

State of Wisconsin: Frequently Asked Questions  
Presented and Submitted by Daniel J. Miske, Whyte, Hirsch, Dudek, SC  
January 1, 2011

GENERAL

1. What state statutes apply to Common Interest Communities in your state? **Chapter 703 Wisconsin Statutes.**
2. Are Common Interest Communities required to incorporate? **No.** Can they be incorporated? **Yes, under Chapter 181 – Nonstock Corporations.** Advantages/Disadvantages? **The primary advantages are that the statutory section sets forth various requirements relating to voting, officers and directors, insurance, and reviewing of records.**
3. Is there a state agency which has authority to regulate and oversee the affairs of Common Interest Communities? **No.** What is the scope of its power and authority? **Not applicable.**
4. On the state level, what are the annual reporting requirements of a Common Interest Community, if any, and to whom? **If the Association elected to be a corporation under Chapter 181, then they would be required to file an annual report with the Wisconsin Department of Financial Institutions. If the community is an unincorporated condominium under Ch. 703 Wis. Stat., then there are no annual reporting requirements.**

MEMBERSHIP MEETINGS

5. Is an Annual Meeting of Members required? **Yes, see § 181.0701 Wis. Stat.**
6. How are Special Meetings of the Members called? **Unless the declaration or bylaws state otherwise, by the Board, or any person authorized by the Articles or Bylaws to call a Special Meeting or by Members holding 5% of the vote pursuant to § 181.0702 Wis. Stat.**
7. What are the Notice Requirements for Membership Meetings? **Whatever is required by the Bylaws. see § 181.0705 Wis. Stat.**
8. What are Quorum Requirements for Membership Meetings? **The Quorum Requirements are almost always set forth in the Bylaws. The statute provides that unless the articles of incorporation or bylaws provide otherwise, a quorum consists of 10% of the votes entitled to be cast. Sec. 181.0722(1) Wis. Stat.**
9. Can Members use Proxies? Absentee Ballots? Mail Ballots? **The Members may use Proxies to vote and although Absentee Ballots are improper Mail Ballots may be used if permitted by the Articles of Incorporation or Bylaws pursuant to §§ 181.0708, 181.0723, and 181.0724 Wis. Stats.**
10. Can Members Raise Concerns or Issues at a Membership Meetings? **There is no**

**prohibition within the Wisconsin Statutes from Members raising new matters and it is commonly done at a Membership Meeting.**

11. Can Non-Members attend Membership Meetings? (Attorneys of Members? Guests of Members? Local or National Media representatives?) **There is no specific prohibition within the statutes to Non-Members attending Membership Meetings, however, they are commonly prohibited within the Bylaws.**

#### BOARD MEETINGS

12. Are Boards of Directors required to hold Regular Board Meetings? **No, see § 181.0821 Wis. Stat.**
13. How are Special Meetings of the Board called? **Unless the Articles of Incorporation or Bylaws provide otherwise, Special Meetings of the Board must be preceded by at least two-days notice to each director see § 181.0822(2) and the number of directors needed to call a Special Meeting is set forth in the Bylaws.**
14. What are the Notice requirements for Board meetings? **All directors are entitled to notice of all meetings, however, directors' attendance at or participation in a meeting waives any required notice unless the director upon arriving objects and does not thereafter vote for or assent to the objected action. Chapter 181.0823 Wis. Stat. Are Members required to be notified as well? No, unless the Bylaws provide otherwise.**
15. What constitutes a quorum for Board Meetings? **Unless the Articles of Incorporation or Bylaws provide otherwise, a majority of the directors in office constitutes a quorum. Chapter 181.0824 Wis. Stat.**
16. Can Board Members use Proxies? **No.**
17. Which meetings of the Board of Directors are open to all homeowners? **Generally all board meetings are open to all homeowners, although they are not entitled to notice, so unless the Board (or a particular member of the Board) is truly willing to have their involvement, from a practical standpoint, they won't know where or when the meeting is going to take place.**
18. Does a Member have the right to address the Board of Directors during the meeting? **No.**
19. Can the Board of Directors meet in Closed or Executive Session? **Yes.** If so, for what purposes? **Generally for the same reasons as governmental bodies, such as deliberating concerning your case, employee issues, considering strategy for crime detection or prevention, competitive bidding or bargaining reasons, and conferring with legal counsel see § 19.85 Wis. Stat.**
20. Are Minutes of Board Meetings required? **Essentially, yes see § 181.1601(1) Wis. Stat.** When can Members see the minutes of such meetings? **A Member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, particular records on five-day written notice to the corporation, see § 181.1602(2) Wis. Stat.**

21. Does a Member have a right to audio- or video-records meetings of the Board? **No.** Under what circumstances or conditions? **None.**
22. Can Non-Members attend Board Meetings? **There is no specific statutory provision preventing Non-Members from attending, however, such clauses are sometimes contained within the Articles, Bylaws, or Declaration.**

#### ADMINISTRATION

23. Does a Member have a right to review books and records of the Association? **Yes.**
- a. If so, what books and records can be reviewed? **It depends on whether the Association is incorporated or not. If it is incorporated the records are essentially the accounting records, the membership list, excerpts of the financial statements, the directors and officers, the annual report, the resolutions, the minutes of all meetings of members and the records of all actions approved by the members for the past three years, the Bylaws, and the Articles of Incorporation, see §§ 181.1601 and 181.1602 Wis. Stats. If the Association is not incorporated, but is a Condominium Association then the Member is entitled to the records and the vouchers authorizing the payments of the Association's debts. § 703.20 Wis. Stat.**
  - b. Can the Member obtain copies of the books and records requested? **Yes, under the two sections cited under subparagraph (a).**
  - c. Does a Member have to pay for copies of the books and records? **Yes.**
  - d. Are there books and records which the Association can withhold or otherwise prevent a Member from reviewing? **Yes, any not specifically cited in the statute – see response to question 23(a).**
24. What are the Reserve requirements in the State? **If the Association is not a condominium there are no Reserve Requirements, except as set forth in the documents. If the Association is a condominium association, then the unit owners may have established a statutory reserve account under § 703.163 Wis. Stat. Are Reserve Studies mandated? No.** What reporting requirements does the Association have with respect to the status of the Reserves, the Reserve Accounts or the funding of the Reserves? **None.**
25. What are the resale disclosure requirements? **Under § 703.20(2) within ten days after request by a seller an Association shall furnish the information necessary for the seller to comply with § 703.33 Wis. Stat. The seller has to pay the Association for the actual costs of furnishing the information. The information required under § 703.33 Wis. Stat. is a fairly significant list detailing all of the documents that would normally be anticipated to be reviewed as part of an offer to buy or sell, including an Executive Summary, Declaration, Bylaws, Articles of Incorporation, management contracts, annual operating budget, leases, expansion plans, floor plan and map.**

26. Does the Membership by Vote or the Board of Directors establish the Assessment?  
**Unless the documents say otherwise, the Board of Directors establishes the assessment off of the budget.**
27. Is a budget required? **Yes.**
28. Is an annual audit required? **Not unless required by the Bylaws or Declaration.**
29. Does the State regulate the collection of assessments? **No.**
- a. What happens if a Member is delinquent in the payment of assessments? **The Association can either proceed to collect under normal collection procedure methods or file a lien against the owner.**
  - b. How can an association increase annual assessments? **It generally can't increase the annual assessment, except at the time of the budget.**
  - c. Under what circumstances can my association levy special assessments? **It depends on the authority granted within the Declarations or Bylaws, but the vast majority of the documents provide for special assessment anytime sought by the Board of Directors, while some documents also require the approval of the members under certain circumstances.**
  - d. Are there provisions related to additional assessments or adjustments in the budget or assessment level in the event of a deficit? **No, except during the period of declarant control of a condominium association. Under those circumstances, and assuming the documents allow the declarant to otherwise not pay assessments (which is the vast majority of the cases) the declarant is liable for any shortfall or deficiency. See § 703.16(2)(b) Wis. Stat.**
30. What authority does the association have to access a Unit or Lot? Under what circumstances?  
**Nothing is statutorily provided, but in most instances the documents grant that authority for maintenance, repair or replacement of a common element or limited common element, and for emergencies.**
31. Does the Association have the authority to adopt rules and regulations? **The Associations do have the right to adopt rules and regulations and it is implied or is specifically granted to condominiums under various sections of Chapter 703 Wis. Stats. As to non-condominiums, if it is provided for within the documents, courts enforce it, even though it is not specifically authorized under Chapter 181.**
32. Does the Association have the authority to assess charges or fines for violations by Members? **Yes, if it is provided for within the documents. See § 703.165(2) Wis. Stats. as to condominiums.** Does the Association have the right to suspend the right of use of the common elements or common areas in the event of a violation? **Suspending the use of the common elements and common areas in the event of a violation if it is provided for in the documents has been enforced by the courts, although there is no Court of Appeals or Supreme Court decision directly on point.** To suspend the right of a Member to vote or otherwise participate in the Association in the event of a violation? **In a condominium the only way to suspend someone's voting right is if it is provided for in the Bylaws and the Association has recorded a Statement of Condominium Lien on the person's unit. § 703.10(4) Wis. Stats. If the Association**

**is not a condominium, there is no particular provision within the statutes, but it would likely be enforced if it were in the documents.**

33. Is there a requirement to have an internal administrative Complaint or Dispute Process? **No.**  
Is it mandatory and/or a prerequisite to other legal action? **No.**
34. Does any applicable statute provide for the removal of a Board Member, several Board members, or the entire Board? Under what conditions? Who decides upon their successors and when? **If the Association is a condominium, then the removal of the director is the governed by the Bylaws under §703.10 Wis. Stat. If the Association is incorporated, then a Director may be removed by the Members at a meeting with sufficient notice for that purpose. If the Director was elected by the Directors, then Directors can remove that Director by a majority vote. See § 181.0808 Wis. Stat.**
35. Can an association be placed into receivership by a Court under state law? **Yes under Sec. 181.1432 Wis. Stat and also under Ch. 128 Wis. Stat.**
36. Does state statute provide for condemnation of common property? **The relevant statutes Ch. 181 and C. 703 do not provide for condemnation. However, the government has the power to condemn any property including common property of an association.]**

#### UNIT/LOT OWNER ISSUES

37. What action(s) can an association take in the event of non-payment of association assessments? **Whatever actions are provided for within the Association documents, including bringing a civil action and foreclosure.** Is foreclosure an option? **Yes.** Under what circumstances? **If a lien is filed and the foreclosure is started within the statutory timeframe, three years if it is a condominium and six months if it is not.** (Please address judicial and non-judicial foreclosure.) **Wisconsin is a judicial foreclosure state.**
38. Are there state laws that regulate whether a Member can be assessed a charge or otherwise fined by its association for violations? **There are no specific state laws other than generically under §703.165 Wis. Stat. dealing with condominium associations.** What violations trigger this authority? **Generally, the authority to fine is found by the courts within the Association documents.** What procedures must be followed?
- a. What actions can the association take to collect these charges or fines? **The charges or fines are considered assessments if the Association is a condominium under §703.165 Wis. Stat. If the Association is not a condominium, the courts are still likely to find that the charges or fines are assessments subject to all of the normal rules on assessments for collection, including foreclosure.**
  - b. Can my association foreclose on my property for non-payment of these charges or fines? **Yes.**
39. What, if any, other internal administrative enforcement options can the association take in the event of a violation of the state statute, association's governing documents, or the rules and regulations of the association? **Any that are authorized within the documents other than prohibiting voting except for as set forth in**

**the statute (e.g. prohibiting use of various aspects of the common elements or charging fines, late fees, interest, administrative charges, and attorney fees).**

40. Does any applicable statute regulate the flying of the American Flag? **Yes, it is specifically authorized by §703.105 Wis. Stat. if the Association is a condominium.**
41. Does any applicable statute regulate solar panels? **No.** Clotheslines? **No.**
42. What are the rules regarding placement of satellite dishes or antennas on my property? (Link to the OTARD Fact Sheet.) **There are no special rules other than the OTARD Fact Sheet.**
43. What dispute resolution options do I have if I have a problem with the board? **Your options are to:**
- a. **Seek the removal of the board;**
  - b. **Successfully run for a position on the board, or**
  - c. **Sue particular board members for breach of fiduciary duties.**
44. What is the state law regarding recalling board members? **There is no authority to recall board members. You will need to seek removal of some or all of the directors as previously discussed.**

#### AMENDMENT OF DOCUMENTS

45. Does state statute provide for the amendment of the association's documents? **Yes.**
- a. What percentage of the owners must approve? **There are numerous different requirements depending on whether you are talking about the Declarations or the Bylaws, although generically, an amendment would require at least two-thirds of the unit owners to vote in favor of the amendment, see §§ 703.10(5) and 703.09(2) Wis. Stat. If the Association is not a condominium, then the Bylaws generally may be amended by the directors pursuant to § 181.0206 Wis. Stat.**
  - b. Is percentage based on those voting or totality of the number of owners? **It depends on how the document is written although generally it is on two-thirds of the total votes.**
  - c. Is the vote taken at a meeting or is it required to be by written consent? **The vote can be taken at a meeting, although it is generally done by written consent.**
  - d. Is mortgagee approval required? **Mortgagee approval is required if you are amending the Declarations pursuant to § 703.09(2) Wis. Stat. Is there a statutory process for obtaining mortgagee approval or providing for a presumptive mortgagee approval? No.**

#### USE OF TECHNOLOGY

46. Other than a written document or by voting at a meeting, can a Common Interest Community use the most advanced technology, including e-mail or the Internet to:
- a. Provide notice to Members of any meeting? **Yes.**

- b. Obtain votes of the Members? **Yes.**
- c. Obtain the consents, acknowledgements or ratifications or Members? **Yes.**
- d. Obtain the electronic signatures of Members? **Yes.**

**See Sec. 181.0708 Wis. Stat. for all of the above.**