



Electronic Disclosures

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I. Law

In the summer of 2010, the Wisconsin legislature passed a law to allow potential buyers to be provided with various disclosure documents electronically. The law is Sec. 703.33(9) Wis. Stat. This relatively new law applies to the disclosure requirements set forth in Sec. 703.33(1) & (2) relating to the sale of a unit.

- A. If you intend to disclose electronically, Section 703.33(9) requires that you follow the constraints of 15 USC 7001(c), which includes the following:
 - 1. Sending a statement from the seller to the buyer wherein the buyer signs a consent (which must be sent electronically so that you know that the buyer can access the documents electronically) to receive the condominium disclosure documents electronically;
 - 2. The notice must meet provide a clear and conspicuous statement
 - a. That the buyer can receive the documents electronically;
 - b. That the buyer can withdraw his/her consent to receiving the documents electronically (and any consequences/fees to do so;
 - c. Describing the procedure to withdraw consent for electronic disclosure;
 - d. That the agreement of electronic disclosure applies only to the specific transaction of unit sale;
 - e. How the buyer may, upon request, obtain a paper copy of the disclosure documents;
 - f. Whether a fee will be charged for the paper copy; and
 - g. List the hardware and software requirements for access to the electronic documents.

II. The New Law Does not Discuss it's Application to Other Electronic Notices.

This can be viewed two ways:

- A. The legislature only wanted to allow electronic disclosure in this limited circumstance, and accordingly it did not provide for any other times that it can be used; or
- B. The legislature only cared about the one area that they dealt with and all other areas are open for interpretation.

III. Which of the Two Alternatives a Court will Follow.

- A. There is no Wisconsin case law on point;
- B. A Wisconsin court may look to what is done in other states.
- C. Equity would seem to weigh in favor of a allowing other types of electronic disclosure, if the unit owner agrees to such electronic disclosures in writing from a notice sent to the unit owner electronically, since generally the law treats the condominium documents as contracts and following that reasoning the parties to a contract can amend the manner in which notices are given.