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BILL ANALYSIS



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Senate Bill 914 (as introduced 3-21-18)
Sponsor: Senator Dave Robertson
Committee: Local Government

Date Completed: 4-10-18

CONTENT

The bill would amend the Condominium Act to do the following:

- Allow an association of co-owners to send certain documents or information by electronic transmission to a co-owner who had given the association an e-mail address or other means to receive electronic communication.
- Permit association bylaws to contain provisions allowing the board of directors of the association of co-owners to take action without meeting if a majority of the board members consented to the action in writing.
- Allow a mortgagee of a co-owner to inspect the records of the association during regular business hours.
- Allow a co-owner or an association director to inspect the records of the association during regular business hours, if certain criteria were met.
- Allow a co-owner or director to apply to the circuit court for an order to compel an inspection, under certain circumstances.
- Require a court that ordered an association to allow the inspection of records also to order the association to pay the co-owner's or director's costs, including reasonable attorney fees, incurred to obtain the order.
- Allow the records kept by or on behalf of an association and a board to be withheld from inspection for specific reasons.
- Allow an association to prohibit a co-owner from inspecting its records under certain circumstances.
- Require an association that limited an inspection of a list of co-owners to provide a reasonable means for a co-owner to communicate with all other co-owners concerning the election of directors and other affairs of the association.
- Allow an association to require a co-owner who wished to communicate with other co-owners to pay the reasonable costs of labor and materials and third-party charges incurred by the association to fulfill the request.

The bill would take effect 90 days after it was enacted.

Electronic Transmission; Amendment Notification

Under the bill, notwithstanding any provision contained in the Nonprofit Corporation Act, if any provision of the Condominium Act or the condominium documents provided for an association of co-owners to deliver or send a document or information to a co-owner, the association could send the document or information by electronic transmission if the co-owner had provided the association with an electronic mail address or other means by which the co-owner could receive an electronic transmission.

Under the Act, condominium documents may be amended without the consent of co-owners or mortgagees if the amendment does not materially alter or change their rights and if the documents reserve to the developer or the association of co-owners the right to amend the documents for that purpose. The master deed, bylaws, and condominium subdivision plan also may be amended, even if the amendment will materially alter or change the rights of the co-owners or mortgagees, with the consent of at least two-thirds of the votes of those co-owners or mortgagees.

Co-owners must be notified of proposed amendments at least 10 days before the amendment is recorded. Under the bill, notice would have to be provided by hand delivery, first-class mail, or electronic transmission.

The Act also specifies that an amendment to the master deed or other recorded condominium document is not effective until the amendment is recorded. A copy of the recorded amendment must be delivered to each co-owner of the project. The bill would require a copy to be delivered by hand, first-class mail, or electronic transmission.

"Electronic transmission" would mean any form of communication that meets all of the following requirements:

- Does not directly involve the physical transmission of paper.
- Creates a record that can be retained and retrieved by the recipient or accessed by the recipient electronically through a website.
- Can be directly reproduced in paper form by the recipient through an automated process.

For the purposes of the Act, the record would be considered a writing.

Bylaw Provisions

The Act allows bylaws to contain any of the following:

- Provisions for the administration of the condominium project not inconsistent with the Act or any other applicable laws.
- Restrictions on the sale, lease, license to use, or occupancy of condominium units.
- Provisions for insuring the co-owners against risks affecting the condominium project, without prejudice to the right of each co-owner to insure a condominium unit on the co-owner's own account and for the co-owner's benefit.

Notwithstanding any provision in the Nonprofit Corporation Act, the bill also would allow bylaws to contain provisions allowing any action required or permitted to be taken at a meeting of the board of directors of the association of co-owners or a committee of the board without a meeting, if a majority of the members of the board or of the committee consented to the action in writing. A record of any written consent would have to be filed and made part of the association of co-owners' books and records. The consent would have the same effect as a vote of the board or committee for all purposes.

Records Inspection

Under the Condominium Act, the books, records, contracts, and financial statements concerning the administration and operation of a condominium project must be available for examination by any of the co-owners and their mortgagees at convenient times. The bill would delete this provision.

Under the bill, a mortgagee of a co-owner could inspect the records of the association of co-owners during regular business hours. A co-owner, in person or by an attorney or other agent, could inspect the records of the association during regular business hours, subject to all of the following:

- The inspection was for a proper purpose.
- The co-owner gave the association written demand describing with reasonable particularity the purpose of the inspection and the records the co-owner desired to inspect.
- The records sought were directly connected with the purpose described in the demand.
- The demand was delivered to the association or its registered office in Michigan or at its principal place of business.
- If the person seeking to inspect the records were an attorney or other agent, the demand included a power of attorney or other writing that authorized the attorney or other agent to act on behalf of the co-owner.

If an association of co-owners did not allow an inspection within five business days after a demand was received, or imposed unreasonable conditions on the inspection, the co-owner could apply to the circuit court for the county in which the principal place of business or registered office of the association was located for an order to compel the inspection. If the co-owner established that the co-owner had complied with the requirements listed above, the court could order the association to permit the inspection, prescribe conditions and limitations on the inspection, and award further relief that it considered just and proper.

A director of an association of co-owners could inspect the records of the association during regular business hours for a purpose reasonably related to his or her position as a director. The director could apply to the circuit court for the county in which the principal place of business or registered office of the association was located for an order to compel the inspection. The court could order the association to permit the inspection, prescribe conditions for the inspection, and award further relief that it considered just and proper.

If the court ordered the association of co-owners to allow the inspection of records, it also would have to order the association to pay the co-owner's or director's costs, including reasonable attorney fees, incurred to obtain the order. However, the court could not order the payment of these costs if the association established that it failed to permit the inspection in good faith because it had a reasonable basis to doubt the right of the co-owner or director to inspect the records demanded.

Notwithstanding any other provisions of the Act, articles of incorporation, bylaws, or a resolution of the board of directors, the records kept by or on behalf of the association of co-owners and the board could be withheld from inspection under the bill's provisions to the extent that the portion withheld related to any of the following:

- Communications with legal counsel that were subject to the attorney-client privilege or attorney work product pertaining to pending litigation or other matters related to the condominium project.
- Meeting minutes or other records of an executive session of a board meeting held to discuss an opinion of legal counsel.
- Social Security numbers, bank account numbers, or credit card numbers of individual co-owners.
- Any records that, if disclosed, would violate Michigan or Federal law.

Notwithstanding the articles of incorporation or condominium documents or any other provision of the Act, the board of directors of an association of co-owners could, by resolution,

prohibit a co-owner from inspecting the records of the association if the board determined in good faith that one or more of the following applied to the proposed inspection:

- It would impair the rights of privacy or free association of the co-owners.
- It would impair the lawful purposes of the association.
- It was not in the best interest of the association.

If an association of co-owners limited the inspection of the list of co-owners, it would have to provide a reasonable means for the co-owner to communicate with all other co-owners concerning the election of directors and other affairs of the association. The association could require a co-owner that wished to communicate with other co-owners to pay the reasonable costs of labor and materials and third-party charges incurred by the association under these provisions, including a charge for copies of records provided to a co-owner and for labor costs directly associated with searching for, locating, and examining the records demanded.

MCL 599.106 et al.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would likely have a minor negative fiscal impact on local government. It would allow a co-owner or an association director to seek an order to compel inspection of records from the appropriate county circuit court. Court operations and administrative costs could increase according to case volume, but would likely be minimal.

The bill would have no fiscal impact on the State.

Fiscal Analyst: Elizabeth Raczkowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.