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**House Bill 4070 (as reported without amendment)****Sponsor: Representative Ken Sikkema****House Committee: Urban Affairs****Senate Committee: Local Government and Veterans****Date Completed: 4-22-87*****RATIONALE***

Owners of condominium units who want to make their units 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 do not approve the modification or if the condominium association has adopted rules prohibiting such alterations. The only recourse available in this situation is to file a complaint under the Michigan Handicappers' Civil Rights Act, which is a lengthy process and has not produced favorable results for handicappers. Some people believe that a statutorily defined procedure is needed to deal fairly and expeditiously with the conflicting interests of condominium management and handicapper residents.

***CONTENT***

The bill would amend the Condominium Act to:

- Allow a co-owner to modify his or her condominium unit or the common elements to facilitate access or alleviate hazardous conditions for handicappers.
- Require notification of the association of co-owners when an exterior modification is proposed.
- Provide for review and approval of the proposed modification by the association of co-owners when an exterior modification is proposed.

The bill would apply to condominiums in existence on the bill's effective date and to those built or converted after that date.

**Modifications For Handicappers**

A co-owner could make improvements or modifications to his or her condominium unit at his or her own expense, including improvements or modifications to common elements and to the route from the public way to the door of the co-owner's unit, if the changes were made in order to facilitate access or movement within the unit for handicappers or to alleviate conditions that could be hazardous to handicappers. The improvement or modification could not impair the structural integrity of the structure or lessen the support of a portion of the condominium project. The co-owner would be liable for the cost of repairing any damage to a common element caused by building or maintaining the improvement or modification, unless the damage could reasonably have been expected in the normal course of building or maintaining the modification. A modification could be made notwithstanding prohibitions and restrictions in the condominium documents, but would have to comply with all applicable State and local building code requirements as well as health and safety laws and ordinances. An improvement or modification would have to be made as closely as reasonably possible to conform with the intent of applicable prohibitions and restrictions regarding safety and aesthetics of the proposed modification.

The association of co-owners would be responsible for the cost of any maintenance of the improvement or modification, unless the maintenance could not reasonably be included with the regular maintenance performed by or paid for by the association. In that case, the co-owner would be responsible for the cost of maintaining the improvement or modification.

**Review and Approval**

Before an improvement or modification was made, the co-owner would be required to submit plans and specifications to the co-owners' association for review and approval. The association would be required to determine whether the proposed improvement or modification substantially conformed to the requirements of the bill, but could not deny a proposed improvement or modification without good cause. If the association denied a proposed modification, it would be required to list in writing the changes needed to make the proposed improvement or modification conform to the requirements of the bill, and would be required to deliver that list to the co-owner.

The association would be required to approve or deny the proposed modification no later than 60 days after the plans and specifications were submitted to the association. If the association did not approve or deny the plans and specifications within the 60-day period, the co-owner could make the proposed improvement or modification without the approval of the association. A co-owner could bring an action against the association and the officers and directors to compel compliance with this provision if the co-owner disagreed with the association's denial of the proposed improvement or modification.

**Exterior Modifications**

An improvement or modification to the exterior of the condominium unit could not unreasonably prevent passage by other condominium residents. A co-owner who made exterior modifications would be required to notify the association of co-owners in writing of the co-owner's intent to convey or lease his or her condominium unit to another person. Notification would have to be made not less than 30 days before the conveyance or lease. Not more than 30 days after being notified, the co-owners' association could require that the co-owner remove the improvement or modification at the co-owner's expense. If the co-owner failed to give timely notice, the co-owners' association at any time could remove or require the co-owner to remove the improvement or modification, at the co-owner's expense. The association could not remove or require the removal of an improvement or modification if a co-owner conveyed or leased his or her unit to a handicapper; or to a person whose parent, spouse, or child was a handicapper, who required the same type of improvement or modification and resided with the person.

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#### Liability Insurance

If a co-owner made an exterior modification or improvement, the co-owner would be required to maintain liability insurance, underwritten by an insurer authorized to do business in the State, in an amount adequate to compensate for personal injuries caused by the exterior modification. The co-owner would not be liable for acts or omissions of the association with respect to the exterior improvement or modification and would not be required to maintain liability insurance with respect to any common element.

#### Application

The bill would apply to condominium units existing on the bill's effective date and to those built or converted after the bill's effective date. The bill would not apply to a condominium unit that otherwise was required by law to be barrier-free and would not impose on a co-owner the cost of maintaining that barrier-free unit.

#### Definitions

"Handicapper" would mean the term as defined 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 125.1502).

"Co-owner" as defined in the Condominium Act, means "a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, who owns a condominium unit within the condominium project. 'Co-owner' may include a land contract vendee if the condominium documents or the land contract so provides".

Proposed MCL 559.147a

### ***FISCAL IMPACT***

The bill would have no fiscal impact on State or local government.

### ***ARGUMENTS***

#### ***Supporting Argument***

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. Currently, the rights of handicappers purchasing a condominium, or of people who become handicappers due to physical injury or illness while owning a condominium, are not specified in the Condominium Act. 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. Where modifications have been allowed, there has been confusion over who is responsible for damage, maintenance, insurance coverage, or the eventual removal of the modification. The bill would make it clear that handicappers and others have a right to make their homes accessible. At the same time, the bill would spell out the responsibility of condominium owners to obtain design approval from the condominium association and specifies who would have the responsibility for the upkeep and removal of the modification and liability insurance.

#### ***Supporting Argument***

The bill attempts to balance the interests of all condominium dwellers by prohibiting project bylaws and regulations from preventing any modification, while requiring that proposed modifications conform as much as

possible to the intent of project building restrictions and prohibitions. A timetable for dealing with modification proposals would ensure that approved modifications were made on a timely basis. By establishing a process, the bill would make it easier for the condominium unit owner and condominium association to reach a mutually agreeable plan.

#### ***Supporting Argument***

The bill would help address the difficult situations that arise when a person becomes handicapped through accident or illness and faces a great number of life changes. Currently, handicappers who are arbitrarily denied permission to modify their units to accommodate their handicaps are able to file a complaint under the Michigan Handicapper Civil Rights Act. For most people who must cope with the trauma of having become handicapped, however, accessibility to their homes is an immediate concern. There is no time to file a lawsuit and wait for the suit to be resolved. In these instances, the handicapped person must face being a prisoner in his or her own home because of a lack of accessibility or is forced into a nursing home or adult foster care home that can accommodate the handicap. Furthermore, most people in this situation are not aware of their rights as a handicapped individual. The bill would help the handicapper and the condominium association work together to resolve in a timely manner any difficulties that could arise without having to go to court.

#### ***Opposing Argument***

Under the bill, the co-owner would have to sell to another handicapper or to a person who had a handicapped person residing with him or her. Otherwise, the association could require that the modifications be removed at the owner's expense. The bill would be overly restrictive in its requirements of what should take place when a condominium owner sold his or her unit that was modified for handicapper accessibility. 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 leasing the unit? The bill would not require the removal of modifications if the new household contained a handicapper. The co-owner should be allowed to sell or lease the unit as is to anyone willing to take it on those terms.

**Response:** Condominium associations could be more reluctant to approve proposed modifications if there were no assurances that the changes would be removed at the unit owner's expense. The bill would not require the automatic removal of the modifications; it just would allow the association to require the removal when removal was believed to be prudent and beneficial.

#### ***Opposing Argument***

Condominium co-owner associations have been concerned with what they see as potential difficulties in implementing the bill as well as the way modifications could affect the aesthetics and market values of the condominium. Co-owners making modifications should be required to sign affidavits, that would be filed with the register of deeds, to testify to their agreement to meet certain obligations, such as paying for the installation, maintenance, and removal of modifications.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.