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

SFA BILL ANALYSIS

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

Senate Bill 612 (Substitute S-4 as passed by the Senate)
Senate Bill 613 (as passed by the Senate)
Sponsor: Senator Bill Bullard, Jr.
Committee: Judiciary

Date Completed: 9-11-00

CONTENT

Senate Bills 612 (S-4) would amend the Condominium Act to make revisions regarding the development and administration of, and modifications to, condominiums. The bill would do all of the following:

- **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.**
- **Establish a statute of limitations for an action against a developer, residential builder, licensed architect, contractor, sales agent, or manager of a condominium project.**

Senate Bill 613 would amend the Revised Judicature Act 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.

Senate Bill 612 (S-4)

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 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% 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% 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.

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 nondeveloper 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.)

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 mortgagee 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% 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.

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 amendment'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.

MCL 559.103 et al. (S.B. 612)
600.3204 (S.B. 613)

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

Fiscal Analyst: M. Tyszkiewicz

S9900\s612sb