

SENATE BILL No. 549

May 7, 2009, Introduced by Senators BASHAM, GLEASON and SWITALSKI and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1978 PA 59, entitled
"Condominium act,"
by amending sections 54 and 90a (MCL 559.154 and 559.190a), as
amended by 2002 PA 283.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 54. (1) The bylaws shall contain provisions for the
2 designation of ~~persons~~**A PERSON** to administer the affairs of the
3 condominium project and shall require that ~~those persons~~**THE PERSON**
4 keep books and records with a detailed account of the expenditures
5 and receipts affecting the condominium project and its
6 administration, and ~~which~~**THAT** specify the operating expenses of
7 the project.

8 (2) The bylaws shall provide that the person designated to
9 administer the affairs of the project shall be assessed as the

1 person in possession for any tangible personal property of the
2 project owned or possessed in common by the co-owners. Personal
3 property taxes based on that tangible personal property shall be
4 treated as expenses of administration.

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

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

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

22 (6) The bylaws shall provide an indemnification clause for the
23 board of directors of the association of co-owners. The
24 indemnification clause shall require that 10 days' notice ~~, before~~
25 ~~payment under the clause,~~ be given to the co-owners **BEFORE PAYMENT**
26 **IS MADE UNDER THE CLAUSE.** The indemnification clause shall exclude
27 indemnification for willful and wanton misconduct and for gross

1 negligence.

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

6 (8) The bylaws shall contain a provision providing that
7 arbitration of ~~disputes, claims, and grievances~~ **A DISPUTE, CLAIM,**
8 **OR GRIEVANCE** arising out of or relating to the interpretation of
9 the application of the condominium document or arising out of
10 ~~disputes~~ **A DISPUTE** among or between co-owners shall be submitted to
11 arbitration and that the parties to the dispute, claim, or
12 grievance shall accept the arbitrator's decision as final and
13 binding, upon the election and written consent of the parties to
14 the ~~disputes, claims, or grievances~~ **DISPUTE, CLAIM, OR GRIEVANCE**
15 and upon written notice to the association. The commercial
16 arbitration rules of the American arbitration association are
17 applicable to any such arbitration.

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

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

25 (11) Subsections (8), (9), and (10) apply only to condominium
26 projects established on or after ~~the effective date of the~~
27 ~~amendatory act that added this subsection~~ **MAY 9, 2002.**

1 (12) THE BYLAWS SHALL PROVIDE THAT CO-OWNERS MAY ATTEND ALL
2 MEETINGS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION OF CO-OWNERS
3 EXCEPT AS PROVIDED IN SUBSECTION (15). THE CO-OWNERS' RIGHT TO
4 ATTEND THE MEETINGS INCLUDES THE RIGHT TO SPEAK ON A DESIGNATED
5 AGENDA ITEM.

6 (13) THE BYLAWS SHALL PROVIDE THAT, EXCEPT IN THE CASE OF AN
7 EMERGENCY, WRITTEN NOTICE OF A MEETING OF THE BOARD OF DIRECTORS OF
8 THE ASSOCIATION OF CO-OWNERS SHALL BE POSTED IN A CONSPICUOUS PLACE
9 ON THE CONDOMINIUM PROPERTY NOT LESS THAN 14 DAYS BEFORE THE
10 MEETING. THE NOTICE SHALL INCLUDE ALL AGENDA ITEMS FOR THE MEETING.
11 THE NOTICE OF A MEETING AT WHICH REGULAR ASSESSMENTS AGAINST CO-
12 OWNERS WILL BE CONSIDERED SHALL CONTAIN A SPECIFIC STATEMENT THAT
13 ASSESSMENTS WILL BE CONSIDERED AND DESCRIBE THE NATURE OF THE
14 ASSESSMENTS.

15 (14) THE BYLAWS SHALL PROVIDE THAT IN THE EVENT OF AN
16 EMERGENCY REQUIRING A MEETING OF THE BOARD OF DIRECTORS OF THE
17 ASSOCIATION OF CO-OWNERS WITHOUT NOTICE AS REQUIRED IN THIS
18 SECTION, THE BOARD OF DIRECTORS OF THE ASSOCIATION OF CO-OWNERS
19 SHALL PROVIDE THE DETAILS OF THAT EMERGENCY TO THE CO-OWNERS
20 PRESENT AT THE NEXT REGULAR MEETING OF THE BOARD OF DIRECTORS OF
21 THE ASSOCIATION OF CO-OWNERS.

22 (15) THE BOARD OF DIRECTORS OF THE ASSOCIATION OF CO-OWNERS
23 MAY MEET IN A CLOSED SESSION ONLY FOR 1 OR MORE OF THE FOLLOWING
24 PURPOSES:

25 (A) TO CONSIDER THE DISMISSAL, SUSPENSION, OR DISCIPLINING OF;
26 TO HEAR COMPLAINTS OR CHARGES BROUGHT AGAINST; OR TO CONSIDER A
27 PERIODIC PERSONNEL EVALUATION OF AN OFFICER, EMPLOYEE, STAFF

1 MEMBER, OR INDIVIDUAL AGENT, IF THE NAMED PERSON REQUESTS A CLOSED
2 HEARING. A PERSON REQUESTING A CLOSED HEARING MAY RESCIND THE
3 REQUEST AT ANY TIME, IN WHICH CASE THE MATTER AT ISSUE SHALL BE
4 CONSIDERED ONLY IN OPEN SESSIONS.

5 (B) FOR STRATEGY AND NEGOTIATION SESSIONS CONNECTED WITH THE
6 NEGOTIATION OF A COLLECTIVE BARGAINING AGREEMENT IF EITHER
7 NEGOTIATING PARTY REQUESTS A CLOSED HEARING.

8 (C) TO CONSULT WITH ITS ATTORNEY REGARDING TRIAL OR SETTLEMENT
9 STRATEGY IN CONNECTION WITH SPECIFIC PENDING LITIGATION, ONLY IF AN
10 OPEN MEETING WOULD HAVE A DETRIMENTAL FINANCIAL EFFECT ON THE
11 LITIGATING OR SETTLEMENT POSITION OF THE ASSOCIATION OF CO-OWNERS.

12 (D) TO REVIEW THE SPECIFIC CONTENTS OF AN APPLICATION FOR
13 EMPLOYMENT IF THE CANDIDATE REQUESTS THAT THE APPLICATION REMAIN
14 CONFIDENTIAL. HOWEVER, ALL INTERVIEWS FOR EMPLOYMENT SHALL BE HELD
15 IN OPEN SESSIONS.

16 (16) SUBSECTIONS (12), (13), (14), AND (15) SHALL APPLY ONLY
17 TO BYLAWS CREATED ON OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
18 ACT THAT ADDED THIS SUBSECTION.

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

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

26 (3) Only those mortgagees who hold a recorded first mortgage
27 or a recorded assignment of a first mortgage against 1 or more

1 condominium units in the condominium project on the control date
2 are entitled to vote on the amendment. Each mortgagee entitled to
3 vote shall have 1 vote for each condominium unit in the project
4 that is subject to its mortgage or mortgages, without regard to how
5 many mortgages the mortgagee may hold on a particular condominium
6 unit.

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

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

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

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

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

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

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

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

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

25 "A review of the association records reveals that you are the
26 holder of 1 or more mortgages recorded against title to 1 or more
27 units in the (name of project) condominium. The co-owners of the

1 condominium adopted the attached amendment to the condominium
2 documents on (control date). Pursuant to the terms of the
3 condominium documents and/or the Michigan condominium act, you are
4 entitled to vote on the amendment. You have 1 vote for each unit
5 that is subject to your mortgage or mortgages.

6 The amendment will be considered approved by first mortgagees
7 if it is approved by 66-2/3% of those mortgagees. In order to vote,
8 you must indicate your approval or rejection on the enclosed
9 ballot, sign it, and return it not later than 90 days after this
10 notice (which date coincides with the date of mailing). Failure to
11 timely return a ballot will constitute a vote for approval. If you
12 oppose the amendment, you must vote against it."

13 (6) The amendment is considered to be approved by the first
14 mortgagees if it is approved by 66-2/3% of the first mortgagees
15 whose ballots are received, or are considered to be received, in
16 accordance with section 90(2), by the entity authorized by the
17 board of directors to tabulate mortgagee votes.

18 (7) The association of co-owners shall mail the notice
19 required under subsection (4) to the first mortgagee at the address
20 provided in the mortgage or assignment for notices.

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

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

1 (a) Termination of the condominium project.

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

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

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

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

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

21 (g) Amendments requiring the consent of all affected
22 mortgagees under section 90(4).

23 **(10) NOTWITHSTANDING ANY PROVISION OF THE CONDOMINIUM**
24 **DOCUMENTS TO THE CONTRARY, IF AN ELECTION IS HELD FOR BOARD OF**
25 **DIRECTORS OF A CONDOMINIUM ASSOCIATION, ALL CANDIDATES SHALL**
26 **RECEIVE A BALLOT TO ENSURE THAT THEIR NAMES ARE FAIRLY REPRODUCED**
27 **ON THE BALLOT. THE BOARD OR OTHER PARTIES WHO CONDUCT THE ELECTION**

1 SHALL KEEP THE BALLOTS CAST IN THE ELECTION AVAILABLE FOR
2 INSPECTION BY THE CANDIDATES FOR AT LEAST 6 MONTHS AFTER THE
3 ELECTION DATE. ANY VOTER WHO CLAIMS NOT TO HAVE RECEIVED A BALLOT
4 SHALL BE AFFORDED AN OPPORTUNITY BY THE PARTY CONDUCTING THE
5 ELECTION TO ENSURE THAT HIS OR HER VOTE IS INCLUDED IN THE FINAL
6 ELECTION TALLY.