



## 2019 ASSEMBLY BILL 685

December 20, 2019 - Introduced by Representatives KITCHENS, BALLWEG and B. MEYERS, cosponsored by Senators COWLES, OLSEN, PETROWSKI, HANSEN and L. TAYLOR. Referred to Committee on Housing and Real Estate.

1     **AN ACT to create** 703.245 of the statutes; **relating to:** creating a pre-filing notice  
2             requirement applicable to a dispute between a condominium association and a  
3             unit owner.

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### *Analysis by the Legislative Reference Bureau*

This bill provides that, if a condominium association and unit owner have a disagreement arising out of or related to the condominium, the association or unit owner generally may not file a claim related to the disagreement in circuit court until the association or unit owner complies with certain requirements created in the bill.

Under the bill, the association or unit owner must provide a notice of claim to the other party, and either party may, within ten business days, request a direct negotiation conference, which must occur no later than 30 days after the request is delivered, to resolve the disagreement. Under the bill, "direct negotiation" means "a dispute resolution process that involves an exchange of offers and counteroffers by the parties or a discussion of the strengths and weaknesses or the merits of the parties' positions, without the use of a 3rd person." If a unit owner requests a direct negotiation conference, the association is required to participate. If an association requests a direct negotiation conference, the unit owner may, but is not required to, participate.

The bill provides that, after the association or unit owner gives the notice of claim, the association or unit owner may file the claim in circuit court when the earliest of the following occurs:

1. Neither party timely requests a direct negotiation conference.

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2. The parties fail to resolve the dispute within ten business days after participating in a direct negotiation conference.

3. The parties fail to timely conduct a direct negotiation conference.

4. A party notifies the other party that direct negotiation has not resulted in a resolution of the disagreement and the notifying party is terminating direct negotiations.

The bill also provides that, if the parties resolve the disagreement through direct negotiation and document that resolution in a written settlement agreement signed by the parties and a party to the agreement materially breaches any material part of the agreement, the nonbreaching party may file a claim in circuit court related to the breach without first providing a notice of claim. If the nonbreaching party prevails in the circuit court action, the circuit court must award the nonbreaching party costs and reasonable attorney fees.

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

1           **SECTION 1.** 703.245 of the statutes is created to read:

2           **703.245 Association-unit owner dispute; notice required. (1)**

3           DEFINITIONS. In this section:

4           (a) "Claim" means a request or demand by an association or unit owner for a  
5           remedy related to a dispute.

6           (b) "Direct negotiation" has the meaning given in s. 802.12 (1) (b).

7           (c) "Dispute" means a disagreement between an association and a unit owner  
8           arising out of or related to a condominium.

9           (d) "Party" means an association or unit owner involved in a dispute.

10          **(2) LIMITATION ON JUDICIAL ACTIONS.** An association may not commence or  
11          maintain a claim in circuit court against a unit owner unless the association complies  
12          with this section, and a unit owner may not commence or maintain a claim in circuit  
13          court against an association unless the unit owner complies with this section.

14          **(3) NOTICE OF CLAIM REQUIRED.** Before an association or unit owner files a claim  
15          described under sub. (2) in circuit court, the association or unit owner shall deliver

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1 to the other party a written notice of the claim that includes all of the following  
2 information:

3 (a) A description of the dispute to which the claim relates, including the date,  
4 time, and location of the events giving rise to the dispute, the persons involved in the  
5 events, and the other party's role in the events.

6 (b) The legal basis for the claim, including any applicable provisions of the  
7 condominium instruments, bylaws, rules, or other documents relating to the  
8 condominium or the association.

9 (c) A proposal for resolving the dispute to which the claim relates.

10 (d) A statement that the other party may request a direct negotiation  
11 conference under sub. (4) and the name and address of the person to which the other  
12 party may deliver the request.

13 **(4) REQUEST FOR DIRECT NEGOTIATION CONFERENCE.** An association or unit owner  
14 that delivers or receives a notice of claim under sub. (3) may, no later than 10 business  
15 days after delivering or receiving the notice, request a direct negotiation conference  
16 with the other party by delivering a written request for direct negotiation that  
17 includes at least 3 proposed dates and times for the direct negotiation conference that  
18 are at least 5 days but not more than 30 days after the request is delivered. If the  
19 association or unit owner delivered the notice of claim, the association or unit owner  
20 shall deliver the request to the other party in the same manner that the notice was  
21 delivered under sub. (3). If the association or unit owner received the notice of claim,  
22 the association or unit owner shall deliver the request to the person identified under  
23 sub. (3) (d).

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1           **(5) DIRECT NEGOTIATION CONFERENCE.** (a) If a unit owner delivers a request  
2 under sub. (4) to an association, the association shall participate in a direct  
3 negotiation conference with the unit owner as provided under par. (c).

4           (b) If an association delivers a request under sub. (4) to a unit owner, the unit  
5 owner may, but is not required to, participate in a direct negotiation conference with  
6 the association as provided under par. (c).

7           (c) If an association and a unit owner participate in a direct negotiation  
8 conference under this subsection, the association and unit owner shall, no later than  
9 30 days after the request under sub. (4) is delivered, meet at a mutually agreed upon  
10 time and place to engage in good faith direct negotiation to resolve the dispute  
11 described in the notice of claim delivered under sub. (3). The association and unit  
12 owner shall participate in the conference personally or by a representative or agent  
13 having authority to act with respect to the dispute and to bind the party represented.  
14 The association and unit owner may conduct the conference through the use of any  
15 means of communication by which any of the following occurs:

16           1. All participating individuals may simultaneously hear each other during the  
17 conference.

18           2. All communication during the conference is immediately transmitted to each  
19 participating individual, and each participating individual is able to immediately  
20 send messages to all other participating individuals.

21           **(6) CIRCUIT COURT ACTION.** If an association or unit owner sends a notice of claim  
22 under sub. (3), the association or unit owner may file the claim in circuit court when  
23 the earliest of the following occurs:

24           (a) No party timely delivers a request for a direct negotiation conference under  
25 sub. (4).

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1 (b) The parties fail to resolve the dispute described in the notice within 10  
2 business days after participating in a direct negotiation conference under sub. (5) (c).

3 (c) The parties fail to conduct a direct negotiation conference under sub. (5) (c)  
4 within the time limit provided under sub. (5) (c).

5 (d) A party notifies the other party that direct negotiation under sub. (5) (c) has  
6 not resulted in a resolution of the dispute described in the notice and the notifying  
7 party is terminating direct negotiations.

8 **(7) TOLLING OF STATUTES OF LIMITATIONS.** Any statute of limitations applicable  
9 to a claim is tolled for the period beginning on the date an association or unit owner  
10 delivers notice of the claim under sub. (3) and ending on the date the association or  
11 unit owner is allowed under sub. (6) to file the claim in circuit court.

12 **(8) BREACH OF SETTLEMENT AGREEMENT; FEE SHIFTING.** If an association and a unit  
13 owner resolve the dispute to which a claim described under sub. (3) (a) relates  
14 through direct negotiation under sub. (5) (c), the association and unit owner may  
15 document that resolution in a written settlement agreement signed by them. If the  
16 association or unit owner materially breaches any material part of the agreement,  
17 subs. (2) to (6) do not apply to a claim of the nonbreaching party against the breaching  
18 party related to the breach, and the nonbreaching party may file a claim in circuit  
19 court related to the breach. If the nonbreaching party prevails in the circuit court  
20 action under this subsection, the circuit court shall award the nonbreaching party  
21 costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.

22 **(9) APPLICABILITY.** (a) *Exempt claims.* This section does not apply to any of the  
23 following claims:

