

Summary of Amendments to the Michigan Condominium Act

Susan Hlywa Topp

Susan Hlywa Topp, PLC

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I. History of Recent Amendments

- A. Public Acts 379 and 380 of 2000
 - 1. Made significant revisions to the Condominium Act.
 - 2. Effective January 2, 2001.
- B. House Bill 5486
 - 1. Revises the amendments made by the 2000 legislation including withdrawal of developers from construction projects; voting by co-owners on changes to by-laws and condominium documents; subleasing of units; and the definition of successor developer.
 - 2. Substitute House Bill 5486 Passed by the House February 14, 2002
 - 3. Reprint Substitute House Bill 5486 (as amended by the Senate) Passed by Senate March 19, 2002
 - 4. Enrolled House Bill 5486 March 21, 2002
 - 5. Recalled before signed by Governor Engler
 - 6. Enrollment vacated on April 9, 2002
 - 7. Returned to Senate April 9, 2002

II. Combined Summary of Changes by Act 379 of Public Acts of 2000 (Effective January 2, 2001) and House Bill 5486

A. Definitions Section

1. **Section 3(2).** “Affiliate of the Developer” added as a defined term.
2. **Section 6(1).** “Co-owner” now includes land contract vendees and land contract vendors, who are now considered jointly and severally liable under the Act unless the condominium documents provide otherwise.
3. **Section 6(2).** “Developer” now excludes a licensed residential builder who acquired title to one or more condominium units for the purpose of residential construction and resale of those units.
4. **Section 10(1).** “Record” modified by replacing “Subdivision Control Act” with “Land Division Act” to provide that the provisions of the Land Division Act do not control divisions made for any condominium project.
5. **Section 10(2).** “Residential Builder” defined as a person licensed under Article 24 of the Occupational Code.

B. Other Sections.

1. **Easement for Encroachment. Section 40.** The following sentence was added to this section:

This section shall not be construed to allow or permit any encroachment upon, or an easement for an encroachment upon, units described in the master deed as being comprised of land and/or airspace above and/or below said land, without the consent of the co-owner of the unit to be burdened by the encroachment or easement.
2. **Offices and Model Units. Section 45.** Expanded to allow residential builders who receive an assignment of rights from the developer to maintain model units, offices, and other facilities within the condominium project. The developer must pay or be responsible to require a residential builder to pay all costs related to the condominium units or common elements while owned by the developer and to restore the facilities to habitable status upon termination of use.
3. **Persons With Disabilities. Section 47a.** Expanded to allow owners of units who have regular visitors or someone residing with them with disabilities to modify the unit to allow handicap access for those visitors or residents. This section was also modified to prevent the association from removing or requiring removal of handicap modifications if: 1) the new co-owner or someone residing with them will utilize the modifications; or 2) the prior co-owner intends to resume residing in the unit within 12 months. Lastly, this section now requires the person who

makes such modifications to add the association as an additional insured on their policy.

4. **Advisory Committee. Section 52.** Extends time frame for filing Consolidating Master Deed and As Built Condominium Subdivision Plan from 180 days to one year after completion of construction. Provisions specifying the time frame for forming the co-owners advisory group have been modified to exclude conveyances by the developer to residential builders as a trigger for this time frame.
5. **Bylaws. Section 54.** Added mandatory bylaw provision stating that arbitration of disputes, claims and grievances arising out of or relating to the interpretation of the application of the condominium documents or arising out of disputes among co-owners shall be submitted to arbitration if the parties elect to do so. If the parties do not elect to pursue arbitration, neither the co-owner nor the association is prohibited from litigating the dispute.

***House Bill 5486:** Adds that the mandatory bylaw provisions only apply to condominium projects established on or after January 2, 2001.
6. **Acquisition of Title by Foreclosure. Section 58.** Removes the designation of unpaid assessments as common expenses to be collected from all condominium co-owners.

***House Bill 5486:** Changes “such person, its successors” to “that mortgagee or purchaser and his or her successors” in section pertaining to non liability for unpaid assessments when title obtained by foreclosure of first mortgage. Also eliminates mortgagee or purchasers liability for assessments that have priority over the first mortgage under section 108.
7. **Changes in Condominium Project. Section 67.** Provision added proscribing a completion period of 10 years from the date of commencement of construction or within 6 years of the last date on which the power to expand or contract was exercised, whichever is later. A developer must complete development and construction of the entire condominium project, including proposed improvements, whether identified as “must be built” or “need not be built” within that period. During that period, the developer can withdraw all undeveloped portions from the project without the prior consent of any co-owners or mortgages or any other party having an interest in the project. Easements for utilities and access are automatically granted through the condominium project for the undeveloped portions. If the developer does not withdraw the undeveloped portions within this period, the property becomes a general common element and all rights to construct units on that portion of the property are terminated. Percentages of value can be adjusted by petitioning the Circuit Court.

***House Bill 5486:** Limits the undeveloped portions of the project that can be withdrawn to those portions that are not identified as “must be built”.

8. **Assessment of Common Expenses. Section 69.** Allows assessments to be levied for all common expenses in accordance with the formula contained in the Master Deed.
***House Bill 5486:** Changes “formula” to “provisions as may be” contained in the Master Deed.
9. **Notice of Proposed Action. Section 71.**
***House Bill 5486:** Deletes Departments of Commerce and Public Health from the list of agencies required to receive the notice of intent to establish a condominium. Replaces the Department of Natural Resources with the Department of Environmental Quality.
10. **Establishment of Condominium Project. Section 72.** Added to clarify that a condominium can be created in the air space over a fee (the underlying surface parcel).
11. **Filing of Master Deed and Plans. Section 73.** Now only requires submission of architectural plans and specifications to the local governmental unit if a condominium contains units that require them.
12. **Amendment of condominium documents.**
Section 90(1). Adds that an amendment that does not materially change the rights of a mortgagee includes changes in the condominium documents that, in the written opinion of an appropriately licensed real estate appraiser, does not detrimentally change the unit’s value.
***House Bill 5486:** Deletes this provision.
Section 90(2). Sentence added that Mortgagees are not required to appear at any meeting of co-owners except that their approval shall be solicited through written ballots. Any mortgagee ballots not returned within 90 days of mailing shall be counted as approval for the change.
Section 90(3).
***House Bill 5486:** Replaces “may” with “shall” to state that reserved rights shall not be amended except by or with the consent of the developer.
Section 90(4).
***House Bill 5486:** Deletes reference to the terms under which a co-owner may rent a unit from the section providing that the method of formula used to determine the percentage of value of units in the project for other than voting purposes shall not be modified without the consent of each affected co-owner and mortgagee.
13. **Voting Procedure. Section 90a.** New section added to provide a procedure for obtaining mortgagee votes on proposed condominium document amendments.

***House Bill 5486:** Section 90a(3). Specifies that the mortgagee must hold a first mortgage or an assignment of a first mortgage to be entitled to vote. Section 90a(5) changes the time frame for the mortgagee to return its ballot from 90 days from the control date to 90 days after the mortgagee receives notice of right to vote by ballot. Section 90a(7) deletes the requirement that the notice of right to vote by ballot be mailed by certified mail within 30 days after the control date. Section 90a(9)(g) is a new paragraph entitling first mortgagees to vote on amendments requiring the consent of all affected mortgagees under section 90(4) of the Act.

14. **Default by Co-owner. Section 106.** Modified to allow both the co-owner and the association to recover attorney fees in proceeding arising because of an alleged default by a co-owner as long as the condominium documents so provide.
15. **Enforcement. Section 107.** Amended to provide that either the association or the co-owner, whichever is successful, shall recover the costs of the proceeding and reasonable attorneys' fees to the extent the condominium documents expressly so provide.
16. **Assessment Lien. Section 108.** Provisions on collection of unpaid assessments amended to include interest, collection and late charges, advances made by the association of co-owners for taxes or other liens to protect its lien, attorneys' fees and fines levied in accordance with the condominium documents, in the lien against the unit or units in the project owned by the co-owner at the time of the assessment. Provisions for foreclosure of assessment liens added and includes interest, costs, attorney fees and collection charges.
17. **Renting or Leasing of Unit. Section 112.** 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 is controlled by the condominium documents as recorded by the developer, which shall not be changed without the developer's approval. After the transitional control date, the association may amend these provisions but such amendment shall not affect the rights of the lessor or lessee under a lease entered into prior to the amendment being made. A co-owner must provide 10 days notice to the association when agreeing to grant possession of a condominium unit to a potential lessee or when leasing the unit. If no lease form is used, the co-owner must provide the association with the name and address of the occupant, the rental amounts, and the due dates for rent under the proposed agreement.

***House Bill 5486:** Adds requirement that the Co-owner or developer shall provide the association with a copy the executed lease. If no lease form is to be used, the co-owner must supply the association with the name and address of the lessees or occupants, along with the rental amount and due dates of any rental or compensation payable to a co-owner or developer,

the due dates of that rental and compensation, and the term of the proposed arrangement.

18. **Successor Developer. Section 135(1).** “Successor Developer” amended to exclude a person who is not obligated to or who does not construct common elements.

***House Bill 5486:** Deletes the above amendment. Adds the following new paragraph as 135(5): A residential builder who neither constructs nor refurbishes common elements in a condominium project and who is not an affiliate of the developer shall not be required to assume and be liable for any contractual obligations of the developer under this section, and shall not be considered a successor developer or acquire any additional developer obligations or rights in the absence of a specific assignment of those obligations or rights from the developer. However, a residential builder that sells a condominium unit shall deliver to the purchaser of that unit the condominium documents that the developer is required to deliver to the purchaser under Section 84A(1). This subsection applies only to condominium projects established on or after the effective date of the amendatory act that added this subsection.

19. **Statute of Limitations. Section 176.** Statute of limitations is the later of three years from the transitional control date or two years from the date the cause of action arises to bring actions against members of the development team.

***House Bill 5486:**Substantially revised this section.

III. Summary of Changes by Act 380 of Public Acts 2000 (Effective January 2, 2001)

- A. MCL 600.3240 amended to add condominium assessments, homeowner association assessments and community association assessments to the category of expenses that may be paid during the redemption period by a purchaser at a foreclosure sale.

IV. Summary of Changes to the Act by 2002 Legislation

A. House Bill 5486

1. **Section 54.** Adds that the mandatory bylaw provisions only apply to condominium projects established on or after January 2, 2001.
2. **Section 58.** Changes “such person, its successors” to “that mortgagee or purchaser and his or her successors” in section pertaining to non liability for unpaid assessments when title obtained by foreclosure of first mortgage. Also eliminates mortgagee or purchasers liability for assessments that have priority over the first mortgage under section 108.
3. **Section 67.** Limits the undeveloped portions of the project that can be withdrawn to those portions that are not identified as “must be built”.
4. **Section 69.** Changes “formula” to “provisions as may be” contained in the Master Deed.
5. **Section 71.** Deletes Departments of Commerce and Public Health from the list of agencies required to receive the notice of intent to establish a condominium. Replaces the Department of Natural Resources with the Department of Environmental Quality.
6. **Section 90(1).** Deletes that an amendment that does not materially change the rights of a mortgagee includes changes in the condominium documents that, in the written opinion of an appropriately licensed real estate appraiser, does not detrimentally change the unit’s value.
7. **Section 90(3).** Replaces “may” with “shall” to state that reserved rights shall not be amended except by or with the consent of the developer.
8. **Section 90(4).** Deletes reference to the terms under which a co-owner may rent a unit from the section providing that the method of formula used to determine the percentage of value of units in the project for other than voting purposes shall not be modified without the consent of each affected co-owner and mortgagee.
9. **Section 90a(3).** Specifies that the mortgagee must hold a first mortgage or an assignment of a first mortgage to be entitled to vote.
10. **Section 90a(5).** Changes the time frame for the mortgagee to return its ballot from 90 days from the control date to 90 days after the mortgagee receives notice of right to vote by ballot.
11. **Section 90a(7).** Deletes the requirement that the notice of right to vote by ballot be mailed by certified mail within 30 days after the control date.
12. **Section 90a(9)(g).** New paragraph entitling first mortgagees to vote on amendments requiring the consent of all affected mortgagees under section 90(4) of the Act.

13. **Section 112.** Adds requirement that the Co-owner or developer shall provide the association with a copy the executed lease. If no lease form is to be used, the co-owner must supply the association with the name and address of the lessees or occupants, along with the rental amount and due dates of any rental or compensation payable to a co-owner or developer, the due dates of that rental and compensation, and the term of the proposed arrangement.
14. **Section 135(1).** Deletes the amendment to “Successor Developer” excluding a person who is not obligated to or who does not construct common elements. Adds the following new paragraph as 135(5): A residential builder who neither constructs nor refurbishes common elements in a condominium project and who is not an affiliate of the developer shall not be required to assume and be liable for any contractual obligations of the developer under this section, and shall not be considered a successor developer or acquire any additional developer obligations or rights in the absence of a specific assignment of those obligations or rights from the developer. However, a residential builder that sells a condominium unit shall deliver to the purchaser of that unit the condominium documents that the developer is required to deliver to the purchaser under Section 84A(1). This subsection applies only to condominium projects established on or after the effective date of the amendatory act that added this subsection.
15. **Section 176.** Substantially revised this section.

**Appendix A
Condominium Act**

View online at
<http://www.michiganlegislature.org/mileg.asp?page=getObject&objName=mcl-Act-59-of-1978>.

**Appendix B
Revisions to Condominium Act H.B. 5486—Committee Summary**

View online at <http://michiganlegislature.org/documents/2001-2002/billanalysis/senate/htm/2001-SFA-5486-S.htm>.

**Appendix C
Revisions to Condominium Act H.B. 5486—Floor Analysis**

View online at <http://michiganlegislature.org/documents/2001-2002/billanalysis/senate/htm/2001-SFA-5486-F.htm>.

**Appendix D
House Bill 5486—Substitute**

View online at <http://michiganlegislature.org/documents/2001-2002/billengrossed/house/pdf/2001-HEBS-5486.pdf>.

**Appendix E
Enrolled House Bill No. 5486**

View online at
<http://michiganlegislature.org/law/mileg.asp?page=getObject&objName=2001-HB-5486>.

**Appendix F
House Bill 5486—History**

View online at
<http://michiganlegislature.org/law/mileg.asp?page=getObject&objName=2001-HB-5486>.