

State of Wisconsin



2019 Senate Bill 512

Date of enactment: **March 3, 2020**
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2019 WISCONSIN ACT 168

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

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

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

703.245 Association-unit owner dispute; notice required. (1) **DEFINITIONS.** In this section:

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

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

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

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

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

(3) **NOTICE OF CLAIM REQUIRED.** Before an association or unit owner files a claim described under sub. (2) in circuit court, the association or unit owner shall deliver to the other party a written notice of the claim that includes all of the following information:

(a) A description of the dispute to which the claim relates, including the date, time, and location of the

events giving rise to the dispute, the persons involved in the events, and the other party's role in the events.

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

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

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

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

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

shall deliver the request to the person identified under sub. (3) (d).

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

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

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

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

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

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

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

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

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

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

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

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

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

1. A claim by an association related to unpaid assessments, including filing a statement of lien under s. 703.165 (3) and an action to collect unpaid assessments or enforce a lien under s. 703.165 (7).

2. A claim by an association related to a violation, as defined in s. 703.24 (1), by a tenant for which notice is given under s. 703.24 (4).

3. A claim by a unit owner related to a decision of the board of directors of a small condominium described under s. 703.365 (6) (a).

4. A claim for a temporary injunction or other similar emergency equitable relief under s. 813.02.

(b) *Applicability to new and existing condominiums.* This section does not apply to a condominium if the declaration of the condominium provides a process for resolving disputes through direct negotiation, mediation, or arbitration.

SECTION 2. Initial applicability.

(1) This act first applies to a claim described under s. 703.245 (2) that is filed in circuit court on the effective date of this subsection.