



[Jon D. Becker](#)  
[Jesse S. Ishikawa](#)  
[Melanie S. Lee](#)  
[Bryan K. Nowicki](#)  
[Justin F. Oeth](#)  
[Barbara Rule Osborn](#)  
[Dean B. Richards](#)  
[Harvey L. Temkin](#)  
[Julie A. Tjugum-Rasmussen](#)  
[Nathan J. Wautier](#)

With the largest real estate practice in Wisconsin, Reinhart offers clients custom-tailored real estate expertise. Our attorneys provide clients with creative solutions for all of their real estate needs.

[reinhartlaw.com](http://reinhartlaw.com)

[subscribe/](#)  
[unsubscribe](#)

[Reinhart Weekly](#)  
[Real Estate Report](#)  
[Archives](#)



3-31-09

## Are condominium documents screwing up your workout?

Many failed condominium projects are now in the hands of receivers and mortgage lenders.

The condominium documents may impose impediments to an orderly liquidation. These can include:

- Cumbersome amendment procedures.
- Prohibitions on leasing of units.
- Undefined boundaries between units and common elements.
- The developer's past failure to follow statutory-ordered turnover of control to association members.

We have helped mortgagees, buyers and associations fix such problems. Here are some examples.

1. Unsold units held by a mortgagee of a failed condominium were subject to an owner occupancy requirement imposed both by the documents and by local zoning. We helped the mortgagee convince both the association and the municipality to loosen the owner-occupancy restriction to allow for rentals during the current economic slowdown. This made the units marketable to a prospective bulk buyer.

*Note:* last Friday, March 27, the Wisconsin Supreme Court, in *Apple Valley Gardens v. MacHutta*, upheld the right of condominium associations to enact bylaws imposing rental restrictions. Both the majority and dissenting opinions cited Ishikawa and Mullins, *Drafter's Guide to Wisconsin Condominium Documents*. Here is a link to the opinion: <http://www.wisbar.org/res/sup/2009/2007ap000191.htm>

2. Two condominiums were under common management. One association was under developer control; the other wasn't. Both condominiums needed to have their declarations amended to implement a new marketing plan. Rather than go through the cumbersome process of amending two separate declarations (which was "iffy" in the case of the condominium no longer controlled by the developer), we merged the two condominiums. (It takes fewer votes to merge condominiums than to amend their declarations.) The developer then had sufficient control of the merged condominium to enact the amendment.
3. An association in a completed condominium had been assessing maintenance, repair and replacement costs among all units on a square-footage basis. An owner discovered that the measurements used by the association over a 20-year period were incorrect. We devised a solution that was accepted by the association that did not require going back to re-adjust past assessments.

4. A condominium that was partially developed failed. A purchaser acquired the remaining units at a foreclosure sale. The original developer had failed to deed over to the condominium certain features that had been represented to buyers as part of the common elements. Furthermore, the condominium was out of compliance with local zoning and land division ordinances. We assisted the association in resolving these problems to the satisfaction of the association and the municipality.



[Jesse S. Ishikawa](#)  
 Reinhart Boerner Van Deuren s.c.  
 22 East Mifflin Street, Suite 600  
 Madison, WI 53703  
 608-229-2208  
[jishikaw@reinhartlaw.com](mailto:jishikaw@reinhartlaw.com)

Have a question for a Real Estate Guru? [Click here!](#)

 CURRENT RATES

Maturity	Today	Last week	Last month
5 year Treasury	1.69%	1.72%	1.98%
10 year Treasury	2.68%	2.70%	3.01%

*This Reinhart Real Estate Report provides general information about real estate issues. It should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them.*

*Any advice expressed in this writing as to tax matters was neither written nor intended by the sender or Reinhart Boerner Van Deuren s.c. to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. If any such tax advice is made to any person or party other than to our client to whom the advice is directed and intended, then the advice expressed is being delivered to support the promotion or marketing (by a person other than Reinhart Boerner Van Deuren s.c.) of the transaction or matter discussed or referenced. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.*



Boerner Van Deuren s.c. Attorneys at Law

Copyright 2009

Reinhart Boerner Van Deuren s.c.

All rights reserved

This communication may be considered advertising in some jurisdictions.