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# JOEL KITCHENS

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STATE REPRESENTATIVE • 1<sup>ST</sup> ASSEMBLY DISTRICT

**Testimony for the Assembly Committee on Housing and Real Estate**  
**Assembly Bill 570**  
**Wednesday, Jan. 5, 2022**

Thank you Chairman Summerfield and committee members for holding a public hearing and giving me the opportunity to testify on Assembly Bill 570, bipartisan legislation that protects basic property rights by building better partnerships between condominium associations and unit owners.

While many unit owners and condominium associations have strong, mutually-beneficial relationships, not all are this fortunate. Several years ago, a group of constituents from the 2nd Senate District who have condos in the 1st Assembly District approached our offices to discuss the difficulties they had been facing with their condominium association.

These constituents had concerns over specific decisions the condo association board had made, and despite efforts to alleviate their issues, they ended up having to seek relief from the court system just to get some basic information. This is because condo unit owners have no guaranteed legal access to financial records and no way of challenging those financial statements with an audit if they feel there are discrepancies.

AB 570 requires that condominium associations maintain relevant financial records for the past six years and provide their residents with access to those records. Smaller condominium associations must make these records available and may charge reasonable fees for copies. Larger associations with 100 or more units must maintain the records on a website that is inaccessible to the general public but available to unit owners upon request.

This legislation also ensures that, beginning one year after the expiration of declarant control of a condominium association, a majority of unit owners may request that the association arrange and pay for an independent financial audit. However, if an audit has been conducted anytime in the past three years, the unit owners must cover the costs.

With the ability to review financial records and request audits, we are confident that we can help resolve disputes before they even arise by providing more accountability and transparency in association decisions.

AB 570 builds off the efforts of our 2019 Act 168, which established a statutory dispute resolution process to help aggrieved unit owners and condominium association leaders avoid costly and lengthy litigation.

I would like to thank you for taking the time to listen to my testimony and I hope you consider supporting AB 570. I would also like to thank Sen. Cowles and his office for all the work they put into this legislation. I would be happy to answer any questions if you have them.

STANDING COMMITTEES:

Natural Resources & Energy, Chair  
Transportation & Local Government, Vice-Chair

JOINT COMMITTEES:

Audit Committee, Co-Chair

**ROBERT L. COWLES**

Wisconsin State Senator  
2nd Senate District

## Testimony on 2021 Assembly Bill 570

Senator Robert Cowles

Assembly Committee on Housing and Real Estate

January 5th, 2022

Thank you, Chairman Summerfield and Committee Members, for holding a hearing and allowing me to testify on 2021 Assembly Bill 570. This bill authorizes a unit owner to access the financial records of their condo association.

Over the past couple of decades, Wisconsin has seen a surge in condominium developments. As residents buying into condos can attest, there's many benefits to owning a condo, but there may be downsides as well, including the trust that a unit owner must have in efforts taken by the condominium association taken on their behalf. While many unit owners and condominium associations have strong, mutually-beneficial relationships, unfortunately some of these relationships have led to frustration, mistrust, and even hardship for unit owners. Building off the success of 2019 Act 168 which established a statutory dispute resolution process to help aggrieved unit owners and condominium association leaders avoid costly and lengthy litigation, Assembly Bill 570 continues the efforts we're taking to safeguard against a souring of these relationships.

A few years back, constituents with condos in Northeast Wisconsin approached my office, Representative Kitchens' office, and former State Senator Dave Hansen's office to discuss the troubles they've been having with their condominium association. These constituents had concerns over specific decisions the board had made, and despite efforts to alleviate their concerns, they ended up having to seek relief from the court system just for some basic information. The reason this was necessary, despite years of paying into the condominium association, was because condo unit owners had no guaranteed legal access to financial records. And even if they could access those records, they still have no way to challenge financial statements with an audit if they feel there are discrepancies.

While this story of an unaccountable condominium association is rare, it's not the only example. Assembly Bill 570 guarantees that condominium associations maintain relevant financial records for the past six-years and provides residents of condo complexes access to the financial records of their condominium associations. Smaller condominium associations are simply required to make these records available and may charge reasonable fees for copies of these records. Larger associations with 100 or more units must maintain the records on a website that's available to unit owners upon request but inaccessible to the general public.

This legislation also ensures that, beginning one-year after the expiration of declarant control of a condominium association, the transition period between a developer and the creation of a condo association, a majority of unit owners may request that the association arrange and pay for an independent financial audit. However, if an audit has been conducted anytime in the past three-years, the unit owners must pay for the audit. This change extends current law provisions allowing for requests for audits under declarant control or for up to one-year after. Finally, Assembly Bill 570 ensures that, after the bill's effective date, condominium associations are not organized as profit seeking entities.

At the request of a stakeholder in this process, we do plan to introduce an amendment to both Assembly Bill 570 and its Senate companion that would raise the maximum threshold that a condo owner may be charged by an association for making copies from a cap of \$50 to a cap of \$150. Given that, in certain situations, smaller condo associations in more rural areas may have to travel and pay to have copies made, we felt that this was an acceptable request to ensure that their reasonable expenses for providing these records can be compensated.

In short, this legislation establishes the ability of a unit owner to access records about the financial standing of the condominium association – organizations which they fund. By providing this ability, we can help to resolve disputes before they even arise by providing more accountability and transparency in association decisions. In other words, we believe Assembly Bill 570 ensures that Wisconsinites who are unit owners in condominium associations have their basic property rights protected.



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**RE:** 2021 ASSEMBLY BILL 570  
2021 SENATE BILL 561  
**TO:** Assembly Committee on Housing and Real Estate  
**DATE:** January 5, 2022

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The Wisconsin Builders Association (WBA) opposes 2021 Assembly Bill 570 (2021 Senate Bill 561) in its current form. The WBA would support the bill with minor changes that would make clear how the requirements of this bill and the Condominium Ownership Act apply to the Declarant and the initial construction of improvements.

Specifically, the Bill should clarify that under Wis. Stat. Ch. 703 (the Condominium Ownership Act):

1. The Association cannot interfere with the Declarant's construction of the improvements (units and common elements) set forth in the recorded Declarant and the Condominium Plat (before and after Declarant turns over control of the Association).
2. The Declarant's obligations to maintain records and the Association's right to obtain such records under the Condominium Ownership Act does not apply to Declarant's financial and construction records related to the initial construction of the improvements. This would not change the Declarant's obligation to maintain such records as to the maintenance, repair, and replacement of common elements once constructed.

The Wisconsin Builders Association generally supports the effort to provide more clarity and transparency to the operations of condominium associations. However, the proposed changes illuminate requirements on developers of condominiums that do not reflect the reality of the financing and construction of condominiums, and would require a developer to share what is generally its confidential, financial information with unit owners.

An example of a real development may be helpful. A common condominium development could consist of 24 separate, two-unit buildings (i.e., 48 units in 24 buildings). The "unit" would include everything from the "studs in". This would mean that the unit would be a cubicle of air that included the drywall, the floor of the bottom level, and the ceiling of the upper level. The unit is what the condominium owner owns in fee simple (total, exclusive ownership). Everything else would be "common elements," in which each unit owner would own a percentage interest in common with the other unit owners, but subject to the management of the association. This would include the studs, framing, insulation, exterior walls, siding, roofing, yards, stormwater ponds, sidewalks, driveway, pools, parking lot, etc.

The common elements exist as soon as the Declaration and Plat are recorded, but the construction of the 24 two-unit buildings may take multiple years to complete. In other words, the common elements will be built out over years, which may include building out the buildings, stormwater, landscaping, private drives, and parking for a set number of units each year.

In the example above, eight buildings / 16 units may be built in year one. During this process, the declarant is financing, contracting, completing, and maintaining the common elements. The Association should not be able to interfere with the construction of the common elements or the units even though the unit owners may control the Association. The Association should be able to require the developer to provide its construction contracts, expenditures, and other documents relating to the initial construction and maintenance of the common elements even though these are not expenses that are passed on to unit owners as common expenses.

Dear Chairman Jagler and Members of the Committee and Housing, Commerce and Trade:

We own a condominium located at the Landmark Resort in Egg Harbor, Wisconsin. We rent out our condo privately and are not members of the Landmark Resort Rental Management Company, which is a wholly owned subsidiary of the Landmark Resort Condominium Owner's Association, Inc.

In 2017, according to the Landmark Owner's Association Board, we were informed that the Board felt that the private renters weren't paying their fair shares and financially contributing as much as the Rental Management Company members. A group of condo owners of which we were a part, requested Rental Company financials and were denied access to them. Our goal was to create fairness amongst all the owners, regardless of how the unit owners chose to manage their rentals.

The outcome of the Owner's Association Board's ideas and actions has directly affected us financially. We own a one-bedroom condo. As a private renter, we were informed that our housekeeping service for every End-of-Stay reservation would increase to \$93.75 whereas those in the Rental Management Company have a rate of \$30.00 per stay. Due to this difference, we requested access to the financials of the Rental Management Company to determine if this increase was necessary and fair. We did not receive any access to the financial records thus we are still paying the higher amount without any knowledge of fairness.

Also, beginning in June of 2017, the private renters were mandated to carry their own Certificate of Compliance insurance policies. This was not requested of the Rental Management Company members. We feel had we been given the opportunity to review the financials we could have reached a reasonable and fair agreement with the Board. Again, our requests to see the Rental Management Company financial statements were denied.

We hope that in the future Wisconsin condo owners will gain more rights and be granted complete access to their condo associations' and their subsidiaries' financial records. Thank you for your consideration in the advancement of the proposed Wisconsin Bill LRB 1843/1.

Sara and Chris Spencer

December 1, 2021

Dear Chairman Jagler and Members of the Committee on Housing, Commerce and Trade,

In April 2016, we purchased a two-bedroom condo at The Landmark in Egg Harbor, WI believing this would be a vacation destination we would enjoy as a family for years to come.

Shortly after our purchase we began the work of remodeling the inside of our condo. It was mandated that items such as appliances and mattresses had to be purchased through the Landmark. Our first experience with financial secretiveness at The Landmark occurred when we were then invoiced for those purchases at a greater cost than what was listed in the Owners Handbook that we were provided at our new owner orientation just months earlier. We of course questioned the discrepancy of the invoice with the stated costs in the Owners Handbook but our questions would go unanswered by Landmark Management or our Association Board of Directors. This was the beginning of our realization that this was not just bad management but rather a concerted effort by Management and our Board of Directors not to answer questions or provide relevant information regarding any kind of finances when requested by an owner of The Landmark.

During our first summer as owners, we were customers of The Landmarks "Rental Management Program" which is a wholly owned subsidiary of the Owners Association. Through the Rental Management Program, we rented our condo to others and as part of that contract, at the end of each rental we were charged a cleaning fee of \$35. The expenses of participating in the Rental Management Program were quite high. Among other fees, we were also charged and paid a Management Fee of 48% of the proceeds we made on each rental to the Rental Management Program. Our requests asking for an accounting of the fees we were paying were met with silence. After a few months, we decided to leave the Rental Program and we rented our condo on our own using a vacation rental platform. Our cleaning fee was then increased from \$35 to \$112.50 for the same cleanout. We attended a board meeting of the Rental Management Company to ask why our cleaning fees had increased more than three fold. The only answer the board would give was, "it was the true cost of cleaning a two-bedroom condo". When asked how they arrived at the "true cost", they would not share their formula.

Moving forward, we decided to become more involved with attending the Condo Association Board meetings and we became more familiar with our Declaration, By Laws and Rules and Regulations. We learned that our By Laws contained rules to make leadership transparent and accountable including a Finance Committee made up of owners (which the Board voted to dissolve years prior and "incorporate as a responsibility of the Board of Directors"), and a detailed yearly budget that was to

be submitted to owners prior to the owners annual meeting. However, the Board willingly chose NOT to follow our very own By Laws. Owners were not allowed to seek or ask questions regarding budgets, financial statements, bids, invoices, receipts, expenditures, etc. Results of audits were not shared.

We also learned that the Rental Management Company was a wholly owned subsidiary of the Condo Association. All of the owners had a financial stake in the Rental Management Company. Yet, the Condo Association Board and the Rental Management Board which conducted joint meetings, refused to share any of the finances of the Rental Management Company (which owned an on site restaurant) even after it was revealed in a letter to condo owners in 2006 by the General Manager that the Rental Management Company had a loss of 1.6 million dollars in the past 5 year period with the majority coming from the restaurant.

It became a priority of several condo owners to determine a way to force the Landmark board to follow its own By Laws. After reviewing Wisconsin State Condo Law, it was clear that there was nothing to help condo owners who were dealing with a rogue board. Other than expensive litigation, we were at an end point how to resolve the situation. In June of 2018, Landmark condo owners reached out to their state representatives to share the details of the dire situation at The Landmark and asked for legislative help to remedy a situation that had no other available alternatives.

While waiting for the legislative process to work out solutions for condo owners, a group of owners committed to attending all meetings of the Condo Association as well as the Rental Management Company. It was standard practice for Condo Association and Rental Management Company Board Minutes not to be posted for months after their approval on the owners secure websites. But as a direct result of committed owners attending board meetings, the Condo Association Board began to meet additionally as an "Executive Board" becoming even more secretive and protective of not only financial and insurance information but of their discussions and decision making surrounding the operation and management of The Landmark. Neither agendas nor minutes were published for Executive Board meetings.

Our experience at The Landmark has been a living nightmare and not the relaxing vacation destination we were dreaming of when we made the purchase. Condo owners in the State of Wisconsin desperately need laws that support and protect them if and when their Association Boards willfully choose not to follow their own By Laws, Declaration and Rules and Regulations.

Thank you in advance for your consideration and support of Senate Bill 561.

Sincerely,

Dave and Penny Albers  
3911 St. Croix Circle E.  
Green Bay, WI 54301

November 30, 2021

LRB 1843/1

Condominium Association's obligation to maintain records

Dear Chairman Jagler and Members of the Committee on Housing, Commerce and Trade,

We owned a condominium for more than 15 years in Door County, WI at the Landmark Resort. It is a full ownership condo. We, as owners, paid our assessed condo fees quarterly for common costs. Year after year our fees increased, to where we were paying several thousand dollars each quarter.

We, like others, rented our condo when we were not using it. When we decided to take over this responsibility on our own, rather than having Landmark management team do it, we suddenly ran into new rules, regulations, increased costs and scrutiny. Among the requirements was a rule to have the Landmark rental team continue cleaning our condo, at a cost that was 3x what they had charged us previously. When we started paying attention to these increased dollars and questioned where they were going: we ran into excuses and dead ends as to why we could not see the financial books. We were promised that we could under certain conditions, but the managers never made it possible. This was so frustrating, as the owners' dollars were the funds being used to manage the property. There are no outside investors. We asked to see bids for projects, and we were denied. In our opinion, financial transparency did not exist.

We finally filed for a declaratory judgement over this and other issues. Our attorneys were allow to then view the books for a set time. However they could not take copies or we could not see the information, even though we owned our property. We ended up selling our property after our issues were not resolved through the courts.

We have never understood why we couldn't see the financial information freely. We have never understood why the State of Wisconsin would not agree that owners have a right to the information, without having to go through the courts. We wish that the State would protect all condominium property owners from the same frustrations we faced.

Sean and Cami Wright



Green Bay, WI