

REAL PROPERTY LAW SECTION
Respectfully submits the following position on:

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HB 4015

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The Real Property Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Real Property Law Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Real Property Law Section is 3,627.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 18. The number who voted in favor to this position was 14. The number who voted opposed to this position was 0.

Report on Public Policy Position**Name of section:**

Real Property Law Section

Contact person:

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Bill Number:

[HB 4015](#) (Lucido) Housing; condominium; co-owner approval of budgets; provide for, and require LARA to provide investigative, enforcement, and dispute resolution services in conflicts between a co-owner and an association. Amends sec. 107 of [1978 PA 59](#) (MCL [559.207](#)); adds sec. 70 & repeals sec. 139 of 1978 PA 59 (MCL [559.239](#)).

Date position was adopted:

February 15, 2017

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

18

Number who voted in favor and opposed to the position:

14 Voted for position

0 Voted against position

0 Abstained from vote

4 Did not vote (absent)

Position:

Oppose

Explanation of the position, including any recommended amendments:

HB 4015 requires a majority of co-owners of a condominium to approve the annual budget under a new Section 70. It also amends MCL 559.207 to authorize the administrator to investigate and seek to resolve disputes related to an association's failure to comply with the condominium documents. Finally, it provides for repeal of MCL 559.239 (which prohibits a co-owner from asserting as a defense to non-payment of assessments that the association has not provided services or management to the co-owner). The Real Property Law Section of the State Bar of Michigan opposes HB 4015 for the following reasons:

- (1) Section 70 singles out condominium associations for different corporate governance than non-profit entities generally (including subdivision associations, cooperatives and summer resort associations). Under long-standing corporate law, the board of directors (elected by unit co-owners) makes decisions regarding budgeting and assessments. HB 4015 would require that annual budgets be approved by a majority vote of all co-owners rather than board members. There is no reason in the case of condominium associations to deviate from long-standing law and custom regarding corporate governance. The bill seeks to redress a perceived issue of condominium co-owners being charged excessive condominium assessments. Aggrieved owners, though, already have adequate recourse under existing law – they can recall board members and/or elect board members who support their views.

As a result of Section 70's provisions, condominium associations could face a choice between significant delays in being able to pay association's bills and having to levy multiple additional assessments in order to make up the difference. This serves to take away the basic power of the board of directors, which has a fiduciary duty to administer the association, and alters the manner in which associations have been successfully governed since the establishment of condominiums in Michigan in 1963. The result of the co-owners' refusal to approve the annual budget would result in the association not being able to pay its bills, which would derail the successful administration and operation of the condominium, and depreciate the value and marketability of the individual condominium units. Also, the levy of additional assessments to pay the bills could jeopardize the condominium project certification with the Federal Housing Administration (FHA). There is also the additional financial burden associated with noticing and holding multiple meetings that may be required due to lack of a quorum and disapproval of a budget.

- (2) The proposed amendments to MCL 559.207 would permit a co-owner to request assistance of the "administrator" to resolve its dispute with the association arising from violation of condominium documents or the Condominium Act, and would empower the "administrator" to investigate the alleged violation, seek to resolve the dispute, or request the county prosecuting attorney or the state Attorney General to sue the association for injunctive or other relief. This will encourage every co-owner who is being pursued by their association for a violation of their condominium documents to file a claim with the state, alleging that the condominium documents have not been enforced properly, which will impair ability of the association to function. Condominium associations must continue to have the ability to govern their projects efficiently and enforce their documents. Further, the "administrator" was a position that functioned only as part of the former governing body overseeing Michigan condominiums, which has not existed since 1983. The bill does not address who will handle these "assistance" functions at the State level or how the increased costs of such functions will be funded. There is concern that requests for State assistance will lead to delays due to a backlog, which could jeopardize the financial security of associations and physical safety of co-owners and occupants; create a statute of limitations problem; or otherwise disrupt condominium projects in their typical day to day administration.
- (3) HB 4015 would repeal MCL 559.239, which prohibits a co-owner from asserting in an answer, or set off to a complaint brought by the association for non-payment of assessments the fact that the association of co-owners or its agents have not provided the services or management to a co-owner(s). This statute protects condominiums from potential financial ruin from co-owner claims that the association is failing to provide services. The obligation to pay assessments is an independent covenant from the association's obligation to provide services. Assessments are the lifeblood of an association and their collection should not be made subject to such defenses. Co-owners already have an adequate remedy for an association's failure to provide

services. They have the right to elect board members who share their views regarding the manner in which services are to be provided, and they also have an independent right to sue for mismanagement or to file a counter claim for lack of services.

- (4) Finally, the aggregate effect of HB 4015 would be to discourage co-owners from volunteering their time to serve on condominium association boards. Such boards are almost always composed of volunteers that serve without compensation. It is often difficult to get co-owners to sacrifice their free time to serve on a board. Making budgeting and assessment collection more difficult, and subjecting volunteer directors to increased litigation risk will discourage co-owners from serving on boards.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2017-HB-4015>