

# Condominium Conversion and Tenant Rights: Wisconsin Statutes Section 703.08: What Kind of Protection Does it Really Provide?

Randy Wynn

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# CONDOMINIUM CONVERSION AND TENANT RIGHTS — WISCONSIN STATUTES SECTION 703.08: WHAT KIND OF PROTECTION DOES IT REALLY PROVIDE?

RANDY WYNN\*

As inflation continues to run rampant and the cost of a home spirals beyond the reach of the average consumer, the purchase of relatively inexpensive condominiums by Wisconsin citizens may soon become the rule rather than the exception.<sup>1</sup> As the demand for these “house-substitutes” rises, an increasing number of landlords will want to take advantage of the profits which can be realized upon conversion of their apartment complexes into condominiums.<sup>2</sup> Conversion typically involves the changing of a multi-unit rental apartment building from landlord ownership to condominium status, wherein each apartment is individually owned as a condominium unit. The unit owner in turn holds an undivided proportional interest in the rest of the building and grounds.

While the conversion of existing properties to condominium status has played an integral role in condominium development since the introduction of this ownership form in our state, Wisconsin's recently repealed Unit Ownership Act<sup>3</sup> was not designed to deal with certain problems which are unique to the conversion concept.<sup>4</sup> One such problem is the recognition of the

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\* J.D., Marquette University, 1979. Mr. Wynn is a member of the law firm of Fiorenza, Weiss, Amato, Hodan & Belongia, S.C.

1. Rohan, *The “Model Condominium Code” — A Blueprint for Modernizing Condominium Legislation*, 78 COLUM. L. REV. 587 (1978) (points to other reasons behind the national growth in popularity of condominiums, including land scarcity near urban areas, smaller, more mobile families, older couples with grown children and increased demand for recreational facilities).

2. Melia, *Ohio Condominium Law: A Comparative Critique*, 29 CASE W. RES. L. REV. 145, 163-64 (1978) (identifies the prohibitive increase in new construction costs fortified by the surplusage of apartments aged 20 years or less and the declining rate of return on apartment investments as factors favoring the landlord's decision to convert a development into condominium units) [hereinafter cited as Melia].

3. WIS. STAT. ch. 703 (1975) (repealed by 1977 Wis. Laws ch. 407).

4. Condominium conversions have been accomplished in Wisconsin under the old Unit Ownership Act. *Id.* Inferences could be drawn from the language of the law indicating that it was not restricted to the construction of new condominium projects.

interests of existing tenants in the property to be converted. This article involves an in-depth analysis of Wisconsin's statutory approach to the protection of these interests through recently enacted section 703.08.<sup>5</sup> Where relevant, comparisons will be made with approaches which have been adopted by other states to determine the nature and extent of the protection afforded by section 703.08.

Section 703.08 reads as follows:

**703.08 Notice prior to conversion of residential property to condominium.** (1) Residential real property may not be converted to a condominium unless the owner of the residential real property gives 120 days prior written notice of the conversion to each of the tenants of the building or buildings scheduled for conversion. A tenant has the exclusive option to purchase the unit for a period of 60 days following the date of delivery of the notice.

(2) A tenant may not be required to vacate the property during the period of the notice required under sub. (1) except for:

- (a) Violation of a covenant in the lease; or
- (b) Nonpayment of rent.<sup>6</sup>

Three avenues of protection exist under this statute: notice, option to purchase and exemption from eviction for the notice period.

## I. NOTICE

Tenants are entitled to 120 days advance written notice of a proposed conversion.<sup>7</sup> During this period they must choose whether to exercise the option to purchase discussed in section II of this article or to seek new accommodations elsewhere. As will be demonstrated, there are several unanswered questions about this notice period.

### A. *When Must the Notice Be Given?*

Although the statute provides that tenants shall be given at least 120 days prior written notice, no indication is given as to

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See, e.g., 1975 Wis. Laws ch. 100; 1971 Wis. Laws ch. 228 (referring to condominium location, construction and floor plans respectively as "the land on which the building improvements are or are to be located," the building which "is or is to be constructed" and the floor plans of each building "built or to be built").

5. 1977 Wis. Laws ch. 407.

6. Wis. STAT. § 703.08 (1977).

7. *Id.* at (1).

how much further in advance the owner can notify the tenant. Illinois, for instance, requires that "such notice shall be given at least 120 days, and not more than 1 year prior to the recording of the declaration which submits the real estate to this Act."<sup>8</sup> Further, while the Illinois time limit is measured back from the "date of the recording of the declaration,"<sup>9</sup> the Wisconsin restriction is more loosely drafted and requires only that the notice be given before the property involved is "scheduled for conversion."<sup>10</sup> Considering that certain option to purchase rights and extended tenancy rights arise out of this 120-day period, it becomes important to know when the starting and ending dates are so as to identify those tenants to whom these rights accrue. Whose "schedule" should the court follow in the following example?

A landlord records a declaration on April 29 stating therein that he intends to convert an apartment complex he owns to condominium status on October 1. On April 30, tenant *A*, who rents an apartment in that complex, moves out after having resided there for a number of years. Tenant *B* moves into the vacated apartment on May 1. On June 1 the landlord delivers tenant *B* written notice of the proposed conversion and extends him an option to purchase his unit. Tenant *A* brings a declaratory judgment action claiming that since he was the resident tenant 120 days prior to the recording of the declaration he should be afforded the right to purchase the unit. Tenant *B* alleges that the notice period is to be measured back from October 1, the date upon which the declaration states that conversion will occur.

To resolve this problem one must determine when "conversion" actually occurs since the statute presumably requires notice to be given 120 days prior to that time: (1) the date the declaration is recorded, or (2) the date the recorded declaration states that the conversion is "scheduled" to take place. Other provisions of the Condominium Ownership Act seem to indicate that the first alternative is correct.<sup>11</sup>

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8. ILL. STAT. ANN., ch. 30, § 330 (Smith-Hurd Supp. 1979).

9. *Id.*

10. WIS. STAT. § 703.08(1) (1977).

11. WIS. STAT. § 703.07(1) (1977) states that "[a] condominium may be created by recording condominium instruments with the register of deeds of the county where the property is located." Under section 703.02(5) "[c]onominium instruments'

However, because the declaration is designed to inform potential condominium purchasers of the nature of their investment<sup>12</sup> it would be more practical to have the notice and option periods *follow* (or begin on) the date the declaration is recorded. The protection of the notice, option to purchase and exemption from eviction provisions should accordingly be extended to tenants of record on the date of recording. This writer recommends rewording section 703.08 to ensure the achievement of this end.<sup>13</sup>

### B. *What Must the Contents of the Notice Include?*

Having determined when the notice shall be given, the converter must now resolve what the contents should include. Again the Wisconsin act gives no direction, except the minimal requirement that the owner make known his intent to create a conversion condominium.<sup>14</sup> Several of the other acts insist that the notice set forth generally the rights of tenants (option to purchase and right to remain in residence) during the conversion period.<sup>15</sup> A full plan of the conversion is also advisable.<sup>16</sup>

The manner in which the notice is worded also may determine whether it is sufficient to terminate periodic tenancies<sup>17</sup> and tenancies at will<sup>18</sup> under section 704.19 of the Wisconsin

mean the declaration, plats and plans of a condominium together with any attached exhibits or schedules." The "declaration" is defined in section 703.02(8) as "the instrument by which property becomes subject to [the Condominium Ownership Act], and that declaration as amended from time to time." Finally, section 703.02(6) provides that a "conversion condominium" is "a structure which, *before the recording* of a condominium declaration, was wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of the purchasers" (emphasis added).

12. Under Wis. STAT. § 703.09 (1977) the declaration must contain certain information such as descriptions of the land, units, common elements and provisions for the number of votes for the owner of each unit including the percentage of their interest.

13. Since these rights would, under my proposal, accrue to tenants of record on the date of recordation, it is advisable to include a provision to the effect that the required notice be delivered to these persons as soon as practicable and not more than 10 days after recording the declaration.

14. See Melia, *supra* note 2, at 164-67, for an interpretation of content requirements under Ohio's similarly worded condominium statute.

15. See UNIFORM CONDOMINIUM ACT § 4-110(a) (1977); D.C. CODE § 5-1268(b)(1) (Supp. V, 1978).

16. N.J. STAT. ANN. § 2A:18-61.8 (West Supp. 1978-79).

17. Wis. STAT. § 704.01(4) (1977) " 'Periodic Tenant' means a tenant who holds possession without a valid lease and pays rent on a periodic basis."

18. Wis. STAT. § 704.01(5) (1977) " 'Tenant at will' means any tenant holding with the permission of his landlord without a valid lease and under circumstances not involving periodic payment of rent."

statutes. Such tenancies can be terminated by the landlord "only by giving to the other party written notice complying with this section [with certain exceptions] . . . ." <sup>19</sup> Under section 704.19(4) a notice to terminate must "substantially inform the . . . [tenant] of the [landlord's] intent to terminate the tenancy *and* the date of termination." <sup>20</sup> Therefore, if the owner's notice of intent to convert fails to also comply with these latter provisions by notifying the tenant of the date of vacation of the premises, it may not constitute the notice to terminate the tenancy. <sup>21</sup> The District of Columbia aptly resolves these issues:

If the notice of conversion specifies a date by which the apartment unit shall be vacated, then such notice shall constitute and be the equivalent of a valid statutory notice to vacate. Otherwise, the declarant shall give the tenant or subtenant occupying the apartment unit to be vacated the statutory notice to vacate where required by law in compliance with the requirements applicable thereto. <sup>22</sup>

### *C. What Constitutes Effective Delivery of the Notice?*

Although section 703.08 does not disclose how the notice should be delivered, our present landlord-tenant statutes again provide useful guidelines. <sup>23</sup> The manner of delivery therein prescribed is consistent with the recommended practice of other conversion statutes. <sup>24</sup> It has also been noted that since notice must be furnished by the owner of the residential real property, a selling owner may in some circumstances have to supply notice when it is his buyer who intends to convert the building to condominium status. <sup>25</sup>

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19. WIS. STAT. § 704.19(2) (1977).

20. WIS. STAT. § 704.19(4) (1977) (emphasis added).

21. Some reprieve may be afforded via section 704.19(5) (1977) wherein it states that "[i]f a notice by a tenant fails to specify any termination date, the notice is valid but not effective until the first date which could have been properly specified in such notice as of the date the notice is given." The landlord, however, would still have had to indicate his intent to terminate the tenancy.

22. D.C. CODE § 5-1268(b)(3) (Supp. V, 1978). *But cf.* OR. REV. STAT. § 91.524(3) (1977) ("A notice of conversion shall not constitute or include a notice to terminate the tenancy.").

23. *See* WIS. STAT. § 704.21 (1977). Presently authorized methods of delivery of a notice include hand delivery and delivery by registered mail.

24. *See* UNIFORM CONDOMINIUM ACT § 4-110(a); OR. REV. STAT. § 91.524(1)(c) (1977); VA. CODE ANN. § 55-79.94(b) (Michie Supp. 1978).

25. Horton, "Recycled Real Estate: The Conversion Condominium," contained in

#### D. *Can the Notice Provision Be Waived?*

Another question that comes to mind is whether or not landlords, contemplating the conversion of their property to condominium status at some indefinite point in the future and desiring not to be locked into honoring a 120-day notice period when the time to convert is financially (or for some other reason) ripe, can insert a provision in their leases which would enable them to cancel and terminate the terms of such leases upon less than 120 days notice to the tenant. This issue is not addressed by section 703.08 nor any other part of the act. Illinois has taken care of this problem statutorily by providing that "any provision in any lease or rental agreement, or any termination of occupancy on account of condominium conversion, not authorized herein, or contrary to or waiving the foregoing provisions, shall be deemed to be void as against public policy."<sup>26</sup> Florida has also enacted a statute prohibiting waiver of the 120 days notice period, although not without exception:

Any provision in any contract, lease, or undertaking which provides for cancellation or termination of the term of any lease for an apartment or other residence at the option of the landlord or developer for reason of its intended conversion to a condominium form of ownership without at least 120 days notice shall be unenforceable except in the following cases:

. . . .

2. If the lease grants the tenant an option to purchase the apartment or other residence in which he resides at a price equal to or less than that offered to nontenants, which option is exercisable by the tenant during a period of not less than 90 days after the mailing of a notice of the intended conversion to the tenant.

3. If the lease provides that the lessor or developer shall not convert to condominium ownership except with the consent of the tenants of not less than 60 percent of the apartments or other dwellings in improvements intended to be converted. For the purpose of this vote, unoccupied apartments or dwellings shall be counted and the developer or lessor may vote those apartments.<sup>27</sup>

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program materials on the New Condominium Law (Advanced Training Seminar/Continuing Legal Education, State Bar of Wisconsin, August, 1978).

26. ILL. STAT. ANN., ch. 30, § 330 (Smith-Hurd Supp. 1979).

27. FLA. STAT. ANN. § 718.402(3)(a) (West Supp. 1979).

Note that the exceptions cited in the Florida statute provide the tenant with greater protection against an unwanted conversion of his leasehold than does the Wisconsin statute. The option to purchase period is increased from 60 to 90 days, and the 60 percent provision enables the tenant to organize other tenants so as to block the conversion, a right not granted by the Wisconsin act. Thus, while at first blush it would seem inequitable and against public policy to allow Wisconsin lessors to draft around the notice provision, the argument can be raised that the lessor is being equitable if he substitutes the waived provisions with demonstrably more beneficial (or equivalent) rights. It is interesting to note in this regard that the legislature has expressly ruled against waiver in another section of the Wisconsin act which deals with various disclosure requirements and the purchaser's right to rescind a contract of sale: "Rights of purchasers under this section may not be waived in the contract of sale and any attempt to waiver is void."<sup>28</sup> If the legislature had intended to prohibit *all* forms of waiver of section 703.08 rights, similar wording could have been used.

Reasons for precluding attempts at waiver of 703.08 rights should be inapplicable to leases issued subsequent to the owner's announced intention (via declaration) to convert. Connecticut has already recognized this distinction:

Notwithstanding the provisions [forbidding waiver of the notice and option requirements] leases executed subsequent to the announced intention of the developer as landlord to convert to a condominium format may contain provisions for the early or advanced termination of the term of such leases or the early cancellation of such leases upon not less than thirty days notice to the tenant, providing that the lease shall conspicuously disclose the fact that it is the landlord's or developer's intention to convert the property containing the leased premises to a condominium form of ownership, or to convey the property for such purposes and that the lease may be cancelled upon not less than thirty days notice to the tenant of the landlord or developer's exercise of the right of cancellation.<sup>29</sup>

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28. WIS. STAT. § 703.33(6) (1977).

29. CONN. STAT. ANN. § 47-88b(d) (1978). Presumably the notice requirement does not apply to a lease entered into simultaneously with, or subsequent to, a contract to purchase the unit. *See, e.g.,* FLA. STAT. ANN. § 718.402(3)(d) (West Supp. 1979).

## II. OPTION TO PURCHASE

The date upon which the notice of the proposed conversion is or should have been delivered is also important in that it triggers the beginning of a 60 day period during which tenants have an exclusive option to purchase their apartment units. Numerous defects exist in the option provision as it is presently drafted.

### A. *What Happens If an Apartment Is Eliminated From the Conversion Scheme?*

Initially, the statute fails to address directly what happens if the development plan for a conversion project calls for the alteration or elimination of a rental unit. The Uniform Act provides that the option period "does not apply to any unit in a conversion condominium if that unit will be restricted exclusively to non-residential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion."<sup>30</sup> Virginia's option provision, upon which this section of the Uniform Act was principally based,<sup>31</sup> expressly declares that "each of said tenants shall have the exclusive right to contract for the purchase of the unit he occupies, but only if such unit is to be retained in the conversion condominium without substantial alteration in its physical layout."<sup>32</sup>

Where two units are combined to make one large unit a problem arises when trying to determine whose unit has been eliminated or substantially altered so as to excuse the owner from granting an option to that tenant. Under the wording of the Uniform Act or the Virginia statute, an argument could be raised that because both units are substantially the same (*e.g.*, where only the dividing wall was removed) both tenants should be granted the option. This anomalous situation would have to be resolved by getting the owner to declare whose unit was being eliminated and which unit was being enlarged. Accordingly, under those acts the tenant occupying the unit being enlarged would be entitled to an option to purchase that unit, while the tenant whose unit was being used to create more room for another unit would not be entitled to an option. Of

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30. UNIFORM CONDOMINIUM ACT § 4-110(b).

31. *Id.* at comment 1.

32. VA. CODE ANN. § 55-79.94(b) (Michie Supp. 1978).

course, an argument that neither tenant in the above situation is entitled to an option is also plausible on the premise that substantial enlargement is the equivalent of substantial alteration.

Apparently, no state allows for the extension of an option to tenants regardless of the intended disposition of their own unit. Under such a system, a tenant whose unit is altered or eliminated would not be foreclosed from being granted an option to purchase another unit in the conversion project. This result could be accomplished in the Wisconsin act by amending the text of 703.08 to read: A tenant has the exclusive option to purchase a unit for a period of 60 days following the date of delivery of the notice. One effect of such an amendment may work to the advantage of lessor-owners. Under the existing version of the Wisconsin act, the owner would be required to grant the tenant an option to purchase his own unit. The proposed amendment would provide the owner with greater flexibility in the allocation of options on respective units. Tenant advocates may find that granting such a wide range of discretion to owners is imprudent as it may result in abusive practices.

### *B. What Are the Terms of the Option?*

This latter point leads us toward another weakness of the Wisconsin act: the statute makes no reference whatsoever to the terms of the option. One might expect that the terms would be equivalent to those being offered to the public or that there would be more advantageous terms where special marketing efforts are geared toward tenants.<sup>33</sup> While some of the acts come close to achieving this result, none of them completely preclude the owner's opportunity to, at some point, offer a greater discount to the public than was given to tenants during the option period.

Oregon, for instance, requires that "[i]f such tenant fails to agree to purchase the unit during [the option period], the declarant may not offer to sell that unit during the following 60 days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant."<sup>34</sup> The Uniform Act has

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33. In *Richards v. Kaskel*, 32 N.Y.2d 524, 347 N.Y.S.2d 1, 300 N.E.2d 388, 394 (1973) the court found substantial price reductions, low finance rates and buy-back provisions offered tenants as inducements to purchase their units "neither discriminatory nor otherwise improper."

34. OR. REV. STAT. § 91.524(2) (1977).

adopted a stricter approach to protect tenants on this issue, extending the price and term freeze to 180 days following the termination of the option period.<sup>35</sup>

### C. *Timing of the Option*

One must also question the intent of the legislature in requiring that the notice period, and the option to purchase period which the delivery of notice triggers, be 120 days *in advance* of recording the declaration. Such a requirement seems absurd considering that it is the declaration which informs the buyer in what he is investing.<sup>36</sup> To ensure that tenants are able to make an informed decision during their option period, New Jersey has enacted a statute which declares in part: "Any owner who intends to convert a multiple dwelling . . . into a condominium . . . shall give the tenants 60 days notice of his intention to convert and the full plan of conversion . . . ."<sup>37</sup>

Because unit owners under the Wisconsin act must strictly comply with the covenants, conditions and restrictions set forth in the declaration,<sup>38</sup> it follows that a tenant will want to know what the general nature of those obligations are before exercising the option to purchase. This end is not effectively accomplished under the present option provisions, which do not require full disclosure at the time the tenant will be making his decision. This is not to say that the tenant is not protected, for full disclosure is required 15 days prior to the closing of the sale of each unit under sections 703.33(1) and 703.33(2). Section 703.33(4) is the tenant's escape valve and states in part:

Any purchaser may at any time within 5 business days following receipt of all information required under sub. (1) . . . rescind in writing a contract of sale without stating any reason and without any liability on his or her part, and the purchaser is entitled to the return of any deposits made in account of the contract.

Although section 703.33(4) allows the tenant a clean break from the obligation of the contract of sale should he decide not to purchase, no compensation is provided for the money (*e.g.*, attorney fees) and time spent in preparation for the closing

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35. UNIFORM CONDOMINIUM ACT § 4-110(b) (1977).

36. WIS. STAT. § 703.09 (1977).

37. N.J. STAT. ANN. § 2A:18-61.8 (West Supp. 1978).

38. WIS. STAT. § 703.10(1) (1977).

which may not have been expended had he known from the start the nature of his investment. In short, a more equitable result is accomplished by requiring that the notice and option periods *follow* the recording of a declaration, particularly in situations involving a "seller's market" where the demand for converters to have a substantial understanding of the development plan at the time they extend the option may not be as great.

*D. What Is the Effect of Failing to Extend an Option to Purchase?*

Another important issue left unanswered by the Wisconsin act is what the effect will be if a converter fails to give the required notice and sells to someone else. Illinois has responded to this question by insisting:

The recording of the deed conveying the unit to the purchaser which contains a statement to the effect that the tenant of the unit either waived or failed to exercise the right of first refusal or had no right of first refusal with respect to the unit shall extinguish any legal or equitable right or interest to the possession or acquisition of the unit which the tenant may have or claim with respect to the unit arising out of the right of first refusal provided for in this Section. The foregoing provision shall not effect any claim which the tenant may have against the landlord for damages arising out of the right of first refusal provided for in this Section.<sup>39</sup>

The solution under the Uniform Act is more stringent:

If a declarant, in violation of [the option to purchase requirements], conveys a unit to a purchaser for value *who has no knowledge of the violation*, recordation of the deed conveying the unit extinguishes any right a tenant may have . . . to purchase that unit if the deed states that the seller has complied with [the option requirements], but does not affect the right of a tenant to recover damages from the declarant for a violation of [the option requirements].<sup>40</sup>

Thus, while both of the above quoted provisions have, as a condition precedent to purchaser's taking free of tenant's right to possession, the exigency that the deed contain a statement of the converter's compliance with option requirements, only

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39. ILL. STAT. ANN. ch. 30, § 330 (Smith-Hurd Supp. 1979).

40. UNIFORM CONDOMINIUM ACT, § 4-110(c) (emphasis added).

the Uniform Act would demand an absence of knowledge of the converter's failure to comply by subsequent purchasers. Notwithstanding the presence or absence of knowledge on the part of third parties, tenants under the above provisions are not foreclosed from pursuing an action for damages against the declarant for his failure to extend an option.

Where a converter fails to give the tenant the required notice and sells to a third party there may be authority in Wisconsin to set aside the transfer and obtain specific performance of the option to purchase.<sup>41</sup> In *Miller v. Green*<sup>42</sup> the tenants had entered into a land contract with their landlord to purchase a farm they had been renting. Subsequent to that time, but before the oral lease between the landlord and the tenant had expired, the landlord sold the same farm to a third party who promptly recorded the deed which had been executed and delivered to him by the landlord. The tenants' land contract was not recorded until 4 months later. On appeal from a trial court judgment against the tenants, the supreme court ruled that because the tenants were in possession of the premises when the third-party sale took place, such possession constituted constructive notice of the tenants' rights under their land contract.<sup>43</sup> Thus, although the third party was first to record,<sup>44</sup> he was, by the tenants' possession, still chargeable with notice "not only of the [tenants'] rights under the lease, but also of any right which [they] may have not under the lease, as, for instance, under an agreement by the lessor to sell the property to [them]."<sup>45</sup> Since, technically, a tenant of record during the

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41. However, Note, *Areas of Dispute in Condominium Law*, 12 WAKE FOREST L. REV. 979, 990-93 (1976) promotes monetary damages as an alternative to the equitable remedy of specific performance based on the nonunique nature of a condominium unit as well as the extraordinary sales pressure associated with condominium sales. Yet, WIS. STAT. § 703.04 (1977) states that each unit "shall for all purposes constitute real property" and *Le Febvre v. Osterndorf*, 87 Wis. 2d 525, 533, 275 N.W.2d 154, 159 (1979), citing the section, then concludes "the established law of real property is thereby applicable to condominium units." Apparently Wisconsin is not ready to overthrow the equitable remedy of specific performance despite the lack of uniqueness of condominium units.

42. *Miller v. Green*, 264 Wis. 159, 58 N.W.2d 704 (1953).

43. *Id.* at 167, 58 N.W.2d at 708.

44. "Every conveyance . . . which is not recorded as provided by law shall be void as against any subsequent purchaser *in good faith* and for a valuable consideration of the same real estate or any portion thereof whose conveyance shall first be duly recorded." WIS. STAT. § 706.08(1) (1977) (emphasis added).

45. 5 J. TIFFANY, *THE LAW OF REAL PROPERTY*, § 1291 (3d ed. 1939), quoted in *Miller*

applicable option period is statutorily vested with the right to receive from the landlord an option to purchase the tenant's unit, subsequent purchasers are put on constructive notice of that right and take subject to it.

Title insurers are, accordingly, advised to require satisfactory evidence of compliance with the notice and option provisions. The safest way to do this would be to obtain a signed acknowledgement from the tenant. Where this method is not practical an affidavit of compliance from the converter may have to suffice.

### III. EXEMPTION FROM EVICTION FOR THE NOTICE PERIOD

Tenants may not be evicted during the notice period except for violations of a covenant in the lease or nonpayment of rent. This guarantee of undisturbed possession presumably extends to month-to-month and similar tenancies of shorter duration than 120 days. Illinois has expressly provided for such circumstances:

Any tenant who was a tenant as of the date of the notice of intent and whose tenancy expires (other than for cause) prior to the expiration of 120 days from the date on which a copy of the notice of intent was given to the tenant shall have the right to extend his tenancy on the same terms and conditions and for the same rental until the expiration of such 120 day period by the giving of written notice thereof to the developer within 30 days of the date upon which a copy of the notice of intent was given to the tenant by the developer.<sup>46</sup>

Several of the other acts clarify that such notice shall not be construed as abrogating any rights a tenant may have under a valid existing lease.<sup>47</sup> Whether the Condominium Ownership Act implies this same construction under section 703.08 is unclear, although Wisconsin case law supports the proposition that a tenant's rights under a lease will not be defeated upon sale of the leased premises by the landlord to a third party, at least insofar as the tenant's possession at the time of the sale was open, notorious and visible.<sup>48</sup> Such a result is consistent

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v. Green, 264 Wis. 159, 163, 58 N.W.2d 704, 706-07 (1953); *Accord* Wis. STAT. § 706.09(1) and (2)(a) (1977).

46. ILL. STAT. ANN. ch. 30, § 330 (Smith-Hurd Supp. 1979).

47. *See, e.g.*, D.C. CODE § 5-1268(b)(1) (Supp. V, 1978); FLA. STAT. ANN. § 718.402(2) (West Supp. 1979). *See also* UNIFORM CONDOMINIUM ACT § 4-110(a).

48. *Ubbink v. Herbert A. Nieman & Co.*, 265 Wis. 442, 445, 62 N.W.2d 8, 9 (1953).

with the view that a seller can convey only such rights as he possesses at the time the premises are sold.<sup>49</sup> This will become important when attempting to substantiate the effectiveness of clauses in the tenant's lease which allow him an option to extend or renew the terms of the lease. Under the authority cited third-party purchasers should take subject to such rights.

#### IV. CONCLUSION

This article by no means exposes all problems associated with section 703.08. As demonstrated, however, this section is too inconclusive, with the result that tenants will still have to resort to the courts to resolve inequities left unchecked, or perhaps created, by the statute as it is presently drafted.

Notice provisions must be clarified to specify contents, delivery and waiver details. The option to purchase language is inadequate to provide the tenant an opportunity to intelligently exercise an option. For a statute that is meant to protect a tenant from losing a residence without clearly enunciated procedures, this section is inadequate.

The law should not only provide guidelines for the good faith purchaser but should also prevent opportunities to take unwarranted advantage of the law. Where a law fails to achieve that dual purpose it must be changed. That is the poetry of our evolving legal system — it has the ability to correct itself from within. The purpose of this article is to prompt other legal minds, either through case law or statutory change, to patch up the rough spots on the road to greater order in condominium conversion law.

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*See also* *Bump v. Dahl*, 26 Wis. 2d 607, 133 N.W.2d 295 (1965); *Peterman v. Kingsley*, 140 Wis. 666, 123 N.W. 137 (1909).

49. *Ubbink v. Herbert A. Nieman & Co.*, 265 Wis. 442, 445, 62 N.W.2d 8, 9 (1953).