

REALTOR[®] Pointers for Condominium Disclosure Materials

Condominium Disclosure Materials [Wis. Stat. § 703.33]

Wis. Stat. § 703.33 requires that the seller provide the buyer with a copy of the Condominium disclosure materials no later than 15 days prior to closing. It is recommended that the disclosure materials be provided as early as possible to firm up the offer and remove this source of buyer objection. The second page of the 2000 WB-4 Residential Condominium Listing Contract, together with the Addendum C to WB-4 Residential Condominium Listing Contract and WB-14 Residential Condominium Offer to Purchase, includes a list of the required documents:

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 land included in the Condominium; generally describes the Units and the Common Elements; sets the percentage interests (may determine monthly assessment amount and other costs & expenses) and the number of votes for each Unit; names the agent for service of process; and gives further important 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 levying and collecting assessments against the Unit owners, and other pertinent matters. Rules and regulations may be a separate document or may be 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 provision of the articles of incorporation controls.

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. Contracts and leases entered into between the Condominium developer and the Association, and the Association or its board 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. As a result, many leases or contracts for the benefit of the Unit owners, for example, a management or maintenance contract, will have a 90-date termination clause.

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. A responsible budget will address items such as electricity for Common Elements such as outside lighting, heating, air conditioning, and water for Common Elements such as 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, special fees for items such as parking, and reserves for capital improvements and major repairs.

- **PRACTICE TIP: RESERVES.** Under Wisconsin law, Condominiums are not legally required to establish reserve funds, as is the case in many other states like Illinois and Michigan. Accordingly, this is an important item to be discussed with any Unit seller or buyer. However, Associations are required at some point to at least consider, per Wis. Stat. § 703.163, whether or not they will have a statutory reserve account.

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, a disclosure document requirement.

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. REALTORS® will have the opportunity to use the Executive Summary as a condominium disclosure tool that may be used with a prospect to overview some of the highlights of a condominium and focus on the information that may be most important to the buyer. The Executive Summary is placed in the condominium disclosure materials directly following the index, and a copy must be attached to the Condominium Addendum to the RECR. The Executive Summary is not a substitute for the buyer's and the buyer's attorney's review of the condominium declaration, bylaws and other condominium disclosure materials.

Cover Sheet, Index & Tables of Contents

Wis. Stat. § 703.33(2)(c) requires that all of these materials be delivered with a cover sheet, index, and tables of contents in the format set forth in the statute, and that all materials must be paginated. The cover sheet must contain specified bold-faced disclosures set forth in Wis. Stat. § 703.33(2)(a). The Declaration, Bylaws, and Articles of Incorporation must also have a separate table of contents preceding them. Additional materials such as engineering and architect reports are also required in the disclosure materials for conversion Condominiums (existing structures changed to Condominium ownership).

- **PRACTICE TIP: FINANCIAL STATEMENTS.** One item included in the Condominium Disclosure Materials section of the WB-4 Condominium listing is not required under § 703.33. This is the "latest annual Association operating statements." Since it is in addition to what is required under statute, WRA members may need to make an extra effort to be sure that these financial statements are delivered to the buyer. The operating statements may not be included in the disclosure materials booklet or packet prepared to meet the statutory requirements, and thus may be easily overlooked.
- **PRACTICE TIP: AMENDMENTS.** Another item included in the Condominium Disclosure Materials section of the WB-4 Condominium listing refers to amendments to all of the listed Condominium disclosure materials. These also may not be part of the packet of disclosure materials and may need to be specially requested and tracked down.

The Condominium forms and §703.33 state that the seller will provide the buyer with complete, current and accurate copies of the Condominium disclosure materials. In many cases, however, the listing agent may be the one who ends up obtaining the disclosure materials from the Association (assuming the seller

does not already have a copy of the documents that is current) and delivering them to the buyer. Wis. Stat. § 703.20(2) requires the Association to provide all disclosure materials required for compliance with § 703.33 within 10 days of a seller's request for these materials. The seller shall pay the Association the actual costs of furnishing the information -- typically photocopying charges.

- **PRACTICE TIP: GATHER DOCUMENTS ASAP.** The key here is to request all of the needed documents as soon as possible so that the materials are on hand for review by the listing agent and for distribution of copies to prospective buyers. Listing agents should learn everything possible about the Condominium before or when they list it.
- **PRACTICE TIP: RESIDENTIAL CONDOMINIUM CONCEPTS.** When buyers are first looking at a condominium and certainly when they start looking at documents, it may be helpful to give them the Residential Condominium Concepts handout as part of the buyer's condominium education. This handout is available on WRA Zip Forms and online at www.wra.org/condolaw.

Seller Cooperation with Marketing Efforts -- Provision of Minutes & Financial Materials

The Seller Cooperation section on the second page of the Condominium listing indicates that the seller is “to provide Broker with all records, documents and other material in Seller’s possession or control which are required in connection with the sale including, but not limited to copies of the Condominium 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 12 months prior to acceptance, copies of the association’s certificate of insurance, a statement from the association indicating the balance of reserve accounts controlled by the association, a statement from the association of the amount of any unpaid assessments on the Unit, and the Declaration and bylaws of the master association, if any.” Note that these documents are in addition to the Condominium disclosure materials that the seller is legally obligated to provide for the buyer. These are the same materials that are referenced under the Additional Condominium Issues section of the WB-14 Condominium offer so at least some buyers may request these documents – it is prudent to gather them and have them on hand.

The statement from the Association setting forth the amount of any unpaid assessments on the Unit being sold warrants additional comment. The Unit buyer has the right to request this statement per Wis. Stat. § 703.16(5). The buyer will not be liable for any unpaid assessment against the seller in excess of the amount reported by the Association on this statement. Accordingly, most lenders and title companies routinely request this statement and may have their own form for this purpose. If there are no unpaid assessments, the title insurance company will remove the title exception for unpaid assessments from the title insurance policy. If assessments remain unpaid at closing, they typically will be credited against the purchase price to be received by the seller. If the Association or the Association board of directors does not provide the statement within ten business days of the buyer’s request, the Association cannot file any additional assessment liens for any unpaid assessments following the day of the buyer’s request. Thus any agent working with the buyer may be wise to contact the title company and/or lender to ensure that this form is delivered to the Association as soon as possible – it cuts off the Association’s ability to file further assessment liens and nothing is worse than a closing held up for the completion of this statement.

- **PRACTICE TIP: FINANCIAL AND IMPROVEMENTS FORECAST.** Obtaining financial statements, minutes, and information about the Condominium’s reserves will better reveal whether the Condominium is financially healthy rather than just looking at the budget. The minutes may reveal whether any major capital improvement projects or other large expenditures are being planned and whether these projects are going to be paid for via the reserves, a special assessment or some other means. The minutes may also indicate whether the Association is involved in any litigation.

- **PRACTICE TIP: RESERVES ARE IMPORTANT.** Listing agents should showcase the fact that an Association has healthy reserve accounts for improvements and maintenance. Agents working with buyers, on the other hand, may want to urge buyers to consider the possible negative consequences of an Association that does not have adequate reserve funds, depending upon the buyer’s circumstances.

Real Estate Condition Report

In the past there has been some confusion among licensees regarding exactly “what property” the seller should be addressing when completing the Real Estate Condition Report (RECR). The Real Estate Condition Report section of the WB-4 listing contract reminds the sellers that if the property being sold is a Condominium Unit, the form should be completed with regard to the Unit itself, the Common Elements, and any Limited Common Elements used exclusively by the Unit seller. This reminder also appears in the RECR form itself, and in Wis. Stat. § 709.03. The seller may also obtain information about the Common Elements from the minutes from the Unit owners’ and Association board of directors’ meetings.

Condominium Addendum Adds Important Condominium Information to the RECR

The new condominium addendum to the real estate condition report (RECR) supplements the RECR. The seller completes the condominium addendum to the RECR with basic information that a unit owner should readily know, including the unit address and description, contact information for the seller or the listing agent, association management information, and current condo fees and assessments information. The condominium addendum to the RECR also instructs the seller to attach a copy of the Executive Summary to the RECR.

PRACTICE TIP: THINK ABOUT FEES AND ASSESSMENTS. The condominium amendment to the RECR gets the prospective purchaser thinking about assessment and fees early on – hopefully before the offer is written. It may be helpful to attach a copy of the current budget to the condominium amendment to the RECR as part of the owner’s answer to the question about the current fees for the unit. The budget and the assessment fees are important aspects of condominium living that often are not well understood by new unit purchasers.

Just above the buyer’s signature lines on the WRA Condominium Addendum To Real Estate Condition Report form is a small box that is to be checked if the buyer has already received the condominium disclosure materials at the time that receipt of the condominium addendum to the RECR is acknowledged. Generally, disclosure materials are not distributed to a potential buyer until after the offer is accepted because sellers may have only one copy of the typically voluminous disclosure materials or are reluctant to pay for multiple copies. Although it may seem early, it may be a beneficial to give at least serious prospects their copy of the disclosure materials early on along with the RECR because it will dramatically shorten the timeframe for rescission by the buyer. Sellers will appreciate knowing early on whether a purchaser is going to rescind the offer based upon the disclosure materials rather than enduring uncertainty right up until closing, which is what happens if the condominium disclosure materials are not given to the buyer until late in the process.

Real Estate Agent Problems in Obtaining Disclosure Documents

One problem often encountered by real estate agents working on a condominium transaction in the past involves the delivery of the required condominium disclosure documents. A condominium seller must furnish the buyer with a copy of the documents required under Wis. Stat. § 703.33(1) at least 15 days before closing. Any buyer may rescind his or her offer to purchase a condominium unit, without stating any reason and without liability, within five business days following receipt of all information required by § 703.33(1).

Condominium declarants generally produce and deliver disclosure materials that meet the § 703.33(1) requirements when a condominium is initially sold to members of the public. Once a few years have passed and the unit is resold, however, it becomes more difficult for the seller to pull together a complete,

current set of disclosure materials. The seller generally cannot just turn over a copy of the materials he or she received when the unit was first purchased - the condominium documents may have been amended, the budget may be outdated, pages may be lost, etc. The seller may ask the condominium association for assistance in compiling the appropriate set of documents, and the association or the association manager may or may not be able to help out. A seller of a unit in 10-unit condominium project 20 years down the line will be lucky if there even is a current operating budget. Thus it may be difficult, if not impossible, for the seller to promptly give the buyer a current, complete set of disclosure materials.


If the buyer receives all of the condominium disclosure documents required by § 703.33(1), the buyer will have five business days to rescind the offer in writing, without stating any reason and without liability. If the buyer receives condominium disclosure documents that include the cover sheet but are missing one or more of the documents required by § 703.33(1), the buyer will have five business days to either rescind the offer in writing, without stating any reason, or to request that the seller deliver the missing documents. If the buyer neither rescinds nor requests missing documents within the five business days, then the delivered materials will be deemed satisfactory and the buyer will have no further right to rescind based upon those materials.

The seller has five business days following receipt of the buyer's request to deliver the missing documents. The buyer may rescind the sale within five business days following the earlier of the buyer's receipt of the requested missing documents or the seller's deadline for delivering the documents. This revised process preserves the consumer protection measures built into the condominium disclosure requirements, but also prevents buyers from turning the shield of those protections into a sword used against sellers and real estate agents. A buyer can no longer wait until the last minute to cancel the transaction.

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!**