

HOUSE BILL No. 5486

December 11, 2001, Introduced by Reps. Bishop, DeRossett and Shulman and referred to the Committee on Commerce.

A bill to amend 1978 PA 59, entitled "Condominium act," by amending sections 58, 67, 69, 90, 90a, 108, 112, 135, 173, and 176 (MCL 559.158, 559.167, 559.169, 559.190, 559.190a, 559.208, 559.212, 559.235, 559.273, and 559.276), sections 58, 67, 69, 90, 108, 112, and 135 as amended and sections 90a and 176 as added by 2000 PA 379 and section 173 as amended by 1983 PA 113.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 58. If the mortgagee of a first mortgage of record or
2 other purchaser of a condominium unit obtains title to the condo-
3 minium unit as a result of foreclosure of the first mortgage,
4 ~~such person, its successors,~~ THAT MORTGAGEE OR PURCHASER AND
5 HIS OR HER SUCCESSORS and assigns are not liable for the
6 assessments by the administering body chargeable to the unit that
7 became due prior to the acquisition of title to the unit by ~~such~~

1 ~~person except for assessments that have priority over the first~~
2 ~~mortgage under section 108~~ THAT MORTGAGEE OR PURCHASER AND HIS
3 OR HER SUCCESSORS AND ASSIGNS.

4 Sec. 67. (1) A change in a condominium project shall be
5 reflected in an amendment to the appropriate condominium
6 document. An amendment to the condominium document is subject to
7 sections 90, 90A, and 91.

8 (2) If a change involves a change in the boundaries of a
9 condominium unit or the addition or elimination of condominium
10 units, a replat of the condominium subdivision plan shall be pre-
11 pared and recorded assigning a condominium unit number to each
12 condominium unit in the amended project. The replat of the con-
13 dominium subdivision plan shall be designated replat number
14 _____ of _____ county condominium subdivision plan
15 number _____, using the same plan number assigned to the
16 original condominium subdivision plan.

17 (3) Notwithstanding section 33, if the developer has not
18 completed development and construction of UNITS OR IMPROVEMENTS
19 IN the ~~entire~~ condominium project, ~~including proposed improve-~~
20 ~~ments whether identified as "must be built" or~~ THAT ARE IDENTI-
21 FIED AS "need not be built", during a period ending 10 years
22 ~~from~~ AFTER the date of commencement of construction by the
23 developer of the project, the developer, its successors, or
24 assigns have the right to withdraw from the project all undevel-
25 oped portions of the project NOT IDENTIFIED AS "MUST BE BUILT"
26 without the prior consent of any co-owners, mortgagees of units
27 in the project, or any other party having an interest in the

1 project. If the master deed contains provisions permitting the
2 expansion, contraction, or rights of convertibility of units or
3 common elements in the condominium project, then the time period
4 is 6 years ~~from~~ AFTER the date the developer exercised its
5 rights with respect to either expansion, contraction, or rights
6 of convertibility, whichever right was exercised last. The unde-
7 veloped portions of the project withdrawn shall also automati-
8 cally be granted easements for utility and access purposes
9 through the condominium project for the benefit of the undevel-
10 oped portions of the project. If the developer does not withdraw
11 the undeveloped portions of the project from the project before
12 expiration of the time periods, ~~such~~ THOSE UNDEVELOPED lands
13 shall remain part of the project as general common elements and
14 all rights to construct units upon that land shall cease. In
15 such an event, if it becomes necessary to adjust percentages of
16 value as a result of fewer units existing, a co-owner or the
17 association of co-owners may bring an action to require revisions
18 to the percentages of value ~~pursuant to section 96~~ UNDER SEC-
19 TION 95.

20 Sec. 69. (1) Except to the extent that the condominium doc-
21 uments provide otherwise, common expenses associated with the
22 maintenance, repair, renovation, restoration, or replacement of a
23 limited common element shall be specially assessed against the
24 condominium unit to which that limited common element was
25 assigned at the time the expenses were incurred. If the limited
26 common element involved was assigned to more than 1 condominium
27 unit, the expenses shall be specially assessed against each of

1 the condominium units equally so that the total of the special
2 assessments equals the total of the expenses, except to the
3 extent that the condominium documents provide otherwise.

4 (2) To the extent that the condominium documents expressly
5 so provide, any other unusual common expenses benefiting less
6 than all of the condominium units, or any expenses incurred as a
7 result of the conduct of less than all those entitled to occupy
8 the condominium project or by their licensees or invitees, shall
9 be specially assessed against the condominium unit or condominium
10 units involved, in accordance with reasonable provisions as the
11 condominium documents may provide.

12 (3) The amount of all common expenses not specially assessed
13 ~~pursuant to~~ UNDER subsections (1) and (2) shall be assessed
14 against the condominium units in proportion to the percentages of
15 value or other ~~formula stated~~ PROVISIONS AS MAY BE CONTAINED in
16 the master deed for apportionment of expenses of administration.

17 (4) A co-owner shall not be exempt from contributing as pro-
18 vided in this act by nonuse or waiver of the use of any of the
19 common elements or by abandonment of his or her condominium
20 unit.

21 Sec. 90. (1) The condominium documents may be amended with-
22 out the consent of co-owners or mortgagees if the amendment does
23 not materially alter or change the rights of a co-owner or mort-
24 gagee and if the condominium documents contain a reservation of
25 the right to amend for that purpose to the developer or the asso-
26 ciation of co-owners. An amendment that does not materially
27 change the rights of a co-owner or mortgagee includes, but is not

1 limited to, a modification of the types and sizes of unsold
2 condominium units and their appurtenant limited common elements.
3 ~~An amendment that does not materially change the rights of a~~
4 ~~mortgagee further includes, but is not limited to, any change in~~
5 ~~the condominium documents that, in the written opinion of an~~
6 ~~appropriately licensed real estate appraiser, does not detrimen-~~
7 ~~tally change the value of any unit affected by the change.~~

8 (2) Except as provided in this section, the master deed,
9 bylaws, and condominium subdivision plan may be amended, even if
10 the amendment will materially alter or change the rights of the
11 co-owners or mortgagees, with the consent of not less than 2/3 of
12 the votes of the co-owners and mortgagees. A mortgagee shall
13 have 1 vote for each mortgage held. The 2/3 majority required in
14 this section may not be increased by the terms of the condominium
15 documents, and a provision in any condominium documents that
16 requires the consent of a greater proportion of co-owners or
17 mortgagees for the purposes described in this subsection is void
18 and is superseded by this subsection. Mortgagees are not
19 required to appear at any meeting of co-owners except that their
20 approval shall be solicited through written ballots. Any mortga-
21 gee ballots not returned within 90 days of mailing shall be
22 counted as approval for the change.

23 (3) The developer may reserve, in the condominium documents,
24 the right to amend materially the condominium documents to
25 achieve specified purposes, except a purpose provided for in sub-
26 section (4). Reserved rights ~~may~~ SHALL not be amended except
27 by or with the consent of the developer. If a proper reservation

1 is made, the condominium documents may be amended to achieve the
2 specified purposes ~~—~~ without the consent of co-owners or
3 mortgagees.

4 (4) The method or formula used to determine the percentage
5 of value of units in the project for other than voting purposes
6 ~~—, and any provisions relating to the ability or terms under~~
7 ~~which a co-owner may rent a unit, may~~ SHALL not be modified
8 without the consent of each affected co-owner and mortgagee. A
9 co-owner's condominium unit dimensions or appurtenant limited
10 common elements may not be modified without the co-owner's
11 consent.

12 (5) Co-owners shall be notified of proposed amendments ~~—~~,
13 under this section ~~—~~ not less than 10 days before the amendment
14 is recorded.

15 (6) A person causing or requesting an amendment to the con-
16 dominium documents shall be responsible for costs and expenses of
17 the amendment, except for amendments based upon a vote of a pre-
18 scribed majority of co-owners and mortgagees or based upon the
19 advisory committee's decision, the costs of which are expenses of
20 administration.

21 (7) A master deed amendment, including the consolidating
22 master deed, dealing with the addition, withdrawal, or modifica-
23 tion of units or other physical characteristics of the project
24 shall comply with the standards prescribed in section 66 for
25 preparation of an original condominium subdivision plan for the
26 project.

1 (8) For purposes of this section, the affirmative vote of a
2 2/3 of co-owners is considered 2/3 of all co-owners entitled to
3 vote as of the record date for such votes.

4 Sec. 90a. (1) To the extent this act or the condominium
5 documents require a vote of mortgagees of units on amendment of
6 the condominium documents, the procedure described in this sec-
7 tion applies.

8 (2) The date on which the proposed amendment is approved by
9 the requisite majority of co-owners is considered the "control
10 date".

11 (3) Only those mortgagees who hold a ~~duly~~ recorded FIRST
12 mortgage or a ~~duly~~ recorded assignment of a FIRST mortgage
13 against 1 or more condominium units in the condominium project on
14 the control date ~~is~~ ARE entitled to vote on the amendment.
15 Each mortgagee entitled to vote shall have 1 vote for each condo-
16 minium unit in the project that is subject to its mortgage or
17 mortgages, without regard to how many mortgages the mortgagee may
18 hold on a particular condominium unit.

19 (4) The association of co-owners shall give a notice to each
20 mortgagee entitled to vote containing all of the following:

21 (a) A copy of the amendment or amendments as passed by the
22 co-owners.

23 (b) A statement of the date that the amendment was approved
24 by the requisite majority of co-owners.

25 (c) An envelope addressed to the entity authorized by the
26 board of directors for tabulating mortgagee votes.

1 (d) A statement containing language in substantially the
2 form described in subsection (5).

3 (e) A ballot providing spaces for approving or rejecting the
4 amendment and a space for the signature of the mortgagee or an
5 officer of the mortgagee.

6 (f) A statement of the number of condominium units subject
7 to the mortgage or mortgages of the mortgagee.

8 (g) The date by which the mortgagee must return its ballot.

9 (5) The notice provided by subsection (4) shall contain a
10 statement in substantially the following form:

11 "A review of the association records reveals that you are
12 the holder of 1 or more mortgages recorded against title to 1 or
13 more units in the (name of project) condominium. The co-owners
14 of the condominium adopted the attached amendment to the condo-
15 minium documents on (control date). Pursuant to the terms of the
16 condominium documents and/or the Michigan condominium act, you
17 are entitled to vote on the amendment. You have 1 vote for each
18 unit that is subject to your mortgage or mortgages.

19 The amendment will be considered approved by FIRST mortga-
20 gees if it is approved by 66-2/3% of ~~the~~ THOSE mortgagees. In
21 order to vote, you must indicate your approval or rejection on
22 the enclosed ballot, sign it, and return it not later than 90
23 days ~~from (the control date)~~ AFTER THIS NOTICE (WHICH DATE
24 COINCIDES WITH THE DATE OF MAILING). Failure to timely return a
25 ballot will constitute a vote for approval. If you oppose the
26 amendment, you must vote against it."

1 ~~(6) The association of co-owners shall mail the notice~~
2 ~~required by subsection (4) to the mortgagee at the address~~
3 ~~provided in the mortgage or assignment for notices by certified~~
4 ~~mail, return receipt requested, postmarked within 30 days after~~
5 ~~the control date.~~

6 (6) ~~(7)~~ The amendment is considered to be approved by the
7 FIRST mortgagees if it is approved by 66-2/3% of the FIRST mort-
8 gagees whose ballots are received, or are considered to be
9 received, in accordance with section 90(2), by the entity autho-
10 rized by the board of directors to tabulate mortgagee votes. ~~not~~
11 ~~later than 100 days after the control date. In determining the~~
12 ~~100 days, the control date itself shall not be counted but the~~
13 ~~one-hundredth day shall be included unless the one-hundredth day~~
14 ~~is a Saturday, Sunday, legal holiday, or holiday on which the~~
15 ~~United States postal service does not regularly deliver mail, in~~
16 ~~which case the last day of the 100 days shall be the next day~~
17 ~~that is not a Saturday, Sunday, legal holiday, or holiday on~~
18 ~~which the United States postal service does not regularly deliver~~
19 ~~mail.~~

20 (7) THE ASSOCIATION OF CO-OWNERS SHALL MAIL THE NOTICE
21 REQUIRED UNDER SUBSECTION (4) TO THE FIRST MORTGAGEE AT THE
22 ADDRESS PROVIDED IN THE MORTGAGE OR ASSIGNMENT FOR NOTICES.

23 (8) The association of co-owners shall maintain a copy of
24 the notice, proofs of mailing of the notice, and the ballots
25 returned by mortgagees for a period of 2 years after the control
26 date.

1 (9) Notwithstanding any provision of the condominium
2 documents to the contrary, FIRST mortgagees are entitled to vote
3 on amendments to the condominium documents only under the follow-
4 ing circumstances:

5 (a) Termination of the condominium project.

6 (b) A change in the method or formula used to determine the
7 percentage of value assigned to a unit subject to the mortgagee's
8 mortgage.

9 (c) A reallocation of responsibility for maintenance,
10 repair, replacement, or decoration for a condominium unit, its
11 appurtenant limited common elements, or the general common ele-
12 ments from the association of co-owners to the condominium unit
13 subject to the mortgagee's mortgage.

14 (d) Elimination of a requirement for the association of
15 co-owners to maintain insurance on the project as a whole or a
16 condominium unit subject to the mortgagee's mortgage or realloca-
17 tion of responsibility for obtaining or maintaining, or both,
18 insurance from the association of co-owners to the condominium
19 unit subject to the mortgagee's mortgage.

20 (e) The modification or elimination of an easement benefit-
21 ing the condominium unit subject to the mortgagee's mortgage.

22 (f) The partial or complete modification, imposition, or
23 removal of leasing restrictions for condominium units in the con-
24 dominium project.

25 (G) AMENDMENTS REQUIRING MORTGAGEE OR CO-OWNER CONSENT UNDER
26 SECTION 90(4).

1 Sec. 108. (1) Sums assessed to a co-owner by the
2 association of co-owners that are unpaid together with interest
3 on such sums, collection and late charges, advances made by the
4 association of co-owners for taxes or other liens to protect its
5 lien, attorney fees, and fines in accordance with the condominium
6 documents, constitute a lien upon the unit or units in the
7 project owned by the co-owner at the time of the assessment
8 before other liens except tax liens on the condominium unit in
9 favor of any state or federal taxing authority and sums unpaid on
10 a first mortgage of record, except that past due assessments that
11 are evidenced by a notice of lien —, recorded as set forth in
12 subsection (3) —, have priority over a first mortgage recorded
13 subsequent to the recording of the notice of lien. The lien upon
14 each condominium unit owned by the co-owner shall be in the
15 amount assessed against the condominium unit, plus a proportion-
16 ate share of the total of all other unpaid assessments attribut-
17 able to condominium units no longer owned by the co-owner but
18 which became due while the co-owner had title to the condominium
19 units. The lien may be foreclosed by an action or by advertise-
20 ment by the association of co-owners in the name of the condomin-
21 ium project on behalf of the other co-owners.

22 (2) A foreclosure shall be in the same manner as a foreclo-
23 sure under the laws relating to foreclosure of real estate mort-
24 gages by advertisement or judicial action except that to the
25 extent the condominium documents provide, the association of
26 co-owners is entitled to reasonable interest, expenses, costs,
27 and attorney fees for foreclosure by advertisement or judicial

1 action. The redemption period for a foreclosure is 6 months from
2 the date of sale unless the property is abandoned, in which event
3 the redemption period is 1 month from the date of sale.

4 (3) A foreclosure proceeding may not be commenced without
5 recordation and service of notice of lien in accordance with the
6 following:

7 (a) Notice of lien shall set forth all of the following:

8 (i) The legal description of the condominium unit or condo-
9 minium units to which the lien attaches.

10 (ii) The name of the co-owner of record.

11 (iii) The amounts due the association of co-owners at the
12 date of the notice, exclusive of interest, costs, attorney fees,
13 and future assessments.

14 (b) The notice of lien shall be in recordable form, executed
15 by an authorized representative of the association of co-owners
16 and may contain other information that the association of
17 co-owners considers appropriate.

18 (c) The notice of lien shall be recorded in the office of
19 register of deeds in the county in which the condominium project
20 is located and shall be served upon the delinquent co-owner by
21 first-class mail, postage prepaid, addressed to the last known
22 address of the co-owner at least 10 days in advance of commence-
23 ment of the foreclosure proceeding.

24 (4) The association of co-owners, acting on behalf of all
25 co-owners, unless prohibited by the master deed or bylaws, may
26 bid in at the foreclosure sale, and acquire, hold, lease,
27 mortgage, or convey the condominium unit.

1 (5) An action to recover money judgments for unpaid
2 assessments may be maintained without foreclosing or waiving the
3 lien.

4 (6) An action for money damages and foreclosure may be com-
5 bined in 1 action.

6 (7) A receiver may be appointed in an action for foreclosure
7 of the assessment lien and may be empowered to take possession of
8 the condominium unit, if not occupied by the co-owner, and to
9 lease the condominium unit and collect and apply the rental
10 ~~therefrom~~ FROM THE CONDOMINIUM UNIT.

11 (8) The co-owner of a condominium unit subject to foreclo-
12 sure ~~pursuant to~~ UNDER this section, and any purchaser, grant-
13 ee, successor, or assignee of the co-owner's interest in the con-
14 dominium unit, is liable for assessments by the association of
15 co-owners chargeable to the condominium unit that become due
16 before expiration of the period of redemption together with
17 interest, advances made by the association of co-owners for taxes
18 or other liens to protect its lien, costs, and attorney fees
19 incurred in their collection.

20 (9) The mortgagee of a first mortgage of record of a condo-
21 minium unit shall give notice to the association of co-owners of
22 the commencement of foreclosure of the first mortgage by adver-
23 tisement by serving a copy of the published notice of foreclosure
24 required by statute upon the association of co-owners by certi-
25 fied mail, return receipt requested, addressed to the resident
26 agent of the association of co-owners at the agent's address as
27 shown on the records of the Michigan corporation and securities

1 bureau, or to the address the association provides to the
2 mortgagee, if any, in those cases where the address is not regis-
3 tered, within 10 days after the first publication of the notice.
4 The mortgagee of a first mortgage of record of a condominium unit
5 shall give notice to the association of co-owners of intent to
6 commence foreclosure of the first mortgage by judicial action by
7 serving a notice setting forth the names of the mortgagors, the
8 mortgagee, and the foreclosing assignee of a recorded assignment
9 of the mortgage, IF ANY; the date of the mortgage and the date
10 the mortgage was recorded; the amount claimed to be due on the
11 mortgage on the date of the notice; and a description of the
12 mortgaged premises that substantially conforms with the descrip-
13 tion contained in the mortgage upon the association of co-owners
14 by certified mail, return receipt requested, addressed to the
15 resident agent of the association of co-owners at the agent's
16 address as shown on the records of the Michigan corporation and
17 securities bureau, or to the address the association provides to
18 the mortgagee, if any, in those cases where the address is not
19 registered, not less than 10 days before commencement of the
20 judicial action. Failure of the mortgagee to provide notice as
21 required by this section shall only provide the association with
22 legal recourse and will not, in any event, invalidate any fore-
23 closure proceeding between a mortgagee and mortgagor.

24 Sec. 112. (1) Before the transitional control date, during
25 the development and sales period the rights of a co-owner,
26 including the developer, to rent any number of condominium units
27 shall be controlled by the provisions of the condominium

1 documents as recorded by the developer and shall not be changed
2 without developer approval. After the transitional control date,
3 the association of co-owners may amend the condominium documents
4 as to the rental of condominium units or terms of occupancy. ~~as~~
5 ~~provided in section 90(4).~~ The amendment shall not affect the
6 rights of any lessors or lessees under a written lease otherwise
7 in compliance with this section and executed before the effective
8 date of the amendment, or condominium units ~~as long as they~~
9 THAT are owned or leased by the developer.

10 (2) A co-owner, including the developer, desiring to rent or
11 lease a condominium unit shall disclose that fact in writing to
12 the association of co-owners at least 10 days before presenting a
13 lease ~~form~~ or otherwise agreeing to grant possession of a con-
14 dominium unit to ~~a~~ potential ~~lessee~~ LESSEES OR OCCUPANTS and,
15 at the same time, shall supply the association of co-owners with
16 a copy of the exact lease ~~form~~ for its review for its compli-
17 ance with the condominium documents. THE CO-OWNER OR DEVELOPER
18 SHALL ALSO PROVIDE THE ASSOCIATION OF CO-OWNERS WITH A COPY OF
19 THE EXECUTED LEASE. If no lease ~~form~~ is to be used, then the
20 co-owner or developer shall supply the association of co-owners
21 with the name and address of the ~~potential lessee~~ LESSEES OR
22 OCCUPANTS, along with the rental amount and due dates ~~under the~~
23 ~~proposed agreement~~ OF ANY RENTAL OR COMPENSATION PAYABLE TO A
24 CO-OWNER OR DEVELOPER, THE DUE DATES OF THAT RENTAL AND COMPENSA-
25 TION, AND THE TERM OF THE PROPOSED ARRANGEMENT.

1 (3) Tenants or nonco-owner occupants shall comply with all
2 of the conditions of the condominium documents of the condominium
3 project, and all leases and rental agreements shall so state.

4 (4) If the association of co-owners determines that the
5 tenant or nonco-owner occupant failed to comply with the condi-
6 tions of the condominium documents, the association of co-owners
7 shall take the following action:

8 (a) The association of co-owners shall notify the co-owner
9 by certified mail, advising of the alleged violation by the
10 tenant. The co-owner shall have 15 days after receipt of the
11 notice to investigate and correct the alleged breach by the
12 tenant or advise the association of co-owners that a violation
13 has not occurred.

14 (b) If after 15 days the association of co-owners believes
15 that the alleged breach is not cured or may be repeated, it may
16 institute on its behalf or derivatively by the co-owners on
17 behalf of the association of co-owners, if it is under the con-
18 trol of the developer, an action for both eviction against the
19 tenant or nonco-owner occupant and, simultaneously, for money
20 damages against the co-owner and tenant or nonco-owner occupant
21 for breach of the conditions of the condominium documents. The
22 relief provided for in this section may be by summary
23 proceeding. The association of co-owners may hold both the
24 tenant and the co-owner liable for any damages to the general
25 common elements caused by the co-owner or tenant in connection
26 with the condominium unit or condominium project.

1 (5) When a co-owner is in arrearage to the association of
2 co-owners for assessments, the association of co-owners may give
3 written notice of the arrearage to a tenant occupying a
4 co-owner's condominium unit under a lease or rental agreement,
5 and the tenant, after receiving the notice, shall deduct from
6 rental payments due the co-owner the arrearage and future assess-
7 ments as they fall due and pay them to the association of
8 co-owners. The deduction does not constitute a breach of the
9 rental agreement or lease by the tenant. If the tenant, after
10 being notified, fails or refuses to remit rent otherwise due the
11 co-owner to the association of co-owners, then the association of
12 co-owners may do the following:

13 (a) Issue a statutory notice to quit for non-payment of rent
14 to the tenant and shall have the right to enforce that notice by
15 summary proceeding.

16 (b) Initiate proceedings pursuant to subsection (4)(b).

17 Sec. 135. (1) As used in this section, "successor
18 developer" means a person who acquires title to the lesser of 10
19 units or 75% of the units in a condominium project, other than a
20 business condominium project, by foreclosure, deed in lieu of
21 foreclosure, purchase, or similar transaction. ~~Successor devel-~~
22 ~~oper does not include a person that is not obligated to, or in~~
23 ~~fact does not, construct common elements.~~

24 (2) A successor developer shall do both of the following:

25 (a) Comply with this act in the same manner as a developer
26 before selling any units.

1 (b) Except as provided in subsection (3), assume all express
2 written contractual warranty obligations for defects in
3 workmanship and materials undertaken by its predecessor in
4 title. A successor developer shall not be required to assume,
5 and shall not otherwise be liable for, any other contractual
6 obligations of its predecessor in title.

7 (3) A successor developer shall not be required to comply
8 with subsection (2)(b) with respect to any express written con-
9 tractual warranty obligations for defects in workmanship and
10 materials, if either of the following is maintained with respect
11 to units for which such a warranty was undertaken by the prede-
12 cessor in title:

13 (a) An insurance policy, in a form approved by the insurance
14 bureau, that is underwritten by an insurer authorized to do busi-
15 ness in this state. The insurance policy shall provide coverage
16 for express written contractual warranty obligations for liabil-
17 ity for defects in workmanship and materials.

18 (b) An aggregate escrow account with an escrow agent which
19 contains not less than 0.5% of the sales price of each unit. If
20 the escrow account described in this subdivision is initiated by
21 a developer before a successor developer acquires title, 0.5% of
22 the sales price of each unit in the project shall be deposited by
23 the developer in the aggregate escrow account periodically upon
24 the sale of each unit. If the escrow account described in this
25 subdivision is initiated by a successor developer after acquisi-
26 tion of title, a total amount equal to 0.5% of the sales price of
27 all units for which the warranty period plus 6 months has not

1 expired shall be deposited by the successor developer in the
2 aggregate escrow account, and 0.5% of the sales price of each
3 unit shall be deposited by the successor developer in the aggre-
4 gate escrow account periodically upon the sale of each remaining
5 unit. Funds in an escrow account described in this subdivision
6 shall not be released for a unit until 6 months after the expira-
7 tion of the warranty period for that unit.

8 (4) A successor developer that acquires title to the lesser
9 of 10 business condominium units or 75% of the business condomi-
10 nium units in the condominium project shall not be required to
11 assume, and shall not otherwise be liable for, any contractual
12 obligations of its predecessor in title.

13 (5) A RESIDENTIAL BUILDER WHO NEITHER CONSTRUCTS NOR REFUR-
14 BISHES COMMON ELEMENTS IN A CONDOMINIUM PROJECT AND WHO IS NOT AN
15 AFFILIATE OF THE DEVELOPER SHALL NOT BE REQUIRED TO ASSUME AND BE
16 LIABLE FOR ANY CONTRACTUAL OBLIGATIONS OF THE DEVELOPER UNDER
17 THIS SECTION, AND SHALL NOT BE CONSIDERED A SUCCESSOR DEVELOPER
18 OR ACQUIRE ANY ADDITIONAL DEVELOPER OBLIGATIONS OR RIGHTS IN THE
19 ABSENCE OF A SPECIFIC ASSIGNMENT OF THOSE OBLIGATIONS OR RIGHTS
20 FROM THE DEVELOPER. HOWEVER, A RESIDENTIAL BUILDER THAT SELLS A
21 CONDOMINIUM UNIT SHALL DELIVER TO THE PURCHASER OF THAT CONDOMIN-
22 IUM UNIT THE CONDOMINIUM DOCUMENTS THAT THE DEVELOPER IS REQUIRED
23 TO DELIVER TO THE PURCHASERS UNDER SECTION 84A(1).

24 Sec. 173. (1) ~~Except as provided by subsection (2) and by~~
25 ~~the following subdivisions, this act shall apply to any~~ THIS ACT
26 APPLIES TO A condominium project or condominium unit AS FOLLOWS:

1 (a) For a condominium project for which a permit to sell has
2 been issued on or before March 18, 1983, the developer may elect
3 to comply with 1 or more of the following requirements in lieu of
4 the specified provisions:

5 (i) In lieu of section 31, 32, 33, 52, or 66, or any combi-
6 nation of these sections, the developer may elect to comply with
7 the terms of the master deed in effect as of March 18, 1983.

8 (ii) In lieu of sections 66(2)(j), 66(4), 84(3), 84(4)(a),
9 (c), and (e), and 103b, the developer may elect to deposit all
10 funds paid by a purchaser on or after January 17, 1983 into an
11 escrow account pursuant to an escrow agreement the terms of which
12 were approved by the administrator on or before March 18, 1983.
13 The funds escrowed under this subdivision in excess of any amount
14 or percentage of the escrowed funds that had been required to be
15 escrowed by the administrator or a condominium document pursuant
16 to former section 103 to cover the cost of construction of recre-
17 ational facilities and other common elements, shall be released
18 only upon conveyance of the condominium unit to that purchaser
19 and issuance of a certificate of occupancy if required by local
20 ordinance. Appropriate funds retained in escrow to cover the
21 cost of construction of recreational facilities and other common
22 elements shall be released to the developer upon completion of
23 each recreational facility or other common element. The escrow
24 agent shall be a bank, savings and loan association, or title
25 insurance company, or person designated to act as the agent of a
26 title insurance company, licensed or authorized to do business in
27 this state.

1 (b) For a condominium project for which a permit to sell has
 2 been issued on or before March 18, 1983, the developer may elect
 3 to exempt the project from the application of sections 84(4)(d),
 4 144, and 145(b).

5 (c) For promotional material filed with the administrator on
 6 or before March 18, 1983, the developer may elect to exempt the
 7 promotional material from the application of section 81a. For
 8 promotional material that has not been filed with the administra-
 9 tor on or before March 18, 1983 and that relates to a condominium
 10 project to which section 66 does not apply, the developer shall
 11 comply with section 81a as if section 66 was applicable to the
 12 condominium project.

13 (2) Sections 104a, 104b, ~~104c,~~ and 104d ~~, as amended by~~
 14 ~~Act No. 538 of the Public Acts of 1982, shall~~ AND FORMER SECTION
 15 104C apply to all condominium projects ~~which~~ THAT on
 16 October 10, 1980 ~~,~~ complied with the definition of qualified
 17 conversion condominium project ~~as added by Act No. 538 of the~~
 18 ~~Public Acts of 1982~~ PROVIDED IN SECTION 104B.

19 (3) Subsection (1)(a)(ii) and (b) ~~shall~~ DOES not apply to
 20 any phase or convertible area of a condominium project ~~, which~~
 21 IF THE phase is established ~~,~~ or ~~which~~ THE convertibility
 22 option is exercised ~~,~~ after March 18, 1983 ~~,~~ and ~~the~~ THAT
 23 establishment or exercise ~~of which~~ results in the addition of
 24 units to the condominium project or the creation of a facility
 25 intended for common use.

26 (4) BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT
 27 THAT ADDED THIS SUBSECTION, SECTIONS 54(8), (9), AND (10), 67(3),

1 135(5), AND 176 APPLY ONLY TO CONDOMINIUM PROJECTS ESTABLISHED ON
2 OR AFTER JANUARY 1, 2001.

3 Sec. 176. A person shall not maintain ~~any~~ AN action
4 against ~~any~~ A developer, residential builder, licensed archi-
5 tect, contractor, sales agent, or manager of a condominium
6 project arising out of the development or construction of the
7 common elements, or the management, operation, or control of a
8 condominium project BEFORE THE TRANSITIONAL CONTROL DATE, more
9 than 3 years ~~from~~ AFTER the transitional control date or 2
10 years from the date the cause of action accrues, whichever occurs
11 later.