



2009 SENATE BILL 351

October 16, 2009 – Introduced by Senators ERPENBACH and WIRCH, cosponsored by Representatives ROYS, BERCEAU, JORGENSEN and POPE-ROBERTS. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT** *to amend* 710.15 (5r); and *to create* 77.25 (19), 100.20 (1w) and 710.16
2 of the statutes; **relating to:** requirements before a sale or other transfer of a
3 manufactured and mobile home community, providing an exemption from the
4 real estate transfer fee, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill gives a residents' association (association) of a mobile or manufactured home community (community) a 90-day right to make an offer to purchase the community, and a 60-day right to enter into an agreement for the purchase after making a timely offer, if the owner of the community receives an offer from a third party for the purchase or other transfer of ownership of the community that the owner intends to accept. If the owner receives such an offer, before unconditionally accepting the offer, the owner must provide, by certified mail, to every resident of the community and to the Wisconsin Housing and Economic Development Authority (WHEDA), notice that includes the price and other terms of the offer, as well as a statement that an association has 90 days from the date of the notice to make an offer to purchase the community.

The bill requires the owner to consider any timely offer to purchase made by an association and to negotiate in good faith. If an association and the owner enter into an agreement for the purchase within 60 days after the association makes an offer, the owner must allow the association a reasonable time beyond the 60-day period to obtain financing, if necessary. The bill exempts the sale of a community to an association from payment of the real estate transfer fee, which is a fee that is paid

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by the grantor on a conveyance of real property and that is equal to 30 cents of every \$100 of the property's value.

The bill requires WHEDA, upon request by an association, to assist the association in obtaining financing and to provide technical assistance. The bill requires the owner to allow an association, its technical assistance provider, and any prospective lender to have access to information regarding the community that the owner has provided or would have provided to a prospective purchaser of the community, such as the terms of any assumable financing, improvements to be made to the property by the owner in connection with the sale, the appraised value of the property, hazardous waste data, and income and operating expense information. Some of the information must be made available at any time after the owner has given notice to the residents, but some information need not be provided before the owner accepts an offer to purchase from the association.

Under the bill, if an association makes a timely offer to purchase but the association and owner do not reach an agreement on the purchase and, as a result, the community will be retired from the rental housing market, the owner must provide 120 days' notice of this to the residents.

The bill makes any owner that sells or otherwise transfers ownership of a community without complying with the requirements of the bill liable to the residents, in equal shares, in the amount of \$50,000 or 50 percent of the gain realized by the owner from the sale or other transfer, whichever is greater; any resident may bring an action to enforce the liability. In addition, any resident may bring an action for an injunction or actual damages. The bill also makes selling or otherwise transferring a community in violation of the requirements under the bill an unfair method of competition or an unfair trade practice. Generally, under current law, unfair methods of competition and unfair trade practices are subject to enforcement actions by the Department of Justice or the Department of Agriculture, Trade and Consumer Protection, and to private actions for damages.

Under current law, if the owner or operator of a community seeks to retire the community permanently from the rental housing market, the owner or operator may terminate the tenancies of residents and occupants of the community by giving notice to vacate 5, 14, or 30 days after giving the notice, depending on the length of a resident's or occupant's lease. The bill changes the length of the notice that must be given to a resident or occupant in this situation to 120 days.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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1 77.25 **(19)** Of a community, as defined in s. 710.15 (1) (ad), to a residents'
2 association, as defined in s. 710.16 (1) (b) 4., under s. 710.16.

3 **SECTION 2.** 100.20 (1w) of the statutes is created to read:

4 100.20 **(1w)** It is an unfair method of competition or an unfair trade practice
5 for any person to sell or otherwise transfer ownership of a manufactured or mobile
6 home community in violation of s. 710.16.

7 **SECTION 3.** 710.15 (5r) of the statutes is amended to read:

8 710.15 **(5r)** NOTICE REQUIREMENTS APPLY. The notice requirements of s. 704.17
9 (1) (a), (2) (a), and (3) apply to a termination of tenancy under sub. (5m) (a) and the
10 The notice requirements of s. 704.17 (1) (b), (2) (b), and (3) apply to a termination of
11 tenancy under sub. (5m) (b) to (em) and (g) to (k). Subject to s. 710.16, if a community
12 owner or operator seeks to retire the community permanently from the rental
13 housing market, the tenancy of a resident or occupant may be terminated, as
14 provided in sub. (5m) (f), if the owner or operator gives the resident or occupant
15 written notice requiring the resident or occupant to vacate on or before a date at least
16 120 days after the giving of the notice.

17 **SECTION 4.** 710.16 of the statutes is created to read:

18 **710.16 Requirements before sale or other transfer of manufactured**
19 **and mobile home community. (1) DEFINITIONS.** (a) The definitions given in s.
20 710.15 (1) apply in this section.

21 (b) In this section:

22 1. "Authority" means the Wisconsin Housing and Economic Development
23 Authority.

24 2. "Heir" has the meaning given in s. 851.09.

25 3. "Owner" means the owner of the community.

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1 4. “Residents’ association” means an organization, however structured, that is
2 made up of residents of a community and in which membership is open to all
3 residents of the community.

4 5. “Technical assistance provider” means a person that assists residents in
5 doing any of the following:

6 a. Forming a residents’ association.

7 b. Making an offer to purchase a community.

8 c. Arranging financing for the purchase of a community.

9 d. Any other actions that facilitate the purchase or operation of a community.

10 **(2) NOTICE BY OWNER.** (a) Except as provided in sub. (7), if an owner receives
11 an offer on or after the effective date of this paragraph [LRB inserts date], for the
12 purchase or other transfer of ownership of the community that the owner intends to
13 accept, before unconditionally accepting the offer the owner shall provide to every
14 resident of the community, and to the authority, by certified mail with return receipt
15 requested, written notice that includes all of the following:

16 1. The price, terms, and conditions provided in the offer that the owner intends
17 to accept or has conditionally accepted.

18 2. A statement that a residents’ association has the right for 90 days following
19 the date of the notice to make an offer to purchase the community.

20 (b) 1. If the owner enters into an agreement for the sale or other transfer of
21 ownership of the community during the 90-day period after the date of the notice in
22 par. (a), the agreement must be contingent on, and must expressly provide that it is
23 contingent on, either of the following:

24 a. The failure of a residents’ association to make an offer to purchase within
25 90 days after the date of the notice.

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1 b. If a residents' association makes a timely offer to purchase, the failure of the
2 owner and residents' association to enter into a contract for the purchase of the
3 community within 60 days after the date of the offer.

4 2. If an agreement described in subd. 1. relates to the sale or other transfer of
5 ownership of more than one community in more than one state, including Wisconsin,
6 only the portion of the agreement that relates to the sale or other transfer of
7 ownership of a community in Wisconsin is subject to and must include the
8 contingency specified in subd. 1.

9 **(3) OFFER BY ASSOCIATION.** (a) For a period of 90 days after the date of the notice
10 in sub. (2) (a), a residents' association shall have the right to make an offer to the
11 owner to purchase the community. The owner shall consider and negotiate in good
12 faith concerning any timely offer to purchase made by a residents' association. If the
13 owner and residents' association enter into an agreement for the sale of the
14 community within the 60-day period after the date of a timely offer, the owner shall
15 allow the residents' association a reasonable time beyond the 60-day period to obtain
16 financing for the purchase if additional time is necessary.

17 (b) Except as provided in par. (c), at any time after the owner has provided the
18 notice under sub. (2) (a), the owner shall, upon request by a residents' association,
19 allow reasonable access to the property by the residents' association, their technical
20 assistance provider, and any prospective lender and shall make available to the
21 residents' association, or the residents' association's prospective lender, any
22 information regarding the community that the owner has or would have provided to
23 a prospective purchaser of the community, except that disclosure of information
24 regarding the community's profit margin or the identity of individuals who are
25 delinquent in the payment of rent may be limited to the officers and directors of the

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1 association and the association's attorney and technical assistance provider and may
2 be subject to reasonable confidentiality requirements. Information that the owner
3 shall make available under this paragraph includes any of the following that is
4 applicable:

5 1. The terms of seller financing, including the amount, interest rate, and
6 amortization rate.

7 2. The terms of any assumable financing, including the amount, interest rate,
8 and amortization rate.

9 3. The legal description and a statement of appraised or assessed value of
10 property included in any land trade involved in the sale or other transfer of
11 ownership of the community.

12 4. Improvements to the property to be made by the owner in connection with
13 the sale or other transfer of ownership or any other economic concessions by the
14 owner in connection with the sale or transfer.

15 5. A survey and legal description of the property.

16 6. A description of any easements appurtenant to the property and copies of all
17 permits or licenses related to the property that are in force.

18 7. An itemized list of monthly operating expenses, utility consumption rates,
19 taxes, insurance, and capital expenditures for each of the past 3 years.

20 8. The most recent rent roll, a list of current tenants, a list of currently vacant
21 units, and a statement of the vacancy rate at the community for the 3 preceding
22 years.

23 9. Any data relating to the past and present existence of hazardous waste on
24 the property or in close proximity to the property.

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1 10. Any data relating to the water, sewer, and electrical systems of the
2 community.

3 11. All income and operating expenses relating to the property for the 3
4 preceding years.

5 12. Any other information that may be required by the lender, which shall be
6 kept confidential.

7 (c) The owner is not required to provide the information under par. (b) 5. to 12.
8 before 7 days after the owner accepts an offer to purchase from the residents'
9 association.

10 (d) Upon the request of a residents' association, the authority shall assist the
11 association in acquiring financing for the purchase of the community and provide
12 technical assistance to the association.

13 **(4) RECORDING.** (a) An owner may record in the office of the register of deeds
14 of the county in which the community is located an affidavit certifying any of the
15 following:

16 1. That the owner has complied with the requirements under this section. A
17 copy of the notice sent under sub. (2) (a) may be recorded with the affidavit.

18 2. That the sale or other transfer of ownership of the community is exempt from
19 the requirements of this section under sub. (7).

20 (b) A residents' association that makes an offer to purchase under sub. (3) may
21 record the offer in the office of the register of deeds of the county in which the
22 community is located.

23 **(5) NOTICE OF CLOSING.** If a residents' association makes a timely offer under
24 sub. (3) but the owner and the association are unable to reach an agreement on the
25 purchase of the community by the association, the owner shall provide the residents

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1 with at least 120 days' notice if, as a result of that failure to reach an agreement, the
2 community will be retired from the rental housing market.

3 **(6) PENALTIES.** (a) An owner that sells or otherwise transfers ownership of a
4 community without complying with the requirements under this section is liable to
5 all of the residents of the community, in equal shares, in the total amount of \$50,000
6 or 50 percent of the gain realized by the owner from the sale or other transfer of
7 ownership, whichever is greater. Any resident may bring an action to enforce the
8 liability.

9 (b) In addition to the cause of action under par. (a), any resident may bring an
10 action for injunctive relief or actual damages. The resident may recover costs and,
11 notwithstanding the limits under s. 814.04 (1), reasonable attorney fees.

12 **(7) EXCLUSIONS.** This section does not apply to any of the following:

13 (a) A transfer by a corporation to an affiliate.

14 (b) A transfer by a partner to one or more of its partners.

15 (c) A sale or transfer to a person who would be an heir, or to a trust, the
16 beneficiaries of which would be heirs, of the owner.

17 (d) A transfer by gift, devise, or operation of law.

18 (e) A taking by eminent domain.

19 (f) A forced sale in a foreclosure action.

20 **SECTION 5. Initial applicability.**

21 (1) **EXEMPTION FROM REAL ESTATE TRANSFER FEE.** The treatment of section 77.25
22 (19) of the statutes first applies to conveyances of mobile or manufactured home
23 communities to residents' associations that are recorded on the effective date of this
24 subsection.

25 **(END)**