

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5486 (Substitute H-1 as passed by the House)
Sponsor: Representative Michael Bishop
House Committee: Commerce
Senate Committee: Financial Services

Date Completed: 3-12-02

CONTENT

The bill would revise a number of provisions of the Condominium Act, including provisions relating to the following:

- The withdrawal of developers from construction projects.**
- Voting by co-owners on changes to by-laws and condominium documents.**
- Subleasing of units.**
- The definition of "successor developer".**

Under the Act, if a developer has not completed development and construction of a condominium project, including proposed improvements identified as "must be built" or "need not be built", within 10 years after the commencement of construction, the developer or its successors have the right to withdraw from the project without the prior consent of any co-owners, mortgagees of units in the project, or any other party having an interest in the project. The bill would retain this provision, but specify that the developer or its successors would have the right to withdraw from the project all undeveloped portions of the project not identified as "must be built".

The Act addresses how common expenses must be assessed. Under one provision, those expenses not subject to special assessments must be assessed against condominium units "in proportion to the percentages of value or other formula stated in the master deed". The bill would replace "formula" with "provisions".

The Act provides that, 10 days before a condominium project is begun, a written notice of the proposed action must be given to the following: the appropriate city, village, township, or county; the appropriate county road commission and county drain commissioner; the Department of Commerce; the Department of Natural Resources; the Department of Public Health; and the State Transportation Department. The bill would remove the Departments of Commerce and Public Health from the list of agencies required to receive notice, and replace the Department of Natural Resources with the Department of Environmental Quality.

Under the Act, mortgagees of condominium units are entitled to vote on amendments to the condominium documents under certain circumstances, such as the termination of the condo project, a change in the method or formula used to determine the percentage of value assigned to a unit, or a reallocation of responsibility for maintenance, repair, replacement, or decoration of a unit. The bill would add that mortgagees would be entitled to vote on any modifications to the method or formula used to determine the percentage of value of units in the project.

The Act defines "condominium documents" as the master deed and any other instrument

referred to in the master deed or bylaws that affects the rights and obligations of a co-owner in the condominium. The Act provides 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. In part, an amendment that does not materially change the rights of a mortgagee includes any change in the condominium documents that, in the written opinion of an appropriately licensed real estate appraiser, does not detrimentally change the value of any unit affected by the change. The bill would delete this standard.

The Act further provides that only those mortgagees who hold a recorded mortgage or a recorded assignment of a mortgage against one or more condominium units in the condo project on the control date (the date on which the proposed amendment is approved by the requisite majority of co-owners) are entitled to vote on the amendment. The bill specifies that only mortgagees holding a recorded first mortgage or a recorded assignment of a first mortgage would be entitled to vote on the proposed amendment.

Under the Act, the association of co-owners must give a notice to each mortgagee entitled to vote on proposed amendments to condominium documents. The association must mail the notice to the mortgagee at the address provided in the mortgage or assignment for notices by certified mail, return receipt requested, postmarked within 30 days after the control date. The bill would require the association to mail the notice to the first mortgagee at the address provided in the mortgage or assignment for mortgages, but would delete the other mailing requirements.

The Act requires a co-owner of a condo unit who desires to rent or lease a unit to notify, in writing, the association of co-owners at least 10 days before presenting a lease to potential lessees. At the same time, the co-owner must supply the association with a copy of the lease for its review. The bill would further require the co-owner to provide the association with a copy of the *executed* lease. Under the Act, if no lease is to be used, then the co-owner or developer must supply the association with the name and address of the potential lessee, along with the rental amount and due dates. Under the bill, a co-owner would have to supply the association with the name and address of the lessees or occupants, along with the rental amount 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 Act defines "successor developer" as a person who acquires the title to the lesser of 10 units or 75% of the units in a condominium project, other than a business condominium project, by foreclosure, deed in lieu of foreclosure, purchase, or similar transaction. Under the bill, 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 considered a successor developer. ("Common element" is defined as portions of the condominium project other than the condo units.) Further, a residential builder who met these requirements would not be required to assume and be liable for any contractual obligations of the developer, and would not acquire any additional developer obligations or rights in the absence of a specific assignment of those obligations or rights from the developer. The bill further provides that a residential builder who sold a condominium unit would have to deliver to the purchaser of that unit the condominium documents that the developer was required to deliver under the Act.

The Act prohibits a person from maintaining an action against a developer, residential builder, licensed architect, contractor, sales agent, or manager of a condo project arising out of the development or construction of the common elements, or the management, operation, or control of a project, more than three years from the transitional control date or two years from the date the cause of action accrues, whichever occurs later. The bill would refer, in this provision, to an action arising out of the management, operation, or control of a condominium project "before the transitional control date". ("Transitional control date" means the date on

which a board of directors for an association of co-owners takes office pursuant to an election in which the votes that may be cast by eligible co-owners unaffiliated with the developer exceed the votes that may be cast by the developer.)

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

The bill provides that the following sections would apply only to condominium projects established on or after the bill's effective date:

- Sections 54(8), (9), and (10), which govern the arbitration of disputes over condominium documents. (These provisions were added by Public Act 379 of 2000, which took effect on January 2, 2001.)
- Section 134(5), which would exempt certain residential builders from the definition of "successor developer".
- Section 176, which limits actions against a developer, residential builder, etc.

MCL 559.158 et al.

Legislative Analyst: Claire Layman

FISCAL IMPACT

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

Fiscal Analyst: Elizabeth Pratt