



**House  
Legislative  
Analysis  
Section**

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**MICHIGAN CONDOMINIUM ACT:  
TECHNICAL AMENDMENTS**

**House Bill 5486 as enrolled  
Public Act 283 of 2002  
Second Analysis (8-19-02)**

**Sponsor: Rep. Michael Bishop  
House Committee: Commerce  
Senate Committee: Financial Services**

***THE APPARENT PROBLEM:***

Public Act 379 of 2000 (Senate Bill 612) made a great many revisions to numerous sections of the Condominium Act based on recommendations from the Real Property Law Section of the State Bar of Michigan. According to legal specialists involved in the drafting of the bill, many areas of contention only came to light toward the end of the process and were not resolved until late in the 1999-2000 legislative session. As a result, there was not sufficient time to do a thorough fine tuning of the legislation to make sure that it was internally consistent. That review has been carried out and specialists from the State Bar have proposed a series of what they describe as technical amendments to improve the revised Condominium Act.

***THE CONTENT OF THE BILL:***

The bill would amend the Condominium Act to make a number of technical changes. These include the following (based on descriptions provided by those involved in the drafting of Public Act 379).

- Language is removed in Section 58 that refers to provisions that ultimately were not included in Public Act 379 of 2000.
- A provision in Section 67 is rewritten to specify that a developer could not withdraw from a project those portions of the project identified as "must be built" without the prior consent of any co-owners, mortgagees of units in the project, or any other party having an interest in project.
- Section 71 requires that at least ten days before certain actions are taken, that written notice of the proposed action be provided to the appropriate local unit, the county road and drain commissioners, the "administrator" (the Department of Consumer and Industry Services), the Department of Natural Resources, the Department of Public Health, and the

Department of Transportation. The bill would update this section and require that notification only be sent to the local unit, the road and drain commissioners, the Department of Transportation, and the Department of Environmental Quality. (This section applies to the following proposed actions: taking reservations under a preliminary reservation agreement for a condominium unit, recording a master deed for a project, or beginning construction of a condominium project.)

- Section 69 addresses how common expenses are to be assessed. Those expenses not subject to special assessments are to be assessed against condominium units "in proportion to the percentages of value or other formula stated in the master deed." The bill would remove the words "formula stated" and replace them with "provisions as may be contained" (reflecting that the provisions involved may not, specifically speaking, be formulas.)
- Section 90 of the act says that condominium documents may be amended without the consent of co-owners or mortgagees if the amendment does not materially alter or change the rights of a co-owner or mortgagee, and Section 90 and a subsequent section, Section 90a, elaborate on the process involved and on what constitutes "materially changing" the rights of co-owners or mortgagees. The bill would remove from Section 90 a provision regarding "materiality" that is said to be covered in Section 90a. Also, a provision in Section 90 regarding the modification of the terms under which a co-owner can rent a unit would be removed because Public Act 379 elsewhere contains a series of new provisions on this subject.
- The act grants mortgagees the right to vote on amendments to condominium documents in certain cases. The bill would make clear, in Section 90a, that these provisions apply only to mortgagees holding a first mortgage. The act also provides a timeline for

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the procedure by which mortgagees are to be notified and to return their votes for tabulation. The bill would simplify these provisions on the grounds that the original timelines proved unworkable.

- The act requires that a co-owner, including the developer, who wants to rent or lease a unit must disclose that fact in writing to the association of co-owners in advance of leasing and supply the association with a copy of the exact lease so the association can review it for compliance with the condominium documents. The bill would require that the co-owner or developer also provide the association with a copy of the executed lease. The act also requires, in cases in which no lease form is to be used, that the co-owner or developer supply the association with the name and address of the lessees or occupants along with the rental amount and due dates. The bill would specify that the information to be provided include the rental amounts and due dates of any rental or compensation payable to a co-owner or developer, the due dates of that rental and compensation, and the term of the proposed arrangement.

- The bill would require, in Section 135, that a residential builder who sold a condominium unit deliver to the purchaser the condominium documents that the act requires developers to deliver to purchasers. Also in that section, the bill would clarify that a residential builder who neither constructed nor refurbished common elements in a condominium project and who was not an affiliate of the developer would not be required to assume and be liable for any contractual obligations of the developer under the section, and would not be considered a successor developer or acquire any additional developer obligations or rights in the absence of a specific assignment of those obligations or rights from the developer. (The bill would also specify that this provision applies only to condominium projects established on or after the effective date of House Bill 5486.)

- Drafters say that a savings and application clause was inadvertently left out of Public Act 379. As noted elsewhere, the bill would in several places specify that certain sections of the act apply only to condominium projects established on or after the effective date of the bill (that is House Bill 5486). An additional section amended in this way is Section 54. The bill would specify that subsections 8, 9, and 10 of Section 54, which deal with the voluntary submission of disputes to final and binding arbitration, would apply only to condominium projects established on or after the effective date of the bill.

- The bill would clarify provisions put in Section 176 of Public Act 379 regarding the statute of limitations on causes of action arising out of the development or construction of the common elements of a condominium project, or the management, operation, or control of a condominium project. Under the bill, if the cause of action accrued on or before the transitional control date, such an action could be maintained more than three years after the transitional control date or two years from the date the cause of action accrued, whichever occurred later. For causes of action that accrue after the transitional control date, a person could not maintain an action later than two years after the date on which the cause of action accrued. (The bill would specify that these provisions apply to condominium projects established on or after the effective date of the bill.)

- The bill would repeal Section 174 of the act, which requires a subdivision plan to be delivered to and retained by the local register of deeds, and requires a consolidating master deed to be recorded at the register of deeds.

MCL 559.158 et al.

### ***BACKGROUND INFORMATION:***

A full description of Public Act 379 of 2000 can be found in the analysis of Senate Bills 612 and 613 by the House Legislative Analysis Section, dated 11-9-00, and in the summary of Senate Bills 612 and 613 by the Senate Fiscal Agency, dated 1-31-01.

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports that the bill would have no fiscal impact. (HFA fiscal note dated 1-29-02)

### ***ARGUMENTS:***

#### ***For:***

The bill contains a number of technical changes to the Condominium Act recommended by the Real Property Law Section of the State Bar of Michigan, which played a major role in drafting the comprehensive revision of the act in the 1999-2000 legislative session.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.