

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Senators Bullard and Steil

ENROLLED SENATE BILL No. 612

AN ACT to amend 1978 PA 59, entitled "An act relative to condominiums and condominium projects; to prescribe powers and duties of the administrator; to provide certain protections for certain tenants, senior citizens, and persons with disabilities relating to conversion condominium projects; to provide for escrow arrangements; to provide an exemption from certain property tax increases; to impose duties on certain state departments; to prescribe remedies and penalties; and to repeal acts and parts of acts," by amending sections 3, 6, 10, 40, 45, 47a, 52, 54, 58, 67, 69, 73, 90, 106, 107, 108, 111, 112, 113, 132, and 135 (MCL 559.103, 559.106, 559.110, 559.140, 559.145, 559.147a, 559.152, 559.154, 559.158, 559.167, 559.169, 559.173, 559.190, 559.206, 559.207, 559.208, 559.211, 559.212, 559.213, 559.232, and 559.235), sections 3, 10, 52, 54, 67, 73, 112, and 135 as amended by 1982 PA 538, section 6 as amended by 1983 PA 113, section 47a as amended by 1998 PA 36, and section 90 as amended by 1988 PA 147, and by adding sections 72b, 90a, and 176.

The People of the State of Michigan enact:

Sec. 3. (1) "Administrator" means the department of consumer and industry services or an authorized designee.

(2) "Affiliate of developer" means any person who controls, is controlled by, or is under common control with a developer. A person is controlled by another person if the person is a general partner, officer, member, director, or employee of the person, directly or indirectly, individually or with 1 or more persons or subsidiaries owns, controls, or holds power to vote more than 20% of the person, controls in any manner the election of a majority of the directors of the person, or has contributed more than 20% of the capital of the person.

(3) "Arbitration association" means the American arbitration association or its successor.

(4) "Association of co-owners" means the person designated in the condominium documents to administer the condominium project.

(5) "Business condominium unit" means a condominium unit within any condominium project, which unit has a sales price of more than \$250,000.00 and is offered, used, or intended to be used for other than residential or recreational purposes.

(6) "Business day" means a day of the year excluding a Saturday, Sunday, or legal holiday.

(7) "Common elements" means the portions of the condominium project other than the condominium units.

(8) "Condominium buyer's handbook" means the informational pamphlet created by the administrator.

(9) "Condominium bylaws" or "bylaws" means the required set of bylaws for the condominium project attached to the master deed.

(10) "Condominium documents" means the master deed, recorded pursuant to this act, and any other instrument referred to in the master deed or bylaws which affects the rights and obligations of a co-owner in the condominium.

Sec. 6. (1) "Co-owner" means a person, firm, corporation, partnership, association, trust, or other legal entity or any combination of those entities, who owns a condominium unit within the condominium project. Co-owner includes land contract vendees and land contract vendors, who are considered jointly and severally liable under this act and the condominium documents, except as the recorded condominium documents provide otherwise.

(2) "Developer" means a person engaged in the business of developing a condominium project as provided in this act. Developer does not include any of the following:

(a) A real estate broker acting as agent for the developer in selling condominium units.

(b) A residential builder who acquires title to 1 or more condominium units for the purpose of residential construction on those condominium units and subsequent resale.

(c) Other persons exempted from this definition by rule or order of the administrator.

(3) "Escrow agent" means a bank, savings and loan association, or title insurance company, licensed or authorized to do business in this state or a representative designated to administer escrow funds in the name, and on behalf, of the escrow agent.

(4) "Expandable condominium" means a condominium project to which additional land may be added in accordance with this act.

(5) "General common elements" means the common elements other than the limited common elements.

Sec. 10. (1) "Record" means to record pursuant to the laws of this state relating to the recording of deeds except that the provisions of the land division act, 1967 PA 288, MCL 560.101 to 560.293, do not control divisions made for any condominium project.

(2) "Residential builder" is a person licensed as a residential builder under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412.

(3) "Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each condominium unit as computed by reference to the condominium subdivision plan and rounded off to a whole number. Certain spaces within the condominium units including, without limitation, attic, basement, and garage space may be omitted from the calculation or partially discounted by the use of a ratio, if the same basis of calculation is employed for all condominium units in the condominium project, that basis is used for each condominium unit in the condominium project, and that basis is disclosed in appropriate condominium documents furnished to each co-owner.

(4) "Time-share unit" means a condominium unit in which a time-share estate or a time-share license exists.

(5) "Time-share estate" means a right to occupy a condominium unit or any of several condominium units during 5 or more separated time periods over a period of at least 5 years, including renewal options, coupled with a freehold estate or an estate for years.

(6) "Time-share license" means a right to occupy a condominium unit or any of several condominium units during 5 or more separated time periods over a period of at least 5 years, including renewal options, not coupled with a freehold estate or an estate for years.

(7) "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 which may be cast by the developer.

Sec. 40. To the extent that a condominium unit or common element encroaches on any other condominium unit or common element, whether by reason of any deviation from the plans in the construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for the encroachment shall exist. This section shall not be construed to allow or permit any encroachment upon, or an easement for an encroachment upon, units described in the master deed as being comprised of land and/or airspace above and/or below said land, without the consent of the co-owner of the unit to be burdened by the encroachment or easement.

Sec. 45. The developer and its duly authorized agents, representatives, and employees, and residential builders who receive an assignment of rights from the developer, may maintain offices, model units, and other facilities on the submitted land. The developer may include provisions in the condominium documents relative to the facilities as may reasonably facilitate development and sale of the project. The developer shall pay or be responsible to require a residential builder to pay all costs related to the condominium units or common elements while owned by developer and to restore the facilities to habitable status upon termination of use.

Sec. 47a. (1) A co-owner may make improvements or modifications to the co-owner's condominium unit, including improvements or modifications to common elements and to the route from the public way to the door of the co-owner's condominium unit, at his or her expense, if the purpose of the improvement or modification is to facilitate access to or movement within the unit for persons with disabilities who reside in or regularly visit the unit, or to alleviate conditions

that could be hazardous to persons with disabilities who reside in or regularly visit the unit. The improvement or modification shall not impair the structural integrity of a structure or otherwise lessen the support of a portion of the condominium project. The co-owner is 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 be expected in the normal course of building or maintaining the improvement or modification. The improvement or modification may be made notwithstanding prohibitions and restrictions in the condominium documents, but shall comply with all applicable state and local building code requirements and health and safety laws and ordinances and shall be made as closely as reasonably possible in conformity with the intent of applicable prohibitions and restrictions regarding safety and aesthetics of the proposed modification.

(2) An improvement or modification allowed by this section that affects the exterior of the condominium unit shall not unreasonably prevent passage by other residents of the condominium project. A co-owner who has made exterior improvements or modifications allowed by this section shall notify the association of co-owners in writing of the co-owner's intention to convey or lease his or her condominium unit to another at least 30 days before the conveyance or lease. Not more than 30 days after receiving a notice from a co-owner under this subsection, the association of co-owners may require the co-owner to remove the improvement or modification at the co-owner's expense. If the co-owner fails to give timely notice of a conveyance or lease, the association of co-owners at any time may remove or require the co-owner to remove the improvement or modification at the co-owner's expense. However, the association of co-owners may not remove or require the removal of an improvement or modification if a co-owner intends to resume residing in the unit within 12 months or a co-owner conveys or leases his or her condominium unit to a person with disabilities who needs the same type of improvement or modification or who has a person residing with him or her who requires the same type of improvement or modification.

(3) If a co-owner makes an exterior improvement or modification allowed under this section, the co-owner shall maintain liability insurance, underwritten by an insurer authorized to do business in this state and naming the association of co-owners as an additional insured, in an amount adequate to compensate for personal injuries caused by the exterior improvement or modification. The co-owner is not liable for acts or omissions of the association of co-owners with respect to the exterior improvement or modification and is not required to maintain liability insurance with respect to any common element. The association of co-owners is responsible for maintenance, repair, and replacement of the improvement or modification only to the extent of the cost currently incurred by the association of co-owners for maintenance, replacement, and repair of the common elements covered or replaced by the improvement or modification. All costs of maintenance, repair, and replacement of the improvement or modification exceeding that currently incurred by the association of co-owners for maintenance, repair, and replacement of the common elements covered or replaced by the improvement or modification shall be assessed to and paid by the co-owner or the unit serviced by the improvement or modification.

(4) Before an improvement or modification allowed by this section is made, the co-owner shall submit plans and specifications for the improvements or modifications to the association of co-owners for review and approval. The association of co-owners shall determine whether the proposed improvement or modification substantially conforms to the requirements of this section and shall not deny a proposed improvement or modification without good cause. If the association of co-owners denies a proposed improvement or modification, the association of co-owners shall list, in writing, the changes needed to make the proposed improvement or modification conform to the requirements of this section and shall deliver that list to the co-owner. The association of co-owners shall approve or deny the proposed improvement or modification not later than 60 days after the plans and specifications are submitted by the co-owner proposing the improvement or modification to the association of co-owners. If the association of co-owners does not approve or deny submitted plans and specifications within the 60-day period, the co-owner may make the proposed improvement or modification without the approval of the association of co-owners. A co-owner may bring an action against the association of co-owners and the officers and directors to compel those persons to comply with this section if the co-owner disagrees with a denial by the association of co-owners of the co-owner's proposed improvement or modification.

(5) This section applies to condominium units existing on May 27, 1987 and to those built or converted after May 27, 1987.

(6) This section does not apply to a condominium unit that is otherwise required by law to be barrier-free and does not impose on a co-owner the cost of maintaining that barrier-free unit.

(7) As used in this section, "person with disabilities" means that term as defined in section 2 of the state construction code act of 1972, 1972 PA 230, MCL 125.1502.

Sec. 52. (1) An advisory committee of nondeveloper co-owners shall be established either 120 days after conveyance of legal or equitable title to nondeveloper co-owners of 1/3 of the units that may be created or 1 year after the initial conveyance of legal or equitable title to a nondeveloper co-owner of a unit in the project, whichever occurs first. The advisory committee shall meet with the condominium project board of directors for the purpose of facilitating communication and aiding the transition of control to the association of co-owners. The advisory committee shall cease

to exist when a majority of the board of directors of the association of co-owners is elected by the nondeveloper co-owners.

(2) Not later than 120 days after conveyance of legal or equitable title to nondeveloper co-owners of 25% of the units that may be created, at least 1 director and not less than 25% of the board of directors of the association of co-owners shall be elected by nondeveloper co-owners. Not later than 120 days after conveyance of legal or equitable title to nondeveloper co-owners of 50% of the units that may be created, not less than 33-1/3% of the board of directors shall be elected by nondeveloper co-owners. Not later than 120 days after conveyance of legal or equitable title to nondeveloper co-owners of 75% of the units that may be created, and before conveyance of 90% of such units, the nondeveloper co-owners shall elect all directors on the board, except that the developer shall have the right to designate at least 1 director as long as the developer owns and offers for sale at least 10% of the units in the project or as long as 10% of the units remain that may be created.

(3) Notwithstanding the formula provided in subsection (2), 54 months after the first conveyance of legal or equitable title to a nondeveloper co-owner of a unit in the project, if title to not less than 75% of the units that may be created has not been conveyed, the nondeveloper co-owners have the right to elect, as provided in the condominium documents, a number of members of the board of directors of the association of co-owners equal to the percentage of units they hold and the developer has the right to elect, as provided in the condominium documents, a number of members of the board equal to the percentage of units which are owned by the developer and for which all assessments are payable by the developer. This election may increase, but does not reduce, the minimum election and designation rights otherwise established in subsection (2). Application of this subsection does not require a change in the size of the board as determined in the condominium documents.

(4) If the calculation of the percentage of members of the board that the nondeveloper co-owners have the right to elect under subsection (2), or if the product of the number of members of the board multiplied by the percentage of units held by the nondeveloper co-owners under subsection (3) results in a right of nondeveloper co-owners to elect a fractional number of members of the board, then a fractional election right of 0.5 or greater shall be rounded up to the nearest whole number, which number shall be the number of members of the board that the nondeveloper co-owners have the right to elect. After application of the formula contained in this subsection, the developer has the right to elect the remaining members of the board. Application of this subsection does not eliminate the right of the developer to designate 1 member as provided in subsection (2).

(5) A consolidating master deed and plans showing the condominium as built shall be recorded not later than 1 year after completion of construction in order to consolidate all phases or amendments of a condominium project. A copy of the recorded consolidating master deed shall be provided to the association of co-owners.

(6) As used in this section, "units that may be created" means the maximum number of units in all phases of the condominium project as stated in the master deed.

(7) For purposes of calculating the timing of events described in this section, conveyance by a developer to a residential builder, even though not an affiliate of the developer, is not considered a sale to a nondeveloper co-owner until such time as the residential builder conveys that unit with a completed residence on it or until it contains a completed residence which is occupied.

Sec. 54. (1) The bylaws shall contain provisions for the designation of persons to administer the affairs of the condominium project and shall require that those persons keep books and records with a detailed account of the expenditures and receipts affecting the condominium project and its administration, and which specify the operating expenses of the project.

(2) The bylaws shall provide that the person designated to administer the affairs of the project shall be assessed as the person in possession for any tangible personal property of the project owned or possessed in common by the co-owners. Personal property taxes based on that tangible personal property shall be treated as expenses of administration.

(3) The bylaws shall contain specific provisions directing the courses of action to be taken in the event of partial or complete destruction of the building or buildings in the project.

(4) The bylaws shall provide that expenditures affecting the administration of the project shall include costs incurred in the satisfaction of any liability arising within, caused by, or connected with, the common elements or the administration of the condominium project, and that receipts affecting the administration of the condominium project shall include all sums received as the proceeds of, or pursuant to, a policy of insurance securing the interest of the co-owners against liabilities or losses arising within, caused by, or connected with the common elements or the administration of the condominium project.

(5) The bylaws shall provide that the association of co-owners shall prepare and distribute to each owner at least once each year a financial statement, the contents of which shall be defined by the association of co-owners.

(6) The bylaws shall provide an indemnification clause for the board of directors of the association of co-owners. The indemnification clause shall require that 10 days' notice, before payment under the clause, be given to the co-owners. The indemnification clause shall exclude indemnification for willful and wanton misconduct and for gross negligence.

(7) The bylaws may allocate to each condominium unit a number of votes in the association of co-owners proportionate to the percentage of value appertaining to each condominium unit, or an equal number of votes in the association of co-owners.

(8) The bylaws shall contain a provision providing that arbitration of disputes, claims, and grievances arising out of or relating to the interpretation of the application of the condominium document or arising out of disputes among or between co-owners shall be submitted to arbitration and that the parties to the dispute, claim, or grievance shall accept the arbitrator's decision as final and binding, upon the election and written consent of the parties to the disputes, claims, or grievances and upon written notice to the association. The commercial arbitration rules of the American arbitration association are applicable to any such arbitration.

(9) In the absence of the election and written consent of the parties under subsection (8), neither a co-owner nor the association is prohibited from petitioning a court of competent jurisdiction to resolve any dispute, claim, or grievance.

(10) The election by the parties to submit any dispute, claim, or grievance to arbitration prohibits the parties from petitioning the courts regarding that dispute, claim, or grievance.

Sec. 58. If the mortgagee of a first mortgage of record or other purchaser of a condominium unit obtains title to the condominium unit as a result of foreclosure of the first mortgage, such person, its successors, and assigns are not liable for the assessments by the administering body chargeable to the unit that became due prior to the acquisition of title to the unit by such person except for assessments that have priority over the first mortgage under section 108.

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

(2) If a change involves a change in the boundaries of a condominium unit or the addition or elimination of condominium units, a replat of the condominium subdivision plan shall be prepared and recorded assigning a condominium unit number to each condominium unit in the amended project. The replat of the condominium subdivision plan shall be designated replat number _____ of _____ county condominium subdivision plan number _____, using the same plan number assigned to the original condominium subdivision plan.

(3) Notwithstanding section 33, if the developer has not completed development and construction of the entire condominium project, including proposed improvements whether identified as "must be built" or "need not be built", during a period ending 10 years from the date of commencement of construction by the developer of the project, the developer, its successors, or assigns have the right to withdraw from the project all undeveloped portions of 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. If the master deed contains provisions permitting the expansion, contraction, or rights of convertibility of units or common elements in the condominium project, then the time period is 6 years from the date the developer exercised its rights with respect to either expansion, contraction, or rights of convertibility, whichever right was exercised last. The undeveloped portions of the project withdrawn shall also automatically be granted easements for utility and access purposes through the condominium project for the benefit of the undeveloped portions of the project. If the developer does not withdraw the undeveloped portions of the project from the project before expiration of the time periods, such lands shall remain part of the project as general common elements and all rights to construct units upon that land shall cease. In such an event, if it becomes necessary to adjust percentages of value as a result of fewer units existing, a co-owner or the association of co-owners may bring an action to require revisions to the percentages of value pursuant to section 96.

Sec. 69. (1) Except to the extent that the condominium documents provide otherwise, common expenses associated with the maintenance, repair, renovation, restoration, or replacement of a limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time the expenses were incurred. If the limited common element involved was assigned to more than 1 condominium unit, the expenses shall be specially assessed against each of the condominium units equally so that the total of the special assessments equals the total of the expenses, except to the extent that the condominium documents provide otherwise.

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

(3) The amount of all common expenses not specially assessed pursuant to subsections (1) and (2) shall be assessed against the condominium units in proportion to the percentages of value or other formula stated in the master deed for apportionment of expenses of administration.

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

Sec. 72b. (1) A condominium project may be established for property consisting of a separate legal parcel in space that is considered the air space over a fee, improved or unimproved, in real property law. Such a condominium project may be provided easements, licenses, and other rights as may be necessary to provide access to and otherwise serve the needs of the project from the underlying surface parcel.

(2) This section applies to any question regarding whether any air space existing over a fee may be submitted to, and established as, a condominium under this act and applies to development as a condominium of air space over a fee.

Sec. 73. (1) A master deed and an amendment to the master deed shall be recorded.

(2) A master deed shall not be recorded without a certification by the treasurer collecting the property taxes and special assessments that all property taxes and current installments of special assessments which became a lien on the property involved in the project are paid in full.

(3) When recorded, a copy of the master deed and a copy of any subsequently amended master deed or amendment shall be filed with the local supervisor or assessing officer.

(4) Detailed architectural plans and specifications for the condominium project, if that condominium project contains any units that require architectural plans and specifications to construct, shall be filed with the local unit of government in which the project is located. However, in the case of a conversion condominium where detailed architectural plans and specifications are not available, the developer shall file with the local unit of government an affidavit stating the fact that detailed architectural plans and specifications are not available.

Sec. 90. (1) The 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 if the condominium documents contain a reservation of the right to amend for that purpose to the developer or the association of co-owners. An amendment that does not materially change the rights of a co-owner or mortgagee includes, but is not limited to, a modification of the types and sizes of unsold condominium units and their appurtenant limited common elements. An amendment that does not materially change the rights of a mortgagee further includes, but is not limited to, 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.

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

(3) The developer may reserve, in the condominium documents, the right to amend materially the condominium documents to achieve specified purposes, except a purpose provided for in subsection (4). Reserved rights may not be amended except by or with the consent of the developer. If a proper reservation is made, the condominium documents may be amended to achieve the specified purposes, without the consent of co-owners or mortgagees.

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

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

(6) A person causing or requesting an amendment to the condominium documents shall be responsible for costs and expenses of the amendment, except for amendments based upon a vote of a prescribed majority of co-owners and mortgagees or based upon the advisory committee's decision, the costs of which are expenses of administration.

(7) A master deed amendment, including the consolidating master deed, dealing with the addition, withdrawal, or modification of units or other physical characteristics of the project shall comply with the standards prescribed in section 66 for preparation of an original condominium subdivision plan for the project.

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

Sec. 90a. (1) To the extent this act or the condominium documents require a vote of mortgagees of units on amendment of the condominium documents, the procedure described in this section applies.

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

(3) Only those mortgagees who hold a duly recorded mortgage or a duly recorded assignment of a mortgage against 1 or more condominium units in the condominium project on the control date is entitled to vote on the amendment. Each mortgagee entitled to vote shall have 1 vote for each condominium unit in the project that is subject to its mortgage or mortgages, without regard to how many mortgages the mortgagee may hold on a particular condominium unit.

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

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

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

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

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

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

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

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

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

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

The amendment will be considered approved by mortgagees if it is approved by 66-2/3% of the mortgagees. In order to vote, you must indicate your approval or rejection on the enclosed ballot, sign it, and return it not later than 90 days from (the control date). Failure to timely return a ballot will constitute a vote for approval. If you oppose the amendment, you must vote against it."

(6) The association of co-owners shall mail the notice required by subsection (4) 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.

(7) The amendment is considered to be approved by the mortgagees if it is approved by 66-2/3% of the mortgagees whose ballots are received, or are considered to be received, in accordance with section 90(2), by the entity authorized by the board of directors to tabulate mortgagee votes not later than 100 days after the control date. In determining the 100 days, the control date itself shall not be counted but the one-hundredth day shall be included unless the one-hundredth day is a Saturday, Sunday, legal holiday, or holiday on which the United States postal service does not regularly deliver mail, in which case the last day of the 100 days shall be the next day that is not a Saturday, Sunday, legal holiday, or holiday on which the United States postal service does not regularly deliver mail.

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

(9) Notwithstanding any provision of the condominium documents to the contrary, mortgagees are entitled to vote on amendments to the condominium documents only under the following circumstances:

(a) Termination of the condominium project.

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

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

(d) Elimination of a requirement for the association of co-owners to maintain insurance on the project as a whole or a condominium unit subject to the mortgagee's mortgage or reallocation of responsibility for obtaining or maintaining, or both, insurance from the association of co-owners to the condominium unit subject to the mortgagee's mortgage.

(e) The modification or elimination of an easement benefiting the condominium unit subject to the mortgagee's mortgage.

(f) The partial or complete modification, imposition, or removal of leasing restrictions for condominium units in the condominium project.

Sec. 106. A default by a co-owner shall entitle the association of co-owners to the following relief:

(a) Failure to comply with any of the terms or provisions of the condominium documents, shall be grounds for relief, which may include without limitations, an action to recover sums due for damages, injunctive relief, foreclosure of lien if default in payment of assessment, or any combination thereof.

(b) In a proceeding arising because of an alleged default by a co-owner, the association of co-owners or the co-owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent the condominium documents expressly so provide.

(c) Such other reasonable remedies the condominium documents may provide including but without limitation the levying of fines against co-owners after notice and hearing thereon and the imposition of late charges for nonpayment of assessments as provided in the condominium bylaws or rules and regulations of the condominium.

Sec. 107. A co-owner may maintain an action against the association of co-owners and its officers and directors to compel these persons to enforce the terms and provisions of the condominium documents. In such a proceeding, the association of co-owners or the co-owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent that the condominium documents expressly so provide. A co-owner may maintain an action against any other co-owner for injunctive relief or for damages or any combination thereof for noncompliance with the terms and provisions of the condominium documents or this act.

Sec. 108. (1) Sums assessed to a co-owner by the association of co-owners that are unpaid together with interest on such sums, collection and late charges, advances made by the association of co-owners for taxes or other liens to protect its lien, attorney fees, and fines in accordance with the condominium documents, constitute a lien upon the unit or units in the project owned by the co-owner at the time of the assessment before other liens except tax liens on the condominium unit in favor of any state or federal taxing authority and sums unpaid on a first mortgage of record except that past due assessments that are evidenced by a notice of lien, recorded as set forth in subsection (3), have priority over a first mortgage recorded subsequent to the recording of the notice of lien. The lien upon each condominium unit owned by the co-owner shall be in the amount assessed against the condominium unit, plus a proportionate share of the total of all other unpaid assessments attributable to condominium units no longer owned by the co-owner but which became due while the co-owner had title to the condominium units. The lien may be foreclosed by an action or by advertisement by the association of co-owners in the name of the condominium project on behalf of the other co-owners.

(2) A foreclosure shall be in the same manner as a foreclosure under the laws relating to foreclosure of real estate mortgages by advertisement or judicial action except that to the extent the condominium documents provide, the association of co-owners is entitled to reasonable interest, expenses, costs, and attorney fees for foreclosure by advertisement or judicial action. The redemption period for a foreclosure is 6 months from the date of sale unless the property is abandoned, in which event the redemption period is 1 month from the date of sale.

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

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

(i) The legal description of the condominium unit or condominium units to which the lien attaches.

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

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

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

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

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

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

(6) An action for money damages and foreclosure may be combined in 1 action.

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

(8) The co-owner of a condominium unit subject to foreclosure pursuant to this section, and any purchaser, grantee, successor, or assignee of the co-owner's interest in the condominium unit, is liable for assessments by the association of co-owners chargeable to the condominium unit that become due before expiration of the period of redemption together

with interest, advances made by the association of co-owners for taxes or other liens to protect its lien, costs, and attorney fees incurred in their collection.

(9) The mortgagee of a first mortgage of record of a condominium unit shall give notice to the association of co-owners of the commencement of foreclosure of the first mortgage by advertisement by serving a copy of the published notice of foreclosure required by statute upon the association of co-owners by certified mail, return receipt requested, addressed to the resident agent of the association of co-owners at the agent's address as shown on the records of the Michigan corporation and securities bureau, or to the address the association provides to the mortgagee, if any, in those cases where the address is not registered, within 10 days after the first publication of the notice. The mortgagee of a first mortgage of record of a condominium unit shall give notice to the association of co-owners of intent to commence foreclosure of the first mortgage by judicial action by serving a notice setting forth the names of the mortgagors, the mortgagee, and the foreclosing assignee of a recorded assignment of the mortgage; the date of the mortgage and the date the mortgage was recorded; the amount claimed to be due on the mortgage on the date of the notice; and a description of the mortgaged premises that substantially conforms with the description contained in the mortgage upon the association of co-owners by certified mail, return receipt requested, addressed to the resident agent of the association of co-owners at the agent's address as shown on the records of the Michigan corporation and securities bureau, or to the address the association provides to the mortgagee, if any, in those cases where the address is not registered, not less than 10 days before commencement of the judicial action. Failure of the mortgagee to provide notice as required by this section shall only provide the association with legal recourse and will not, in any event, invalidate any foreclosure proceeding between a mortgagee and mortgagor.

Sec. 111. (1) Upon the sale or conveyance of a condominium unit, all unpaid assessments, interest, late charges, fines, costs, and attorney fees against a condominium unit shall be paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature except the following:

(a) Amounts due the state, or any subdivision thereof, or any municipality for taxes and special assessments due and unpaid on the condominium unit.

(b) Payments due under a first mortgage having priority thereto.

(2) A purchaser or grantee is entitled to a written statement from the association of co-owners setting forth the amount of unpaid assessments, interest, late charges, fines, costs, and attorney fees against the seller or grantor and the purchaser or grantee is not liable for, nor is the condominium unit conveyed or granted subject to a lien for any unpaid assessments, interest, late charges, fines, costs, and attorney fees against the seller or grantor in excess of the amount set forth in the written statement. Unless the purchaser or grantee requests a written statement from the association of co-owners as provided in this act, at least 5 days before sale, the purchaser or grantee shall be liable for any unpaid assessments against the condominium unit together with interest, costs, fines, late charges, and attorney fees incurred in the collection thereof.

Sec. 112. (1) Before the transitional control date, during the development and sales period the rights of a co-owner, including the developer, to rent any number of condominium units shall be controlled by the provisions of the condominium documents as recorded by the developer and shall not be changed without developer approval. After the transitional control date, the association of co-owners may amend the condominium documents as to the rental of condominium units or terms of occupancy as provided in section 90(4). The amendment shall not affect the rights of any lessors or lessees under a written lease otherwise in compliance with this section and executed before the effective date of the amendment, or condominium units as long as they are owned or leased by the developer.

(2) A co-owner, including the developer, desiring to rent or lease a condominium unit shall disclose that fact in writing to the association of co-owners at least 10 days before presenting a lease form or otherwise agreeing to grant possession of a condominium unit to a potential lessee and at the same time, shall supply the association of co-owners with a copy of the exact lease form for its review for its compliance with the condominium documents. If no lease form is to be used, then the co-owner or developer shall supply the association of co-owners with the name and address of the potential lessee, along with the rental amount and due dates under the proposed agreement.

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

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

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

(b) If after 15 days the association of co-owners believes that the alleged breach is not cured or may be repeated, it may institute on its behalf or derivatively by the co-owners on behalf of the association of co-owners, if it is under the control of the developer, an action for both eviction against the tenant or nonco-owner occupant and, simultaneously, for money damages against the co-owner and tenant or nonco-owner occupant for breach of the conditions of the

condominium documents. The relief provided for in this section may be by summary proceeding. The association of co-owners may hold both the tenant and the co-owner liable for any damages to the general common elements caused by the co-owner or tenant in connection with the condominium unit or condominium project.

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

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

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

Sec. 113. A developer, residential builder, or sales agent shall not require that a prospective purchaser of a condominium unit obtain financing from a specific financial institution exclusively.

Sec. 132. A construction lien otherwise arising under the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305, is subject to the following limitations:

(a) Except as provided in this section, a construction lien for work performed upon a condominium unit or upon a limited common element may attach only to the condominium unit upon which the work was performed or to which the limited common element is appurtenant.

(b) A construction lien for work authorized by the developer, residential builder, or principal contractor and performed upon the common elements may attach only to condominium units owned by the developer, residential builder, or principal contractor at the time of recording of the statement of account and lien.

(c) A construction lien for work authorized by the association of co-owners may attach to each condominium unit only to the proportionate extent that the co-owner of the condominium unit is required to contribute to the expenses of administration as provided by the condominium documents.

(d) A construction lien may not arise or attach to a condominium unit for work performed on the common elements not contracted by the developer, residential builder, or principal contractor or by the association of co-owners.

Sec. 135. (1) As used in this section, "successor developer" means a person who acquires 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. Successor developer does not include a person that is not obligated to, or in fact does not, construct common elements.

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

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

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

(3) A successor developer shall not be required to comply with subsection (2)(b) with respect to any express written contractual warranty obligations for defects in workmanship and materials, if either of the following is maintained with respect to units for which such a warranty was undertaken by the predecessor in title:

(a) An insurance policy, in a form approved by the insurance bureau, that is underwritten by an insurer authorized to do business in this state. The insurance policy shall provide coverage for express written contractual warranty obligations for liability for defects in workmanship and materials.

(b) An aggregate escrow account with an escrow agent which contains not less than 0.5% of the sales price of each unit. If the escrow account described in this subdivision is initiated by a developer before a successor developer acquires title, 0.5% of the sales price of each unit in the project shall be deposited by the developer in the aggregate escrow account periodically upon the sale of each unit. If the escrow account described in this subdivision is initiated by a successor developer after acquisition of title, a total amount equal to 0.5% of the sales price of all units for which the warranty period plus 6 months has not expired shall be deposited by the successor developer in the aggregate escrow account, and 0.5% of the sales price of each unit shall be deposited by the successor developer in the aggregate escrow account periodically upon the sale of each remaining unit. Funds in an escrow account described in this subdivision shall not be released for a unit until 6 months after the expiration of the warranty period for that unit.

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

Sec. 176. A person shall not maintain any action against any developer, residential builder, licensed architect, contractor, sales agent, or manager of a condominium project arising out of the development or construction of the common elements, or the management, operation, or control of a condominium project, more than 3 years from the transitional control date or 2 years from the date the cause of action accrues, whichever occurs later.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 613 of the 90th Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved

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Governor.