

Compliance Tips for Condominium Associations

It is important for Condominium Associations to keep good records, for the benefit of the Unit owners and to help guard against potential liability for all concerned. One time when recordkeeping will often become the focus is when a Unit owner sells his or her Unit. The Unit seller -- or perhaps his or her real estate agent -- will come looking for the documentation that the law says must be provided to a new Condominium Unit buyer.

The responsibilities outlined in this paper legally belong to the Association. In practical terms, the responsibility will be that of the board of directors and Association officers. Depending upon the circumstances and organization of the Condominium, that responsibility may rest in a Condominium management company or manager, accountants and/or attorneys.

The following discussion reviews some newer aspects of Wisconsin's Condominium law as well as some of the tasks and documents that an Association is asked to provide when a Unit is sold. The topics reviewed include:


1. Executive Summary
2. Budget
3. Statutory Reserves
4. Disclosure Documents
5. Unpaid Assessments
6. Minutes and Financial Statements


1. Executive Summary


The purpose of the Executive Summary is to highlight essential information about the Condominium for prospective buyers. The Declarant (developer) or the Association must prepare an Executive Summary that must either explain the following in plain, clear language or specifically refer to where the information can be found in the Condominium disclosure documents:

- ◆ *Condominium identification* -- the name of the Condominium.
- ◆ *Governance* -- the name and address of the Condominium Association, whether the Association is self-managed or has a manager and the name and address of the person who may be contacted for general information about the Condominium.
- ◆ *Parking* -- a description of parking availability, restrictions and costs.
- ◆ *Pets* -- a description of the rules relating to pets.
- ◆ *Unit rentals* -- whether Unit owners may rent their Units and any restrictions on rentals.
- ◆ *Special amenities* -- a description of special amenities like a golf course or athletic club, and any Unit owner obligations to join or pay dues.
- ◆ *Unit repair and maintenance responsibilities* -- a description of a Unit owner's repair and maintenance responsibilities,
- ◆ *Common element and limited common element maintenance, repair and replacement* -- identity of person responsible for the maintenance, repair, and replacement of the common elements and the limited common elements, and whether this is paid for with Unit assessments, reserve funds or both.
- ◆ *Reserves* -- whether the Association has reserves for common element repairs and replacements and whether the reserves are in a statutory reserve account (see number 3 below).
- ◆ *Fees on new Units* -- a description of any provisions exempting the Declarant or modifying the Declarant's obligation to pay condo maintenance fees on unsold Units during the Declarant control. Declarant control refers to that period of time when the Declarant exercises the powers and responsibilities of the Association while construction is completed and new Units are sold (up to 10 years for expandable Condominiums, up to three years for other projects).

- ◆ *Expansion plans* – description of any Condominium expansion plans, the deadline for completion of any expansion, and who is responsible for management during the expansion period.
- ◆ *Unit alterations* – description of the rules, restrictions and procedures for Unit owners who want to alter their Units or enclose limited common elements.
- ◆ *Amendments* – an indication that a Unit purchaser’s rights and responsibilities may be altered by amendment of the Declaration or bylaws, and a description of the amendment process.
- ◆ *Other restrictions or features* – optional.

 Talk to your attorney about what is the best way for you to prepare an Executive Summary. Maybe the attorney will draft this for you. A fill-in-the blanks Executive Summary form that anybody may use – for free – is available online at www.wra.org/condolaw. Maybe the attorney will use the form or maybe the attorney will instruct you to complete the form. Just get it done!

 Once completed, a copy of the Executive Summary may be distributed to each Unit owner. Unit owners who are selling their Units will ask for the Executive Summary, which they need to use in two places: the Condominium disclosure materials packet and the real estate condition report.

 Per Wis. Stat. § 703.33(1m), the Declarant (developer) or the Association is responsible for preparing the Executive Summary and revising it whenever a change is made in the disclosure materials that necessitates a corresponding revision to the Executive Summary.

What happens if the Association does not provide an Executive Summary? The Unit owners trying to sell their Units will not be able to give the legally required paperwork to their buyers. The mere fact that the Association is not sufficiently organized and on top of things so as to be able to provide this document sends a negative message to potential buyers. As a result, there may be angry Unit owners, brokers and the attorneys pressuring the Association to comply. The Unit sellers might even lose deals and/or lose money due to their failure to be able to comply with the law. This might result in a wide range of consequences for the Association ranging from nasty letters to the filing of lawsuits, especially if a Unit owner loses money because of it.

2. Annual Budget

Wis. Stat. § 703.161 requires that every Condominium with at least one residential Unit must adopt a budget each year and distribute it to all of the Unit owners. The budget must show:

- ◆ Regular Association expenses, e.g., insurance, lawn care, snow plowing, repairs, etc.
- ◆ Budget amounts allocated to reserves and to other funds held for future expenditures.
- ◆ The amount and purpose of anticipated future expenditures.
- ◆ The amounts already held in any reserves and/or any other funds held for future expenditures.
- ◆ Any surpluses.
- ◆ The amount and source of any income other than Unit owner assessments.
- ◆ The aggregate amount and purpose of the assessment levied against Unit owners.

A responsible budget will address items such as outside lighting; inside lighting, heating, air conditioning and water for offices, hallways, meeting rooms, and restrooms; snow removal; liability insurance for the Common Elements and errors and omissions insurance for Association directors and officers; swimming pool and tennis court maintenance; security measures; pest control; common grounds maintenance and landscaping; exterior building maintenance; accounting and legal fees; management fees; administrative supplies and expenses; any applicable taxes; and reserves for capital improvements and major repairs. The budget should also show the assessments that each Unit owner will pay per month and per year.

3. Statutory Reserves


Wisconsin Condominium law requires a Declarant or Association to establish a statutory reserve account (SRA) to fully or partially pay for repairs and replacements of the Common Elements unless the Declarant or Association elects not to establish such an account. New and existing Condominiums must consider whether or not they should set up SRA to pay for the repair and replacement of roofs, siding and other common elements. An Association also may at any time elect to establish a SRA, with the written consent of a majority of the Unit votes, or to terminate a SRA, with the written consent of a majority of the Unit votes.


Emphasis on flexibility. SRA can be designed to only partially pay for future common element repairs and replacements, with the balance of the costs to be raised through borrowing, special assessments against the Units or by other means. Existing Condominiums setting up new SRA need not catch up to the amounts they would have had if the Unit owners had been assessed for replacement reserves since the creation of the Condominium. The annual budget must provide that a portion of each monthly condo maintenance fee is earmarked for the reserve fund.

Establishing a Statutory Reserve Account. The Declarant initially decides whether to establish a SRA for a new Condominium—the Declarant must establish a SRA or opt out. During the period of Declarant control, the Declarant is the only one who can establish or terminate a SRA. If the Declarant establishes a SRA, payments for the account are first assessed against a Unit once the certificate of occupancy has been issued.



Once the period of Declarant control is over, the Association becomes the decision-maker. If the Declarant has not established or has terminated a SRA, the Association must discuss the establishment of a SRA either at the first annual meeting of the Association held after termination of Declarant control or at a special meeting held within one year of the termination of Declarant control. The Association may establish a SRA with the written consent of a majority of the Unit votes. If the Declarant has established a SRA, the Association may at any time after Declarant control has ended elect to terminate the SRA with the written consent of a majority of the Unit votes.

When planning for these meetings, the Associations must first be sure to follow the meeting procedures established in any articles of incorporation, their bylaws and any applicable statutes as far as notice, quorum, voting, etc. While § 703.163 requires that the Association address or discuss the establishment of a SRA at the designated meeting, it does not specify that the Association must necessarily vote at that meeting if it appears that the Unit owners are interested in setting up a SRA. Consequently, Associations should also review the articles of incorporation, bylaws and applicable statutes and talk to their attorneys to see if they can take action by written consents collected outside of any meeting rather than collecting written consents at the meeting. Condominium Associations may wish to distribute written summaries regarding the pros and cons of a SRA and alternate methods of funding long-term repairs and replacements of the common elements before holding a meeting. The Association may be able to discuss the pros and cons of a SRA, as well as alternate methods of funding long-term repairs and replacements of the common elements, at the meeting and then gather written consents from the Unit owners later on.

 Condominiums established before November 1, 2004 had until May 1, 2006 to establish a SRA unless the Association elected not to establish a SRA by the written consent of a majority of the Unit votes.

 Factors that a Declarant or Association should consider in determining how much to assess against Unit owners for a SRA include any funds already in the account, the estimated future costs of repairing or replacing the common elements (excluding routine maintenance), the estimated remaining useful life of the common elements, the approximate proportion of repair

and replacement costs that will be covered by the SRA, the approximate proportion of costs to be funded by other means and any other relevant factors.

-  A statutory reserve account statement must be executed and recorded whenever the Declarant or Association decides to not establish a SRA and whenever a SRA is otherwise established or terminated by the Declarant or by the Association. Go to www.wra.org/condo for a form that may be used for a Statutory Reserve Account Statement to record with the Register of Deeds.
-  A Declarant, Unit owner, Association, or director, officer, manager, or employee of an Association is not liable in connection with the establishment or termination of a SRA, a decision to not establish or terminate a SRA or with respect to the determination of the amounts assessed against Unit owners for the reserve funds.

4. Providing Condominium Disclosure Materials

Wis. Stat. § 703.20(2) requires a Condominium Association to provide all disclosure materials required for compliance with Condominium disclosure materials requirements stated in § 703.33 within 10 days of a seller's request for these materials. Accordingly, your Association may be asked to provide the most current copy of all of the following documentation. The Association may charge the Unit owner for the actual costs of furnishing the information – typically photocopying charges.

Declaration of Condominium. The recording of the Declaration and Condominium plat and plans at the Register of Deeds creates the Condominium. The Declaration states the name and address of the Condominium; describes the included land; generally describes the Units and the Common Elements; sets the percentage interests (may determine assessment amounts and other costs) and the number of votes for each Unit; names the agent for service of process; and gives further details regarding the Condominium.

Bylaws and Rules and Regulations. Bylaws are mandatory, but generally they are not recorded. The bylaws indicate the type of organization the Association will be (incorporated or unincorporated), whether Association duties may be delegated to the board of directors and/or a manager, procedures for Unit owners' and board of directors' meetings, the process for electing directors, the procedure for setting and collecting assessments and other pertinent matters. Rules and regulations may be a separate document or included within the bylaws.

Articles of Incorporation. Pursuant to Wis. Stat. § 181.0203, the corporate existence of any incorporated Association begins when the Department of Financial Institutions files the articles of incorporation. The powers, duties and operation of the Association are specified in its Articles. If a provision of the articles of incorporation is inconsistent with a bylaw, the articles control.

Management & Employment Contracts; Leases. Copies of all management and employment contracts and leases must be included in the Condominium Disclosure Documents if the Unit owners or Association are/will be a party to them. The Association may terminate any contracts or leases that are not bona fide or commercially reasonable to the Unit owners on not less than 90 days notice.

Annual Operating Budget. A copy of the Association's projected annual operating budget is required. The budget must include details concerning the monthly Condominium assessments paid by Unit owners and any other fees payable for the use of facilities not part of the Condominium.

Expansion Plans. If the Condominium is an expandable Condominium, a description of the planned expansion stages and the maximum number of Units that may be added to the Condominium must be given. The Declaration in expandable Condominiums reserves the right of the developer (Declarant) to add additional parcels, buildings, and Units to the Condominium over a maximum period of 10 years.

Floor Plan and Map. A copy of the floor plan of the Unit being purchased, and information and maps showing the location of the Common Elements and other facilities to be used by Unit owners must be provided. Copies of the Condominium plat maps are typically used for locating the Common Elements and other features, although a copy of the Condominium plat is not, per se, required.

Executive Summary. A user-friendly summary or index to the important information contained within the disclosure documents. The Declarant or the Association prepares the Executive Summary. See discussion under number 1 above.

5. Unpaid Assessments

The Unit buyer has the right to request a statement of the amount of any unpaid assessments on the Unit per Wis. Stat. § 703.16(5). The buyer cannot be held liable for any of the seller's unpaid assessments in excess of the amount the Association reports on this statement. Lenders and title companies routinely request this statement and may have their own form for this purpose. If assessments remain unpaid at closing, they typically will be paid from the money received by the seller. If the Association does not provide the statement within ten business days of the buyer's request, the Association cannot file any assessment liens for any unpaid assessments following the day of the buyer's request.

6. Minutes and Financial Statements

Unit sellers may also request additional information such as the Association's financial statements for the last two years, the minutes of the last Unit owner's meetings, the minutes of Condominium board meetings during the last year or two, copies of the Association's certificate of insurance, a statement of the balance in reserves, and the Declaration and bylaws of any master Association. Unit buyers and their brokers and attorneys will want these items to get a read on the financial health of the Association and to see whether any major capital improvement projects or other large expenditures are being planned and how these projects are going to be paid for -- via the reserves, a special assessment or some other means. Reserves may be crucial to the buyer, depending upon the character of the Condominium and the buyer's circumstances.

Small Condominium Disclosure Documents – § 703.365(8)

If a Condominium has no more than 12 Units and if the Declaration so provides, the disclosure materials for a small Condominium are abbreviated and must include only the following materials:

1. Declaration, Bylaws and any Rules and Regulations, together with an index of the contents
2. Articles of Incorporation of the Condominium Association, if incorporated
3. Any management or employment contracts affecting Condominium use, maintenance or access when the Unit owners or Association are or will be a party
4. Projected annual operating budget including reasonable detail regarding monthly assessment fees and other monthly charges
5. Any lease when the Unit owners or Association are or will be a party
6. A copy of the Condominium plat

 If the Declaration of a small Condominium provides for abbreviated disclosure materials, that means that the small Condominium will **NOT HAVE AN EXECUTIVE SUMMARY!**