reserve account is changed from a two-thirds vote to a majority vote - the same vote that is required to create a statutory reserve (AB 254, Section 33, pages 24-25). The intent of this change is to create the same rules for establishing and terminating reserves.
3. Audit of Association Books During Developer Control. The condo association financial records maintained by the developer during the developer control may be audited at association expense every three years upon unit owners' request. More frequent audits requested by unit owners are at requestors' expense (AB 254, Section 37, pages 32-33). The intent of this change is to clarify how audits will be paid for.
4. Declaration Provision for Mandatory Arbitration Deleted. Provision specifically confirming that the declaration may impose mandatory arbitration is deleted because of concern that extensive owners rights are forfeited when the exclusive remedy is arbitration (AB 254, Section 12, page 5). The intent of this change is to avoid the possibility of unit purchasers forfeiting their rights to litigate future problems without careful consideration. This consideration may get lost when purchasers have so many other features to evaluate.

5. Declaration to State Rental Restrictions. When a Declaration is amended to recite rental restrictions, the restrictions do not apply to leases in place, and do not apply to the units of unit owners who do not consent to the amendment until the units are sold (AB 254, Section 9, page 4). The intent of this change is to avoid making immediate changes to the property rights of existing tenants renting condominium units, and the property rights of unit owners who do not support the rental restrictions.

6. Requirements for Owner Occupancy of Directors May be Stated in the Bylaws. Bylaws may specify the proportion of non-occupant unit owners who may serve on the association board of directors, while the provision prohibiting non-occupant directors is dropped (AB 254, Section 17, page 12). The intent of this change is to permit flexibility for associations to determine the extent to which non-occupant unit owners participate on the board of directors rather than simply prohibiting them.

7. Provision for Nuisance Action Against Condominium Association Deleted. Provision specifically permitting a municipality to bring receiver action against association whose neglect of the common elements is contributing to a nuisance is deleted (AB 254, Section 70, pages 51-52). The intent of this change is to set aside the issue of nuisance actions for consideration in another forum because it is not a Chapter 703 provision.

8. Unit Assessments During Developer Control. AB 254 provides that if a developer's units are exempt from unit assessments for common expenses during developer control, that the assessments for sold units shall not exceed the unit's share of expenses per the budget, leaving the developer to pay the balance of actual expenses. The proposed amendment to AB 254 replaces that provision with an item in the executive summary directing unit purchasers to any provisions in the condominium materials excusing or modifying the developer's obligation to pay unit assessments (AB 254, Section 30, pages 18 & 19). The intent of this change is to avoid imposing one set of formula for handling fees on unsold units upon all developers because the budget and audit provisions allow enhanced monitoring of developers and the executive summary is changed to alert unit buyers to review any provisions about the payment of fees for developers' unsold units.

9. Amendments to Declaration and Bylaws. Language is added to the executive summary calling attention to the fact that a unit purchaser's rights and responsibilities in the condominium may be changed via amendments to the declaration, bylaws and other documents. (AB 254, Section 49, page 41). The intent of this change is to alert buyers that a condominium documents can be amended in ways that change the property rights of owners.

10. Technical Corrections. Changes made to rectify incorrect reference to affidavits and to require that statutory reserves statements be in the required form for recordable documents. (AB 254, Sections 16 and 33, pages 11 and 26). The intent of this change is to make corrections that will permit recording of the referenced documents with the Register of Deeds.

HORTON LAW OFFICE, S.C.

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WM. PHARIS HORTON
ATTORNEY AT LAW

February 24, 2004

MAILING ADDRESS
P.O. BOX 5621
MADISON, WISCONSIN 53705

Hon. Steve Wieckert, Chairman
Assembly Committee on Housing
P.O. Box 8953
Madison WI 53708

Dear Chairman Wieckert:

Re: Hearing on 2003 Assembly Bill 254

I regret that a previous commitment makes it impossible for me to attend the Committee's hearing on 2003 Assembly Bill 254 on Thursday. I would like to offer my comments, and my strong statement of support, for this bill and my hope that it can be advanced and adopted this session.

The bill is the product of a Legislative Council study committee on which I had the privilege of serving. I was impressed by the quality and depth of the study and the commitment of those on the study committee to work for the improvement of the Wisconsin Condominium Act. There were a lot of ideas discussed and a healthy range of opinions on those ideas. There was significant compromise on controversial issues and a resulting belief by the study committee that the overall package made a number of improvements to the Act.

Following the introduction of the Legislative Council bill in 2002, there was a hearing late in the 2001 session of the Legislature. Some further ideas were raised in that hearing and the interested parties have been working so far this session to iron out some of the remaining points in controversy. This effort is represented by an amendment (LRB 2259). It is a continuation of the process of compromise that characterized the work of the study committee. There are parts of the amendment, just as there are parts of the bill, that I am more or less enthusiastic about, but I remain convinced that even with the adoption of the amendment the overall package will represent a step forward in the Act. Condominium ownership has become an important part of the real estate market, residential and commercial, in Wisconsin. This bill makes condominium ownership available more economically and helps it to be more understandable to the people of Wisconsin. I would urge its adoption with the amendment.

I understand other amendments may be offered. A recent communication from the newly-formed Community Associations Institute, Wisconsin Chapter, addresses various points in the bill and the amendment. The Community Associations Institute (CAI) nationally has been a useful and positive clearing house for information regarding condominiums and other community groups for many years. The comments by the Wisconsin Chapter, unfortunately, appear to miss the mark as regards this proposal.

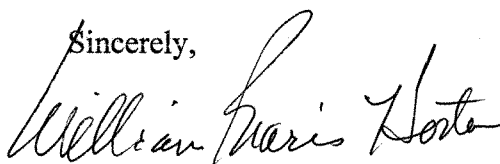
Hon. Steve Wieckert
February 24, 2004
Page Two

A major point in the CAI-Wisconsin Chapter's memorandum of February 18, its item I, results from an apparent inability to interpret legislative drafting. Provisions that the memo claims have been deleted are merely renumbered: for example, §703.16(4) of the current Statutes is not removed but is renumbered and retained as §703.165(3). Similarly, what is now §703.16(6) dealing with the priority of condominium liens becomes §703.165(5) and, while its introductory language is reworded to be more easily understood, the priority of the condominium lien is not changed by this amendment. Contrary to the conclusion of the Wisconsin Chapter, the changes that it interprets into Sections 31 and 34 of the bill strengthen rather than weaken the position of an association in dealing with its finances.

A second major point in the Wisconsin Chapter memo, its item VII, deals with the approval mechanism for certain changes within a condominium. The memo calls for approval by the association board (which is required in the bill on page 14, lines 6-7), assurance that it will not interfere with the use of other units or the common elements (required in the bill on page 14, lines 1-3), and will not impair the structural integrity of the condominium (required in the bill on page 14, lines 4-5). Apparently the Wisconsin Chapter analysis missed what was already in the bill in making these comments.

The balance of the points in the memo refer to issues in the bill and amendment that were the subject of debate and compromise either in the study committee or in the process leading up to the drafting of the amendment. I am not unsympathetic to several of the points raised, but none of them are of such importance that they should sidetrack the bill. This bill and its amendment are a very positive step forward. They are not the last amendment that will be made to the Condominium Act; further fine-tuning to meet problems and new developments is inevitable. These issues, if they remain, can be addressed then. In the meantime, I believe the bill as amended deserves to be acted on favorably by your Committee and the Legislature.

Sincerely,

A handwritten signature in cursive script that reads "William Pharis Horton". The signature is written in dark ink and is positioned above the printed name.

Wm Pharis Horton



Wisconsin Builders Association

Dedicated to Preserving and Promoting the American Dream

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La Crosse

Ted Peotter
Wausau

**Deputy Executive
Vice-President**
Jerry Deschane



MEMORANDUM

TO: Representative Steve Wieckert, and
Members of Assembly Housing Committee

FROM: Jerry Deschane

DATE: February 26, 2004

RE: Support AB 254 as amended

The Wisconsin Builders Association urges your support for Assembly Bill 254 as amended by LRBa2259. This legislation is the result of a lot of hard work by a Legislative Council committee, renters, developers, builders, owners and Realtors. It updates Wisconsin's condominium laws and provides additional protection for unit purchasers and renters.

We note for the record that, while our organization supports this legislation and we will work hard for its passage, some members of the Wisconsin Builders Association are still uncomfortable with provisions that relate to an individual's property rights. Specifically, the provisions allowing condominium bylaws or declarations to be modified without unanimous consent of the unit owners could give rise to a situation where an individual may be deprived of a property right against his will by majority action. If such a circumstance were to arise, some of our members believe that an individual could challenge the constitutional validity of these portions of the bill.

However, as an Association, we are satisfied that the bill, as amended, is a reasonable and realistic compromise. The doubts we have are outweighed by the certainty that this bill improves the law for both owners and developers of condominiums. We thank the members of the Legislative Council committee for their hard work, and we look forward to the passage of this legislation.

Thank you for considering our viewpoint.

4868 High Crossing Boulevard • Madison, Wisconsin 53704-7403
(608) 242-5151 • (800) 362-9066 • Fax (608) 242-5150

www.wisbuild.org

Pelnar, Angela

From: Rep.Wieckert
Sent: Wednesday, August 20, 2003 2:28 PM
To: 'Jerry Deschane'
Subject: RE: Condo bill

Dear Jerry,

Thank you for your memo regarding the condo legislation. I too feel some changes are needed. I think you are on the right track in working with other associations to develop a consensus bill. Please let me know if there is anything I can do to assist you.

The builder's testimony in favor of my double tax exempt bonding bill for WHEDA was valuable.

Sincerely,
Steve

[Pelnar, Angela] -----Original Message-----
From: Jerry Deschane [mailto:jdeschane@wisbuild.org]
Sent: Wednesday, August 20, 2003 10:57 AM
To: Rep.Wieckert@legis.state.wi.us
Subject: Condo bill

Hi, Steve.

I just wanted to let you know where we are on the condominium bill (AB 254), which is sitting in your committee.

This bill is last year's legislative council recodification of condominium laws. Our representative on the legislative council committee, attorney John Kassner, had several significant concerns with the final product. Up to this time, John has been devoting all of his time to the challenge of Trans 233, which as you know we are pursuing in court.

We have been in contact with the Wisconsin Realtors Association and intend to sit down with their representative over the next two weeks to identify remaining concerns and determine how or whether they can be resolved. It would be our hope that the Builders and Realtors will be able to approach your committee with a consensus position on the bill sometime in September.

Let me know if you have additional questions.

Jerry

Pelnar, Angela

From: Jerry Deschane [jdeschane@wisbuild.org]

Sent: Wednesday, August 20, 2003 10:57 AM

To: Rep.Wieckert@legis.state.wi.us

Subject: Condo bill

Hi, Steve.

I just wanted to let you know where we are on the condominium bill (AB 254), which is sitting in your committee.

This bill is last year's legislative council recodification of condominium laws. Our representative on the legislative council committee, attorney John Kassner, had several significant concerns with the final product. Up to this time, John has been devoting all of his time to the challenge of Trans 233, which as you know we are pursuing in court.

We have been in contact with the Wisconsin Realtors Association and intend to sit down with their representative over the next two weeks to identify remaining concerns and determine how or whether they can be resolved. It would be our hope that the Builders and Realtors will be able to approach your committee with a consensus position on the bill sometime in September.

Let me know if you have additional questions.


Jerry

08/20/2003



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE STEVE WIECKERT
FROM: Don Dyke, Chief of Legal Services 
RE: Assembly Amendment __ (LRBa2582/1) to 2003 Assembly Bill 254 (Condominium Law)
DATE: March 4, 2004

This memorandum describes how the above-captioned amendment differs from Assembly Amendment 1 to 2003 Assembly Bill 254. With the exception of the differences described below, Assembly Amendment __ (LRBa2582/1) is identical to Assembly Amendment 1.

Inclusion of Rental Requirements or Restrictions in Declaration

The Bill

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

Amendment 1

Amendment 1 provides that requirements and restrictions for renting residential units stated in an amendment to the declaration of a condominium established before the effective date of the bill are not binding on leases in effect on the date the amendment is recorded or on unit owners who did not give written consent to the amendment, but are binding on the unit owner once the unit is sold and conveyed to a new unit owner.

Amendment __ (LRBa2582/1)

The amendment deletes the above-described provision of the bill in its entirety (and, consequently does not include the treatment of Assembly Amendment 1).

Eviction Action by Association

The Bill

The bill provides that the condominium declaration may authorize the condominium association, under specified circumstances, to bring an eviction action against a tenant who fails to comply with the declaration, bylaws, or association rules or who commits any act or omission that is grounds for evictions under current law (a "violation"). Specifically, a declaration may provide that a unit owner, as a condition renting or leasing the owner's 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 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 a notice and procedural requirements for the association's exercise of power of attorney and the allocation of responsibility for eviction-related costs between the unit owner and the association. An eviction action brought by an association is subject to relevant eviction provisions of current chs. 704 and 799, Stats.

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

Amendment 1

Amendment 1 provides that the eviction provision applies to condominiums established before the effective date of the bill only to the extent the declaration is amended with the consent of all unit owners to include any of the provisions.

Amendment __ (LRBa2582/1)

The amendment deletes the above-described eviction provisions of the bill in its entirety (and, consequently, does not include the treatment of Assembly Amendment 1).

BYLAWS: SERVICE AS DIRECTOR BY NONOCCUPANT OWNERS

The Bill

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

Assembly Amendment 1

Assembly Amendment 1 deletes the express authority for the bylaws to provide that a unit owner may not serve as a director unless the owner occupies his or her unit. The amendment retains the provision that the bylaws may specify the proportion of nonoccupant unit owners who may serve as directors. See item 5. of the amendment.

Amendment — (LRBa2582/1)

The amendment deletes the above-described provision of the bill in its entirety (and, consequently, does not include the treatment of Assembly Amendment 1).

Declarant Liability for Assessments on Unsold Units

The Bill

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

Amendment 1

Amendment 1 deletes this provision.

Amendment — (LRBa2582/1)

The amendment restores the provision of the bill deleted by the amendment and revises that provision by providing that the total amount that may be assessed against units that are not exempt from assessments may not exceed those units' "budgeted share" of common expenses (in contrast to those units' "projected share" of common expenses).

Financial and Operational Records During Declarant Control

The Bill

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

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

Amendment 1

Amendment 1 revises the period during which an independent audit of financial records may be requested. Under the amendment, the request may be made during the period of declarant control and for two years thereafter, but no earlier than two years after the condominium declaration is recorded.

The amendment also expressly provides that a financial audit requested under the provision is at the association's expense but the cost of any audit requested within 36 months after completion of a previous audit is to be paid for by the requesting unit owners.

Amendment __ (LRBa2582/1)

The amendment retains the language of the bill concerning the period during which an audit may be requested: during the period of declarant control and for one year thereafter. The amendment retains those provisions of Assembly Amendment 1 providing that a financial audit requested under the provision is at the association's expense but the cost of any audit requested within 36 months after completion of a previous audit is to be paid for by the requesting unit owners.

Nuisance Actions Against Associations

The Bill

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

Amendment 1

Amendment 1 deletes this provision

Amendment __ (LRBa2582/1)

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

If you have any questions or need additional information, please contact me directly at the Legislative Council staff offices.

DD:wu:tlujal

**SHIRLEY
KRUG**

**STATE
REPRESENTATIVE**

Dear Steve—

Attached are the Leg Council
Memo & the amendment.

Please review with Don
Dykes & let me know what
you think.

In most cases, we 1) go
back to current law or
2) make minor modifications
to your amendment 1.

Thanks,

Shirley





Memorandum

WISCONSIN REALTORS ASSOCIATION

TO: Rep. Marlin Schneider
FROM: Michael Theo and Deb Conrad
DATE: March 3, 2004
RE: Condominium Association Actions

You had asked several questions with respect to AB 254, regarding the powers of condominium association powers to enforce condo rules on unit owners and owners. You also asked questions about the recourse options owners have to challenge association decisions. Below please find some information about current law and AB 254 that addresses these issues.

1) Neither the existing law nor AB 254 allow the unit owners or the board of directors to simply vote a unit owner out of his or her unit. AB 254 does give associations the ability in the future to evict tenants if the unit owner/landlord fails to address the problem, but this is not the power to remove unit owners.

2) Existing law and AB 254 allows associations to impose fines for violations of the law or the condominium declaration, bylaws or rules. Such ability would be established in the condominium documents. The association and the board of directors must follow its own rules if they enforce the condominium rules against any unit owner. Should the association, board or officers fail to act in a proper and reasonable manner, the unit owner may pursue remedies within the association such as bringing the matter to the attention of the other unit owners or the board, voting out board members or officers who behave improperly, or other remedies stated in the condominium documents. In addition, the unit owner may sue in court if no satisfactory solution is obtained within the condominium. Nothing in AB 254 changes that.

We hope this information is useful. Please don't hesitate to contact us.

Thanks!

(Mike Theo cell: 608-444-1111)

Becher, Scott

From: Theo, Mike - VP Public Affairs [mtheo@wra.org]
Sent: Wednesday, March 03, 2004 1:19 PM
To: 'Becher, Scott'
Subject: RE: LRB 03a2466 Topic: Condominiums

This looks great. Hebl is 100% supportive and will help with his caucus. The attorney representing the CAI group that testified at the hearing says the amendment looks fine and addresses the concerns they raised at the hearing. She however can't speak formally on behalf of their group because they have not convened to review and the group is very diverse. But that means we addressed the concerns raised at the hearing and their attorney has said so. That seems good enough for you guys, Hebl and I will check in with Morris, Krusick, etc.

Thanks again for all the help. Let me know if you guys need ANYTHING else from us before tomorrow.

Mike

-----Original Message-----

From: Becher, Scott [mailto:Scott.Becher@legis.state.wi.us]
Sent: Wednesday, March 03, 2004 12:35 PM
To: Micheal Theo (E-mail)
Subject: FW: LRB 03a2466 Topic: Condominiums

-----Original Message-----

From: Pelnar, Angela
Sent: Wednesday, March 03, 2004 12:30 PM
To: Becher, Scott; Pelnar, Angela
Subject: FW: LRB 03a2466 Topic: Condominiums

Angela Pelnar
Legislative Aide
State Representative Steve Wieckert
608-266-3070
angela.pelnar@legis.state.wi.us

-----Original Message-----

From: Dyke, Don
Sent: Wednesday, March 03, 2004 12:05 PM
To: Rep. Wieckert
Subject: FW: LRB 03a2466 Topic: Condominiums

-----Original Message-----

From: Basford, Sarah
Sent: Wednesday, March 03, 2004 8:30 AM
To: Dyke, Don

03/03/2004

Subject: LRB 03a2466 Topic: Condominiums

The attached proposal has been jacketed for introduction.

A copy has also been sent to: madelon.lief@legis.state.wi.us
<<mailto:madelon.lief@legis.state.wi.us>> ;

<<2466>>



Memorandum

WISCONSIN REALTORS ASSOCIATION

To: Representatives Steve Wieckert and Tom Hebl

From: Michael Theo, Vice President of Public Affairs
Debbi Conrad, Director of Legal Services

Date: March 3, 2004

RE: AB 254 – Condominium Law Compromise Amendment (LRBa2466/2)

Based on concerns raised in testimony last week before the Assembly Housing Committee by the Community Associations Institute, (CAI), and some committee members, we have worked with Rep. Wieckert and Legislative Council staff to offer the following changes to AB 254. These changes (LRBa2466/1) are also acceptable to the Wisconsin Builders Association.

1. Existing rental restrictions and eviction provisions in condo documents.

Amend the bill to allow existing eviction procedures in condo bylaws and declarations to remain in effect without being validated or invalidated by the bill. (Delete Section 9 of the bill which provides that rental restrictions must be stated or referenced in the declaration.) These changes should address the number one concern raised by CAI at the hearing.

2. Responsibility for assessments on unsold units during declarant control period.

Amend the amendment to restore language from the original bill (Section 30, pages 18-19 of AB 254), stating developers cannot charge assessments for unsold units to other unit holders. The concern was raised at the hearing that the unintended consequence of the amendment could be unit purchasers paying the overhead for a developer's sales efforts. This change would restore the language as developed by the Legislative Council study committee, with one minor change. This change should address concerns raised by CAI (and Chairman Wieckert) at the hearing.

3. Time limits on audits

Amend the amendment to remove time limits on the ability of unit owners to audit the books during developer control. With this change, the bill would say the condo association pays for one audit request every three years and requesting unit owners would pay for any other audits. This change should address concerns raised by CAI at the hearing. (AB 254, in Section 37 on pages 32-33. Assembly amendment: Assembly amendment page 2, remove the change in #11, lines 11-12, but leave in the changes in #12 and #13, lines 13-17.)


4. Nuisance action for receivership action against condominium association mismanaging the common elements.

Amend the amendment to clarify that municipalities and counties can abate nuisances if the condo association fails to perform its duties to maintain and control common elements. This change would make it clear that the bill only authorizes a receivership action to restore proper management and eliminate nuisance conditions, (such as drugs, prostitution, serious physical deterioration, etc.). This change would not allow for the seizure of buildings or units which was the concern raised by some under the original bill. This provision should address concerns raised by Rep. Morris at the hearing.



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE STEVE WIECKERT
FROM: Don Dyke, Chief of Legal Services 
RE: Assembly Amendment __ (LRBa2466/2) to 2003 Assembly Bill 254 (Condominium Law)
DATE: March 3, 2004

This memorandum describes how the above-captioned amendment differs from Assembly Amendment 1 to 2003 Assembly Bill 254. With the exception of the differences described below, Assembly Amendment __ (LRBa2466/2) is identical to Assembly Amendment 1.

Inclusion of Rental Requirements or Restrictions in Declaration

The Bill

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

Amendment 1

Amendment 1 provides that requirements and restrictions for renting residential units stated in an amendment to the declaration of a condominium established before the effective date of the bill are not binding on leases in effect on the date the amendment is recorded or on unit owners who did not give written consent to the amendment, but are binding on the unit owner once the unit is sold and conveyed to a new unit owner.

Amendment __ (LRBa2466/2)

The amendment deletes the above-described provision of the bill (and, thus, the above-described provision of Assembly Amendment 1 is not included in the amendment).

Eviction Action by Association

The Bill

The bill provides that the condominium declaration may authorize the condominium association, under specified circumstances, to bring an eviction action against a tenant who fails to comply with the declaration, bylaws, or association rules or who commits any act or omission that is grounds for evictions under current law (a "violation"). Specifically, a declaration may provide that a unit owner, as a condition renting or leasing the owner's 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 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 a notice and procedural requirements for the association's exercise of power of attorney and the allocation of responsibility for eviction-related costs between the unit owner and the association. An eviction action brought by an association is subject to relevant eviction provisions of current chs. 704 and 799, Stats.

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

Amendment 1

Amendment 1 provides that the eviction provision applies to condominiums established before the effective date of the bill only to the extent the declaration is amended with the consent of all unit owners to include any of the provisions.

Amendment __ (LRBa2466/2)

The amendment provides that the above-described eviction provisions do not affect any eviction procedure contained in a declaration or bylaws, or referenced in a declaration or bylaws, on the effective date of the bill. (It is expressly provided that this applicability provision is not intended to affect the validity of any such procedure.)

Declarant Liability for Assessments on Unsold Units

The Bill

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

Amendment 1

Amendment 1 deletes this provision.

Amendment __ (LRBa2466/2)

The amendment restores the provision of the bill deleted by the amendment and revises that provision by providing that the total amount that may be assessed against units that are not exempt from assessments may not exceed those units' "budgeted share" of common expenses (in contrast to those units' "projected share" of common expenses).

Financial and Operational Records During Declarant Control

The Bill

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

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

Amendment 1

Amendment 1 revises the period during which an independent audit of financial records may be requested. Under the amendment, the request may be made during the period of declarant control and for two years thereafter, but no earlier than two years after the condominium declaration is recorded.

The amendment also expressly provides that a financial audit requested under the provision is at the association's expense but the cost of any audit requested within 36 months after completion of a previous audit is to be paid for by the requesting unit owners.

Amendment __ (LRBa2466/2)

The amendment retains the language of the bill concerning the period during which an audit may be requested: during the period of declarant control and for one year thereafter. The amendment retains those provisions of Assembly Amendment 1 providing that a financial audit requested under the provision is at the association's expense but the cost of any audit requested within 36 months after completion of a previous audit is to be paid for by the requesting unit owners.

Nuisance Actions Against Associations

The Bill

The bill allows a city, village, town, or county to proceed directly against a condominium association in an action to abate a nuisance if the municipality or county may bring the abatement action

under ch. 823 (nuisances) and the failure of the condominium association to perform its duties to maintain and control the common elements is a reason that the nuisance has not been abated.

Amendment 1

Amendment 1 deletes this provision

Amendment __ (LRBa2466/2)

The amendment restores this provision of the bill, with revisions. Under the amendment, the municipality or a county may proceed under the provision if it has "grounds under ch. 823 to abate a nuisance occurring upon the common elements of a condominium." Under the amendment, the action authorized by the provision is an action for receivership under s. 823.23, Stats. Finally, the amendment expressly states that the provision does not authorize the seizure of condominium buildings or units.

If you have any questions or need additional information, please contact me directly at the Legislative Council staff offices.

DD:wu:tlu

DRAFT

To: Representatives Steve Wieckert and Tom Hebl

From: Michael Theo, Vice President of Public Affairs
Debbi Conrad, Director of Legal Services

Date: March 3, 2004

RE: AB 254 – Condominium Law Compromise Amendment

Based on concerns raised in testimony last week before the Assembly Housing Committee by the Community Associations Institute, (CAI), and some committee members, we have worked with Rep. Wieckert and Legislative Council staff to offer the following changes to AB 254. These changes are also acceptable to the Wisconsin Builders Association.

1. Existing rental restrictions and eviction provisions in condo documents.

Amend the bill to allow existing eviction procedures in condo bylaws and declarations to remain in effect without being validated or invalidated by the bill. (Delete Section 9 of the bill which provides that rental restrictions must be stated or referenced in the declaration.) These changes should address the number one concern raised by CAI at the hearing.

2. Responsibility for assessments on unsold units during declarant control period.

Amend the amendment to restore language from the original bill (Section 30, pages 18-19 of AB 254), stating developers cannot charge assessments for unsold units to other unit holders. The concern was raised at the hearing that the unintended consequence of the amendment could be unit purchasers paying the overhead for a developer's sales efforts. This change would restore the language as developed by the Legislative Council study committee, with one minor change. This change should address concerns raised by CAI (and Chairman Wieckert) at the hearing.

3. Time limits on audits

Amend the amendment to remove time limits on the ability of unit owners to audit the books during developer control. With this change, the bill would say the condo association pays for one audit request every three years and requesting unit owners would pay for any other audits. This change should address concerns raised by CAI at the hearing. (AB 254, in Section 37 on pages 32-33. Assembly amendment: Assembly amendment page 2, remove the change in #11, lines 11-12, but leave in the changes in #12 and #13, lines 13-17.)

4. Nuisance action for receivership action against condominium association mismanaging the common elements.

Amend the amendment to clarify that municipalities and counties can abate nuisances if the condo association fails to perform its duties to maintain and control common elements. This change would make it clear that the bill only authorizes a receivership action to restore proper management and eliminate nuisance conditions, (such as drugs, prostitution, serious physical deterioration, etc.). This change would not allow for the seizure of buildings or units which was the concern raised by some under the original bill. This provision should address concerns raised by Rep. Morris at the hearing.

To: All Legislators

From: Michael Theo, Vice President of Public Affairs
Debbi Conrad, Director of Legal Services

Date: February 23, 2004

RE: Support AB 254 – Condominium Law Revisions

The Wisconsin REALTORS® Association (WRA) strongly supports AB 254 – legislation revising and updating Wisconsin's condominium laws. This legislation represents substantial work and compromises by the Legislative Council's Condominium Law Special Study Committee which worked from September 2000 through October 2001.

SB 254 addresses a wide range of condominium issues including:

- Provisions to encourage the establishment of reserve funds to pay for the repair and replacement of common elements such as roofs, etc.
- Provisions to aid condominium associations to enforce condominium rules.
- Provisions to help unit purchasers understand what they are buying,
- Provisions to make condominiums easier to work with – for consumers, developers, real estate agents, and attorneys.

AB 254 Highlights:

1. Statutory Reserve Accounts Encourage Planning for Long-Range Maintenance

Under AB 254, new and existing condominiums will be forced to consider whether or not they should have mandatory reserve accounts. These reserve accounts can be used in a flexible manner – they need not be fully funded to pay the full amount of all future common element repairs. Rather, reserves can be designed to only partially pay for future common element repairs and replacements. Condominiums will be able to opt in and out of these reserve accounts if circumstances change. Under AB 354, condo associations also must adopt and distribute an annual budget that shows any reserve funds to all unit owners.

2. Condominium Addendum Adds Important Condominium Information to the Real Estate Condition Report (RECR)

AB 254 creates a condominium addendum to supplement the real estate condition report (RECR). The RECR is given to all buyers regarding the property they are considering to purchase. The seller must list the unit address/description, contact information for the seller or the seller's agent, association management information, and information about the condominium budget and fees.

3. Executive Summary Enhances Disclosure for Buyers

AB 254 creates an executive summary or index for the voluminous disclosure materials provided condominium buyers. This index summarizes the most important information buyers need to know and/or directs them to the sections of the disclosure materials where that information is found. This includes information regarding condominium expansion plans, governance, repair and maintenance responsibilities, reserve funds, rules for unit rentals, parking arrangements, rules on pets, and other restrictions or features. The executive summary will appear at the beginning of the condominium disclosure materials package and a copy must be attached to the RECR.

4. Obtaining Disclosure Materials Addressed

Under existing law, condo buyers have a five-day right to rescind an offer to purchase but the time does not begin to run until the buyer has received all of the required disclosure documents. If even one document is missing, the rescission period is not triggered and the buyer can wait until the day of closing to decide to back out of the transaction. Under AB 254, when the buyer requests missing documents, the seller has five days to produce the documents and the buyer has five additional days in which to decide whether or not to rescind. A buyer can no longer wait until the last minute to cancel the transaction.

5. Associations Given Tools to Address Rental Issues

Under AB 254, any rental restrictions in a condominium must be stated in the condo declaration. The bill specifies that a tenant is liable for all fines if the tenant violates the condo law, declaration, bylaws or association rules. The unit owner becomes liable if tenant does not pay a fine within 30 days. All tenants must receive a copy of the condominium declaration, bylaws and rules and a tenant's failure to comply with these documents is automatically considered a breach of the tenant's rental agreement or lease. The condo declaration may provide that an owner who rents his/her unit can appoint the association the power of attorney to evict a tenant who violates the condominium declaration, bylaws or rules or if there are grounds for eviction under landlord/tenant law. These provisions help the association deal with tenants when the unit owner is not local.

6. Owners Given Means to Monitor Developers Financial Records

AB 254 provides that the developer (or "declarant") must keep financial and operation records for the association and turn these records over to the board of directors once the developer control ends. Unit owners are given rights to request audits during the developer control period.

7. Technical Changes Make for Easier Administration

AB 254 provides numerous technical changes that will delight associations, condominium developers and attorneys. These include improved condominium conversion procedures, allowing condo liens to be created fines and penalties not just assessments, declaration amendment procedures, assignment of declarant rights, simplification of unit plans for plats, procedures for unit owner improvements to the limited common elements, and improved procedures for merging two units.

We strongly encourage your support for AB 254. For more information and additional details, see the Legislative Council's report on AB 254 at http://www.legis.state.wi.us/lc/jlc03/rl2003_10.pdf



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2003 Assembly Bill 254	Assembly Amendment 1
<i>Memo published: February 27, 2004</i>	<i>Contact: Don Dyke, Chief of Legal Services (266-0292)</i>

2003 Assembly Bill 254 makes various revisions and additions to condominium law. Assembly Amendment 1 revises the bill as described below.

INCLUSION OF RENTAL REQUIREMENTS OR RESTRICTIONS IN DECLARATION

The Bill

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

The Amendment

The amendment provides that requirements and restrictions for renting residential units stated in an amendment to the declaration of a condominium established before the effective date of the bill are not binding on leases in effect on the date the amendment is recorded or on unit owners who did not give written consent to the amendment, but are binding on the unit owner once the unit is sold and conveyed to a new unit owner. See item 1. of the amendment.

MANDATORY ARBITRATION

The Bill

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

The Amendment

The amendment deletes this provision. See item 2. of the amendment.

EVICITION ACTION BY ASSOCIATION

The Bill

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

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

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

The Amendment

The amendment provides that the provision applies to condominiums established before the effective date of the bill only to the extent that the declaration was amended with the consent of all unit owners to include any of the provisions. See item 3. of the amendment.

RECORDING DECLARATION AMENDMENT BASED ON ALTERNATE PROCEDURE

The Bill

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

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

The Amendment

The amendment requires, consistent with current ch. 703 recording requirements, that the "amendment" (not affidavit) be recorded, together with the required information. See item 4. of the amendment.

BYLAWS: SERVICE AS DIRECTOR BY NONOCCUPANT OWNERS

The Bill

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

The Amendment

The amendment deletes the express authority for the bylaws to provide that a unit owner may not serve as a director unless the owner occupies his or her unit. The amendment retains the provision that the bylaws may specify the proportion of nonoccupant unit owners who may serve as directors. See item 5. of the amendment.

DECLARANT LIABILITY FOR ASSESSMENTS ON UNSOLD UNITS

The Bill

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

The Amendment

The amendment deletes this provision. See items 6. and 17. of the amendment. (Note: see, for a related provision in the amendment, the description below of additions to the executive summary of disclosure items.)

OPTING OUT OF STATUTORY RESERVE ACCOUNT REQUIREMENT

The Bill

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

The Amendment

The amendment revises the above 2/3 vote requirements by substituting "a majority" of the unit votes. See items 7. to 9. of the amendment.

RECORDING STATUTORY RESERVE ACCOUNT STATEMENTS

The Bill

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

The Amendment

The amendment requires the recorded statement to conform to current standard format requirements for recorded documents under s. 59.43 (2m), Stats. See item 10. of the amendment.

FINANCIAL AND OPERATIONAL RECORDS DURING DECLARANT CONTROL

The Bill

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

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

The Amendment

The amendment revises the period during which an independent audit of financial records may be requested. Under the amendment, the request may be made during the period of declarant control and for two years thereafter, but no earlier than two years after the condominium declaration is recorded. See item 11. of the amendment.

The amendment also expressly provides that a financial audit requested under the provision is at the association's expense but the cost of any audit requested within 36 months after completion of a previous audit is to be paid for by the requesting unit owners. See items 12. and 13. of the amendment.

EXECUTIVE SUMMARY OF DISCLOSURE ITEMS

The Bill

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

The Amendment

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

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

See item 15. of the amendment.

NUISANCE ACTIONS AGAINST ASSOCIATION

The Bill

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

The Amendment

The amendment deletes this provision. See items 14. and 16. of the amendment.

LEGISLATIVE HISTORY

Assembly Amendment 1 was offered by Representative Wieckert. The Assembly Committee on Housing recommended adoption of the amendment by a vote of Ayes, 5; Noes, 1.

DD:rv:wu:jal;wu