House
Legislative
Analysis
Section

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CONDO ACT REVISIONS AND FORECLOSURE

Senate Bill 612 (Substitute H-1)
Senate Bill 613 as passed by the Senate
First Analysis (11-9-00)

Sponsor: Sen. Bill Bullard, Jr.
House Committee: Local Government and Urban Policy
Senate Committee: Judiciary

THE APPARENT PROBLEM:

The Condominium Act was passed in 1978, more than 20 years ago, and some of its provisions are out of date, according both to those who develop condominium projects, as well as to the residents who live in the developments and who govern them as co-owners in condominium associations. After review by the Real Property Section of the State Bar of Michigan, a number of revisions to the Condominium Act have been recommended.

Among the proposed revisions are those that would do the following:

--Acknowledge new relationships between developers and residential builders, given the expansion of the kinds of development arrangements that now constitute a once more limited category called 'site condominium projects', to ensure that the act includes residential builders who have a contractual relationship with developers (as opposed to residential builders who have project-wide co-development status within projects, in which case the residential builders are affiliated- or successor-developers).

--Expand the conditions under which a co-owner could make improvements to facilitate access to or movement within the unit for people with disabilities who reside in, or who regularly visit, the unit, but also specifying that costs to maintain these improvements would fall to the co-owner and not the association.

--Transfer responsibility for any improvement to the co-owner who makes the improvement, rather than requiring the association of co-owners to maintain the improvement.

--Prohibit any encroachment upon, or easement for an encroachment, in both land and airspace as described in the master deed, without the consent of the co-owner of the unit to be burdened by the encroachment or easement.

--Change the filing deadline by which the consolidating master deed and plans must be recorded from 180 days to one year of project completion, so that the law would correspond to existing rules.

--Require that the bylaws for a co-owner's association contain a provision that requires binding arbitration following the commercial arbitration rules of the American Arbitration Association.

--Clarify that the limited statutory lien covers costs incurred by the association including unpaid assessments, interest, collection and late charges, advances made by the association to protect its lien, fines and attorney fees, all to the extent that they are allowed by the condominium's documents.

--Provide a maximum time within which facilities and units must be built so that the "percentages of value" used to apportion fees among co-owners in the association can be adjusted when developers fail to complete developments due to financial or market conditions.

--Specify that certain common assessments could be assessed against the units in proportion to the percentages of value, or using some other formula, rather than the number of votes.

--Provide for legal parcels in space or air rights (that is, 'air space over a fee') and allow these parcels to be established under the condominium act.

--Clarify that amendments to condominium documents would require mortgagee-approval (that is, the lender's approval) only if a change would affect the value of a

mortgagee's underlying collateral, as determined by a licensed appraiser.

--Establish an approval protocol to obtain the various lenders' agreement about improvements when it is necessary.

--Clarify that association co-owners who can vote would not include co-owners who are in default.

--Provide that in any default by a co-owner, the association of co-owners, or an individual co-owner, could recover the costs of court proceedings and reasonable attorney fees, as determined by the court, to the extent that the condominium's documents specified.

--Clarify the responsibility of the co-owner (and any subsequent purchaser) for assessments that accrue during any period of redemption following foreclosure. [This proposed revision would require a change in the Revised Judicature Act, as proposed in Senate Bill 613.]

--Require that a lender notify the co-owner association in the event of a foreclosure.

--Require that new owners be notified of all interest, late fees, fines, costs and attorneys fees that are due as a result of an assessment delinquency within the association, as well as notification of unpaid assessments.

--Afford an association the right to modify the rights of co-owners to lease units after the end of the development and sales period (that is, once the developer is entirely out of the project).

--Prohibit residential builders from requiring a prospective purchaser of a condominium unit to obtain financing exclusively from a specified financial institution.

--Correct the statutory reference to the Construction Lien Act of Michigan, and to refer to such liens as construction liens, and not mechanics liens.

--Restrict the number of entities that could qualify as a "successor developer".

--Impose a statute of limitations on claims against developers, residential builders, architects, contractors, sales agents and managers of a condominium project.

To make these revisions, Senate Bill 612 has been introduced to amend the Condominium Act .

If Senate Bill 612 were adopted, then provisions of the Revised Judicature Act concerning mortgage foreclosure sales also would have to be amended so that the two laws complement each other. For that reason, Senate Bill 613 has been introduced, and tie-barred to Senate Bill 612. Senate Bill 613 would give a purchaser at a mortgage foreclosure sale the opportunity to recover the condominium assessments, or other community property assessments, which were paid during the period of redemption. The bill would assure that such payments would be added to the amounts necessary to redeem the foreclosure in the same manner as are taxes and other costs that were incurred to protect the foreclosed property.

THE CONTENT OF THE BILLS:

Generally, Senate Bill 612 would amend the Condominium Act (MCL 559.103 et al.) to make revisions regarding the development and administration of, and modifications to, condominiums. The bill would include a residential builder in certain provisions pertaining to developers; revise provisions concerning modification and improvements to accommodate persons with disabilities, including removal by an association and responsibility for maintenance costs; revise certain requirements relative to recording a condominium's master deed; require that a condominium association's bylaws provide for binding arbitration of certain disputes, claims, and grievances; revise provisions pertaining to unpaid assessments on a condominium unit, and foreclosure of liens and mortgages; allow a developer to withdraw undeveloped portions of a project that was not completed within a certain time frame; allow development in the air space above a parcel of property; revise procedures for amending condominium documents; revise provisions dealing with the rental of condominium units; and, establish a statute of limitations for an action against a developer, residential builder, licensed architect, contractor, sales agent, or manager of a condominium project.

In order to ensure compatible foreclosure procedures, Senate Bill 613 would amend the Revised Judicature Act (MCL 600.3204) to include condominium assessments and other assessments in amounts that a person must pay in order to redeem foreclosed property.

The bills are tie-barred. A more detailed description of both bills follows.

Definitions. "Developer" currently means a person engaged in the business of developing a condominium project as provided in the act, but does not include a real estate broker acting as agent for a developer in selling condominium units or other persons exempted from the definition by rule or order of the administrator (i.e., the Department of Consumer and Industry Services or an authorized designee). The bill also would exempt from the definition a "residential builder" who acquired title to one or more condominium units for the purpose of residential construction on those units and subsequent resale. "Residential builder" would mean a person licensed as such under Article 24 of the Occupational Code.

The bill would define "affiliate of developer" as any "person" (i.e., an individual, firm, corporation, or other entity) who controlled, was controlled by, or was under common control with a developer. A person would be controlled by another if the person 1) were a general partner, officer, member, director, or employee of that other person; 2) directly or indirectly, individually or with one or more persons or subsidiaries owned, controlled, or held power to vote more than 20 percent of the person; 3) controlled in any manner the election of a majority of the person's directors; or 4) had contributed more than 20 percent of the person's capital.

"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 with a condominium project. The bill would delete a provision that "co-owner" may include a land contract vendee if the condominium documents or the land contract so provides. The bill specifies, instead, that "co-owner" would include land contract vendees and vendors, who would be considered jointly and severally liable under the act and the condominium documents, except as the recorded condominium documents otherwise provided.

Consent of Co-owners for Easements. Under the current law, a valid easement always exists to the extent that a condominium unit or common element encroaches on any other condominium unit. The bill would retain this provision but specify that this section could 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 the land, without the consent of the co-owner of the unit to be burdened by the encroachment or easement.

Developer Responsibilities. Under the act, a developer or its duly authorized agents, representatives, and employees may maintain offices, model units, and other facilities on land submitted for a condominium development. The bill would include in that provision residential builders who received an assignment of rights from the developer.

A developer must pay all costs related to the condominium units or common elements while owned by the developer and restore the facilities to habitable status upon termination of use. Under the bill, the developer would have to pay those costs or be responsible for requiring a residential builder to pay them.

Modifications to Accommodate Persons With Disabilities. The act allows a co-owner to make improvements or modifications to his or her unit, including to common elements and to the route from the public way to the door of the unit, at the co-owner's own expense, if the purpose of the improvement or modification is to facilitate access to or movement within the unit for persons with disabilities, or to alleviate conditions that could be hazardous to persons with disabilities. Under the bill, this provision would apply to improvements or modifications made for persons with disabilities who resided in or regularly visited the condominium unit. If a co-owner makes those improvements or modifications, he or she must maintain liability insurance adequate to compensate for personal injuries caused by the exterior improvement or modification. The bill specifies that the insurance coverage also would have to name the condominium association of co-owners as an additional insured.

The act provides that a co-owner who has made exterior improvements or modifications to accommodate persons with disabilities must notify the condominium association in writing of his or her intention to convey or lease the condominium unit to another person at least 30 days before the conveyance or lease. The association then may require the co-owner to remove the improvement or modification at his or her own expense, or the association may remove it at the co-owner's expense. The association may not remove the improvement or modification, however, if the unit is conveyed or leased to a person with disabilities. The bill also would prohibit the association from removing the improvement or

modification if a co-owner intended to resume residing in that unit within 12 months.

The act provides that the association is responsible for the cost of any maintenance of the improvement or modification, unless the maintenance cannot reasonably be included with the regular maintenance performed by or paid for by the association, in which case the co-owner is responsible for the cost of maintenance. The bill specifies, instead, that the association of co-owners would be responsible for maintenance, repair, and replacement of the improvement or modification only to the extent of the cost currently incurred by the condominium association 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 for maintenance, repair, and replacement of those common elements would have to be assessed to and paid by the co-owner of the unit serviced by the improvement or modification.

Master Deed. The act provides that a consolidating master deed and plans showing a condominium as having been built must be recorded within 180 days after completion of construction in order to consolidate all phases or amendments of a condominium project. The bill would extend the allowable period for recording a master deed and plans to one year after completion. For purposes of calculating the timing, the bill specifies that conveyance by a developer to a residential builder, even though not an affiliate of the developer, would not be considered a sale to a non-developer co-owner until the residential builder conveyed the unit with a completed residence on it or until it contained a completed residence that was occupied.

The act requires that a master deed and any amendment to it be recorded. The act also requires that detailed architectural plans and specifications for the condominium project be filed with the local unit of government in which the project is located. Under the bill, this requirement would apply only if the condominium project contained any units that required architectural plans and specifications to construct.

Arbitration. A condominium association's bylaws would have to include a provision that disputes, claims, and grievances arising out of or relating to the interpretation of the application of the condominium document or out of disputes among or between co-owners would have to be submitted to arbitration. Parties to the dispute, claim, or grievance would have to accept the arbitrator's decision as final and binding, upon the election and written consent of the parties and written notice to the association. The commercial arbitration rules of the American Arbitration Association would apply.

In the absence of election of and written consent to arbitration by the parties, neither a co-owner nor the association would be prohibited from petitioning a court to resolve a dispute, claim, or grievance. If the parties elected arbitration, however, they could not petition the courts regarding the matter.

Unpaid Assessments/Foreclosure. The act provides that sums assessed to a co-owner by the condominium association of co-owners that are unpaid constitute a lien upon the unit or units in the project owned by that co-owner at the time of the assessment. This lien applies before other liens except state and federal tax liens on the condominium unit and sums unpaid on a first mortgage of record, except that past due assessments that are evidenced by notice of lien have priority over a first mortgage recorded after the notice of lien was recorded. Under the bill, this provision would apply to condominium association assessments together with interest on the unpaid assessments, collection and late charges, advances made by the association for taxes or other liens to protect its lien, attorney fees, and fines in accordance with the condominium documents.

The act specifies that the lien for unpaid assessments may be foreclosed by an action or by advertisement by the association of co-owners. Foreclosure must in the same manner as a foreclosure under laws relating to foreclosure of real estate mortgages by advertisement or judicial action. The bill would make an exception to that requirement. To the extent the condominium documents provided, the condominium association would be entitled to reasonable interest, expenses, costs, and attorney fees for foreclosure by advertisement or judicial action. The redemption period for a foreclosure would be six months from the date of sale, unless the property were abandoned, in which case the redemption period would be one month from the date of sale.

Under the bill, a co-owner of a condominium unit subject to foreclosure and any purchaser, grantee, successor, or assignee of the co-owner's interest in the unit, would be liable for assessments by the condominium association chargeable to the unit that became due before the redemption period expired, together with interest, advances made by the

association for taxes or other liens to protect its lien, costs, and attorney fees incurred in their collection.

The mortgagee of a first mortgage of record of a condominium unit would have to give notice to the condominium association 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 by certified mail addressed to the association's registered agent or, if that address were not registered with the Michigan Corporation and Securities Bureau, to the address the association provided to the mortgagee, if any, within 10 days after the first publication of the notice. The mortgagee would have to notify the association or the co-owner involved, if the association's address were not registered, by certified mail, of intent to commence foreclosure of the mortgage by judicial action, not less than 10 days before commencing the 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 it was recorded; the amount claimed to be due on the mortgage on the date of notice; and a description of the mortgaged premises that substantially conformed with the description contained in the mortgage. Failure of the mortgagee to provide notice would only provide the association with legal recourse and would not, in any event, invalidate any foreclosure proceeding between a mortgagee and mortgagor.

The act provides that if the mortgagee of a first mortgage of record or other purchaser of a condominium unit obtains title as a result of foreclosure of the first mortgage, the person, its successors, and assigns are not liable for the assessments by the administering body, chargeable to the unit, that became due before that person acquired title to the unit. The bill would make an exception to this provision for assessments having priority as liens on the condominium unit. The bill also would delete a provision specifying that unpaid assessments are common expenses collectible from all of the condominium unit owners.

The act provides that, upon the sale or conveyance of a condominium unit, all unpaid assessments against that unit must be paid out of the sale price or by the purchaser in preference over any other assessments or charges except for amounts due the state or any subdivision of the state or any municipality for taxes and special assessments due and unpaid and payments due under a first mortgage having priority. A purchaser or grantee is entitled to a statement from the association of co-owners setting forth the amount of unpaid assessments. The bill would add interest, late charges, fines, costs, and attorney fees to the assessments that must be paid out of the sale price or by the purchaser in preference over other amounts due, and to the statement a purchaser or grantee is entitled to receive from a condominium association.

Condominium Development.

Length of Project. Under the bill, if a developer did not complete development and construction of an entire condominium project, including proposed improvements, during a period ending 10 years from the date the developer began construction, then the developer, its successors, or assigns would have the right to withdraw from the project all undeveloped portions of it, 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 permitted the expansion, contraction, or rights of convertibility of units or common elements in the project, then the time period would be six years from the date the developer exercised its rights with respect to expansion, contraction, or rights of convertibility, whichever right was exercised last. The undeveloped portions of the project withdrawn also would have to be automatically granted easements for utility and access purposes throughout the condominium project for the benefit of the undeveloped portions of the project.

If the developer did not withdraw the undeveloped portions of the project from the project before the 10- or six-year time period expired, those lands would remain part of the project as general common elements and all rights to construct units on that land would cease. In that event, if it became necessary to adjust percentages of value as a result of fewer units existing, a co-owner or the condominium association of co-owners could bring an action to require revisions to percentages of value.

Air Space. The bill specifies that a condominium project could 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" (that is, a project could be built up from a particular parcel of property, regardless of whether that parcel already was used for another purpose). Such a condominium project could be provided easements, licenses, and other rights necessary to provide access to and otherwise serve the project's needs from the underlying surface parcel. This provision would apply to any question regarding whether any air space existing "over a fee" could be

submitted to, and established as, a condominium under the act and would apply to development of "air space over a fee" as a condominium. (Generally speaking, the term "fee" refers to the greatest ownership interest a person can have in real property.)

Percentage of Value Assessments. Under the existing law, common expenses associated with the maintenance, repair, renovation, restoration, or replacement of a limited common element must be specially assessed against the condominium unit to which that common element was assigned at the time the expense was incurred, or in the alternative, to all of the units involved. The law requires that the expenses be assessed to the units in proportion to the number of votes in the association of co-owners appertaining to each unit. This requirement would be deleted under the bill, and instead, all common expenses not specially assessed could 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.

Amendments to Condominium Documents. The act specifies that condominium documents may be amended without the consent of co-owners or mortgagees if the amendment does not materially alter or change the rights of a co-owner or mortgagee and if the condominium documents contain a reservation of the right to amend for that purpose to the developer or the condominium association of co-owners. Such an amendment includes a modification of the types and sizes of unsold condominium units and their appurtenant limited common elements. The bill specifies that an amendment that does not materially change the rights of a mortgagee also would include any change in the condominium documents that, in the written opinion of a licensed real estate appraiser, did not detrimentally change the value of any unit affected by the change.

Under the bill, mortgagees would not be required to appear at any meeting of co-owners, although their approval would have to be solicited through written ballots. Any mortgagee ballot not returned within 90 days of mailing would be counted as approval for the change.

The act requires that co-owners "and mortgagees of record" be notified of proposed amendments at least 10 days before an amendment is recorded. The bill would delete "and mortgagees of record" from that requirement.

The act generally requires the consent of at least two-thirds of the co-owners and mortgagees to amend a master deed, bylaws, and the condominium subdivision plan. The bill specifies that the affirmative vote of two-thirds of co-owners would be considered two-thirds of all co-owners entitled to vote as of the record date for a vote.

The bill would establish a procedure that would apply to the extent that the act or condominium documents required a vote of mortgagees of units on amendment of the documents. Only mortgagees who held a duly recorded mortgage or a duly recorded assignment of a mortgage against one or more condominium units in the project on the "control date" would be entitled to vote on an amendment. (The date on which the proposed amendment was approved by the requisite majority of co-owners would be considered the control date.) Each mortgagee entitled to vote would have one vote for each condominium unit in the project that was subject to its mortgage or mortgages, without regard to how many mortgages that mortgagee held on a particular condominium unit.

The condominium association of co-owners would have to give each mortgagee entitled to vote notice containing all of the following:

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

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

--An envelope addressed to the entity authorized by the board of directors for tabulating mortgage votes.

--A statement containing language specified in the bill, explaining the adoption of the amendment or amendments by co-owners and the mortgagee voting process.

--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.

--A statement of the number of condominium units subject to the mortgagee's mortgage or mortgages.

--The date by which the mortgagee would have to return its ballot.

The condominium association would have to 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. An amendment would be considered to be approved by the mortgagees if it were approved by 66-2/3 percent of the mortgagees whose ballots were received, or were considered to be received, in accordance with the act, by the entity authorized by the board of directors to tabulate mortgagee votes within 100 days after the control date. The condominium association would have to maintain a copy of the notice, proofs of mailing of the notice, and the ballots returned by mortgagees for a period of two years after the control date.

Mortgagees would be entitled to vote on amendments to the condominium documents only under the following circumstances:

--Termination of the condominium project.

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

--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.

--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 and/or maintaining insurance from the condominium association to the condominium unit subject to the mortgage.

--The modification or elimination of an easement benefitting the condominium unit subject to the mortgage.

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

Association Relief from Co-owner Default. Under the current law, a default by a co-owner entitles the association of co-owners to certain kinds of relief. An individual co-owner is not entitled to relief. Instead, the law specifies that in a proceeding arising because of an alleged default by a co-owner, the association of co-owners, if successful, may recover the costs of the proceeding and reasonable attorney fees as may be determined by the court. Under the bill, either the association of co-owners or an individual co-owner would be required to recover costs and reasonable attorney fees as determined by the court, to the extent the condominium documents expressly so provide.

In addition and under the law, a co-owner may maintain an action against the association of co-owners and its officers and directors to compel them to enforce the terms and provisions of the condominium documents. Senate Bill 612 would retain this provision, but add that in such a proceeding, the association of co-owners or the co-owner, if successful, would recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent that the condominium documents expressly provide. Further, the bill would retain the provision that 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 provision of the condominium documents or the act.

Rental of Condominium Units. Currently, unless a developer provides otherwise in the condominium documents, a co-owner, including the developer, may rent any number of units at any time without limitation as to the term of occupancy. The bill would delete that provision. Instead, 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 would be controlled by the provisions of the condominium documents as recorded by the developer and could not be changed without developer approval. After the transitional control date, the association of co-owners could amend the condominium documents as to the rental of units or term of occupancy. The amendment would not affect the rights of any lessors or lessees under a written lease otherwise in compliance with the act and executed before the bill's effective date, or condominium units owned or leased by the developer.

The act requires that a co-owner, including the developer, desiring to rent or lease a condominium unit "for a period of longer than 30 consecutive days" disclose that fact in writing to the association at least 10 days before presenting a lease form to a potential lessee and, at the same time, supply the association with a copy of the exact lease form for its review for compliance with the condominium documents. The bill would delete "for a period of longer than 30 consecutive days" from that provision and would extend the disclosure requirement to a co-owner otherwise agreeing to grant possession of a unit to a potential lessee. The bill also specifies that, if no lease form were to be used, the co-owner or developer would

have to supply the association with the potential lessee's name and address, along with the rental amount and due dates under the proposed agreement. The bill would delete a requirement that a developer proposing to rent units before the transitional control date notify either the advisory committee or each co-owner in writing.

The act provides that, when a co-owner is in arrearage to the association for assessments, the association may give written notice of the arrearage to a tenant occupying a co-owner's unit. The tenant then must deduct from rental payments due the co-owner the arrearage and future assessments as they fall due and pay them to the association. The deduction does not constitute a breach of the rental agreement by the tenant. The bill specifies that, if the tenant, after being notified of the co-owner's arrearage, failed or refused to remit to the association rent otherwise due the co-owner, the association could issue a statutory notice to quit for nonpayment of rent and enforce the notice by summary proceeding or initiate eviction proceedings pursuant to the act.

Financing of a Condominium Unit. The act prohibits a developer or sales agent from requiring that a prospective purchaser of a condominium unit obtain financing exclusively from a specific financial institution. The bill would extend that prohibition to a residential builder.

Statute of Limitations. The bill specifies that a person could not maintain any action against any developer, residential builder, licensed architect, contractor, sales agent, or manager of the development or construction of the common elements, or the management , operation, or control of a condominium project, more than three years from the transitional control date or two years from the date the cause of action accrued, whichever occurred later.

Senate Bill 613

The Revised Judicature Act provides that, if after the sale of foreclosed property, the purchaser, the purchaser's heirs, executors, or administrators, or any person lawfully claiming under one of those parties pays certain amounts necessary to redeem the property, then redemption is made upon the filing of certain documents with the register of deeds. Under this provision, the purchaser, the purchaser's heirs, executors, or administrator, or any person lawfully claiming under one of those parties must pay taxes assessed against the property, amounts necessary to redeem senior liens from foreclosure, or premiums on an insurance policy covering buildings located on the property that would have been the duty of the mortgagor under the terms of the mortgage if the mortgage had not been foreclosed and that were necessary to keep the policy in force until the redemption period expired.

The bill would add to those required payments condominium assessments, homeowner association assessments, or community association assessments. The bill also would add a receipt or copy of the canceled check for those payments to the items that must be filed with the register of deeds.

HOUSE COMMITTEE ACTION:

The House Committee on Local Government and Urban Policy made no changes to the Senate-passed version of Senate Bill 613.

However, the committee adopted a substitute for Senate Bill 612. Senate Bill 612 (H-1) differs from the Senate-passed version of Senate Bill 612 in three ways. New provisions would 1) allow a condominium association to apportion certain expenses according to percentage of value assessment protocols; 2) require co-owner approval of encroachments or easements; and, 3) provide for association and individual co-owner relief in judgments against co-owners who are in default. A more detailed explanation of each provision in the substitute that was adopted by members of the House committee follows.

Percentage of Value Assessments. Under the existing law, common expenses associated with the maintenance, repair, renovation, restoration, or replacement of a limited common element must be specially assessed against the condominium unit to which that common element was assigned at the time the expense was incurred, or in the alternative, to all of the units involved. The law requires that the expenses be assessed to the units in proportion to the number of votes in the association of co-owners appertaining to each unit. This requirement would be deleted under the bill, and instead, all common expenses not specially assessed could 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.

Consent of Co-owners for Easements. Under the current law, a valid easement always exists to the extent that a condominium unit or common element encroaches on any other condominium unit. The bill would retain this provision but specify that this section

could 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 such land, without the consent of the co-owner of the unit to be burdened by the encroachment or easement.

Association and Individual Co-owner Relief from Co-owner Default. Under the current law, a default by a co-owner entitles the association of co-owners to certain kinds of relief, and an individual co-owner is not entitled to relief. Instead, the law specifies that in a proceeding arising because of an alleged default by a co-owner, the association of co-owners if successful, may recover the costs of the proceeding and reasonable attorney fees as may be determined by the court. Under Senate Bill 612 (H-1), either the association of co-owners or an individual co-owner would be required to recover costs and reasonable attorney fees as determined by the court, to the extent the condominium documents expressly so provide.

In addition and under the law, a co-owner may maintain an action against the association of co-owners and its officers and directors to compel them to enforce the terms and provision of the condominium documents. Senate Bill 612 (H-1) would retain this provision, but add that in such a proceeding, the association of co-owners or the co-owner, if successful, would recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent that the condominium documents expressly provide. Further, the bill would retain the provision that 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 the act.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that the bills would have no fiscal impact on state or local government. (10-4-00)

ARGUMENTS:

For:

According to committee testimony, Michigan was the second state to pass a Condominium Act, more than 20 years ago. Since that law was enacted, condominium projects have flourished, as variations of condominium developments have emerged under the legal framework provided by the law. However, in some instances the provisions of the law have become outdated and revisions are necessary so that current practices are in line with the laws on the law books. For example, when the original law passed, it was customary for condominium developers to enter into partnerships with residential builders to plan and implement an entire land-based development, customarily referred to as 'site condominiums'. When construction of the units was completed and after all the units had been sold, they turned over the administration of the development to an association of resident co-owners. Although this kind of development is still undertaken, it has become customary that condominium associations and developers undertake expansions of 'site condominium' projects. In these arrangements, residential builders are not co-developers or successor-developers, but instead they work under contract with the developers and/or association to build new units. This new role for residential builders is not specified under the current law. Indeed, without changes in the current law proposed by Senate Bill 612, all site condominium residential builders become successor-developers, and in doing so they assume responsibilities they do not want, and rights that more properly belong to the association co-owners.

In addition, the current act does not account for condominium projects that are not land-based, but instead are condominium projects where the unit consists only of land or air space not enclosed within any structure.

For:

Currently, the Condominium Act allows a co-owner to improve his or her unit under certain conditions, in order to accommodate a person--customarily a family member--with disabilities, if the co-owner maintains liability insurance. However, the law requires that exterior improvements be removed if a co-owner rents the unit, unless the unit is leased to a person with disabilities who needs the same type of improvement, or to a person whose parent, spouse, or child is disabled and requires the same type of improvement. Senate Bill 612 would change these provisions to 1) allow improvements within the unit for people with disabilities "who reside in or regularly visit the unit", 2) allow a co-owner to retain exterior improvements if he or she plans to resume residing in the unit within 12 months, and 3) require the association of co-owners to be named as an additional insured party on the co-owner's liability insurance policy. The legislation also clarifies that costs of maintenance, repair, and replacement of the improvement that exceed those currently incurred by the co-owners association would be paid by the co-owner who improved the unit.

POSITIONS:

The Department of Consumer and Industry Services supports the bills. (11-7-00)

The Michigan Bar Association, Real Property Section, supports the bills. (11-7-00)

The Michigan Bankers Association supports the bills. (11-6-00)

Analyst: J. Hunault

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