



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone 517/373-6466

CONDOMINIUM MODIFICATION FOR HANDICAPPERS

House Bill 4070 as introduced
First Analysis (3-17-87) Floor Copy

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Sponsor: Rep. Ken Sikkema
Committee: Urban Affairs

Mich. State Law Library

H.B. 4070 (3-17-87)

THE APPARENT PROBLEM:

Owners of condominium units who want to make them more accessible to handicappers, either for their own benefit or to help others, cannot make needed exterior alterations if fellow owners in the condominium project refuse to grant approval or if the condominium association has adopted rules prohibiting such alterations. The only avenue available in this situation is a complaint under the Michigan Handicapper Civil Rights Act. This is a lengthy process and has not produced favorable results for handicappers. Some statutorily defined procedure is needed to deal fairly and expeditiously with the conflicting interests of condominium management and handicapper residents.

THE CONTENT OF THE BILL:

House Bill 4070 would amend the Condominium Act to allow an owner of a condominium unit (referred to in the act as a "co-owner") to modify the unit, including the route from the public way to the door and the common elements of a condominium project, to improve access to or movement within the unit or alleviate hazardous conditions for handicappers. Any modification would be made at the co-owner's expense and would have to be accomplished without restricting the passage of other condominium residents. A modification could be made despite prohibitions and restrictions in the condominium documents (bylaws and other instruments affecting the rights and obligations of co-owners), but would have to comply with state and local building codes and health and safety laws and ordinances, and would have to conform as closely as possible to the intent of prohibitions and restrictions regarding safety and aesthetics contained in the condominium documents.

The bill would apply to all new and existing condominium units except those already required by law to be barrier-free. The bill would not impose the cost of maintaining a barrier-free unit on a co-owner.

Under the bill, a co-owner would have to submit modification plans to the condominium association for review and approval. The association could not deny a proposal without good cause. The denial of a proposal would have to be accompanied by a list of changes needed to make the proposed alterations conform to the requirements of the bill. If the association did not make a decision within 60 days, the co-owner would be allowed to proceed with the modification. A co-owner whose proposal was denied could bring action against the association and its officers and directors to require them to comply with the bill's provisions.

A co-owner who made an exterior change to accommodate a handicapper would be required to maintain liability insurance to cover the cost of any personal injuries caused by the alteration, except those injuries caused by acts or omissions of the co-owner association. The co-owner would not be required to maintain liability insurance with respect to any common element. The association would be responsible for the cost of maintaining a modification unless it could not reasonably be part of regular maintenance, in which case the co-owner would be responsible for it. A co-owner would also be liable for the cost of repairing any damage to a common element caused by building or maintaining the modification unless it was damage of a type reasonably expected in the normal course of building or maintenance.

The co-owner would be required to provide the association 30 days' written notification of plans to sell or lease the condominium. The association would then have 30 days to order the co-owner to remove the modification, at the co-owner's expense. If the co-owner failed to give timely notice of a transfer, the association could at any time require the co-owner to remove the alteration or have it removed at the co-owner's expense. However, the association could not remove or order the removal of the modification if someone in the new household needed the same kind of modification.

The bill would adopt the definition of "handicapper" found in the State Construction Code Act: "a person whose physical characteristics have a particular relationship to that person's ability to be self-reliant in the person's movement throughout and use of the building environment" (MCL 559.147 and 559.147a).

FISCAL IMPLICATIONS:

There are no apparent fiscal implications to the state.

ARGUMENTS:

For:

The bill would guarantee that people who want to modify their condominium units to make them more accessible to handicappers could do so unless there were valid objections from neighbors in the condominium project. Handicapper representatives say the law does not address this now and complain that, as a result, handicappers living in condominiums are forced to use inconvenient and unsafe entrances and common areas when fellow condominium dwellers refuse to allow them to make needed modifications. Existing civil rights procedures have not

worked in these instances. Where modifications have been allowed, moreover, there has been confusion over who is responsible for damage, maintenance, insurance coverage, or the eventual removal of the modification. The bill would assign and clarify these responsibilities. While associations would be required to approve reasonable modifications, the co-owner desiring the modifications would have to bear a major portion of the financial and legal responsibility for them. Further, the bill attempts to balance the interests of all condominium dwellers by prohibiting project bylaws and regulations from preventing any modification whatsoever while requiring that proposed modifications conform as much as possible with the intent of project building restrictions and prohibitions. A timetable for dealing with modification proposals ensures that there will not be unnecessary delays.

Against:

In the past, condominium co-owner associations have been concerned with the potential difficulties of implementing the bill and with how modifications might affect the aesthetics and market values of the condominium. They have also recommended that co-owners proposing modifications be made to sign affidavits, to be filed with the register of deeds, testifying to their agreement to meet certain obligations, such as paying for the installation, maintenance, and removal of modifications.

Against:

If a modification conformed to state and local regulations and building codes and was approved by the condominium association, why should the co-owner pay for its removal when selling or (particularly) leasing the unit? The bill would not require the removal of modifications if the new household contains a handicapper, but why not allow the co-owner to sell or lease the unit as it is to anyone willing to take it on those terms?

Response: Condominium associations might be more reluctant to approve proposed modifications if there are no assurances they will ultimately be removed at the unit owner's expense. Besides, the bill does not require the automatic removal of the modifications; it simply allows association board members to demand removal when they believe it to be prudent or beneficial.

POSITIONS:

The Michigan Commission on Handicapper Concerns, within the Department of Labor, supports the bill (3-12-87).