

CONDOMINIUM ACT (EXCERPT)
Act 59 of 1978

559.190a Voting procedures.

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

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

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

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

- (a) A copy of the amendment or amendments as passed by the co-owners.
- (b) A statement of the date that the amendment was approved by the requisite majority of co-owners.
- (c) An envelope addressed to the entity authorized by the board of directors for tabulating mortgagee votes.
- (d) A statement containing language in substantially the form described in subsection (5).
- (e) A ballot providing spaces for approving or rejecting the amendment and a space for the signature of the mortgagee or an officer of the mortgagee.
- (f) A statement of the number of condominium units subject to the mortgage or mortgages of the mortgagee.

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

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

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

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

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

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

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

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

- (a) Termination of the condominium project.
- (b) A change in the method or formula used to determine the percentage of value assigned to a unit subject to the mortgagee's mortgage.
- (c) A reallocation of responsibility for maintenance, repair, replacement, or decoration for a condominium unit, its appurtenant limited common elements, or the general common elements from the association of co-owners to the condominium unit subject to the mortgagee's mortgage.
- (d) Elimination of a requirement for the association of co-owners to maintain insurance on the project as a whole or a condominium unit subject to the mortgagee's mortgage or reallocation of responsibility for obtaining or maintaining, or both, insurance from the association of co-owners to the condominium unit subject to the mortgagee's mortgage.

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

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

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

History: Add. 2000, Act 379, Imd. Eff. Jan. 2, 2001;—Am. 2002, Act 283, Imd. Eff. May 9, 2002.