

## CONDOMINIUM ACT Act 59 of 1978

AN ACT relative to condominiums and condominium projects; to prescribe powers and duties of the administrator; to provide certain protections for certain tenants, senior citizens, and persons with disabilities relating to conversion condominium projects; to provide for escrow arrangements; to provide an exemption from certain property tax increases; to impose duties on certain state departments; to prescribe remedies and penalties; and to repeal acts and parts of acts.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1980, Act 283, Imd. Eff. Oct. 10, 1980;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 1998, Act 36, Imd. Eff. Mar. 18, 1998.

*The People of the State of Michigan enact:*

### **559.101 Short title.**

Sec. 1. This act shall be known and may be cited as the “condominium act”.

**History:** 1978, Act 59, Eff. July 1, 1978.

### **559.102 Meanings of words and phrases.**

Sec. 2. For the purposes of this act, the words and phrases defined in sections 3 to 10 shall have the meanings respectively ascribed to them in those sections.

**History:** 1978, Act 59, Eff. July 1, 1978.

### **559.103 Definitions; A to C.**

Sec. 3. (1) “Administrator” means the department of consumer and industry services or an authorized designee.

(2) “Affiliate of developer” means any person who controls, is controlled by, or is under common control with a developer. A person is controlled by another person if the person is a general partner, officer, member, director, or employee of the person, directly or indirectly, individually or with 1 or more persons or subsidiaries owns, controls, or holds power to vote more than 20% of the person, controls in any manner the election of a majority of the directors of the person, or has contributed more than 20% of the capital of the person.

(3) “Arbitration association” means the American arbitration association or its successor.

(4) “Association of co-owners” means the person designated in the condominium documents to administer the condominium project.

(5) “Business condominium unit” means a condominium unit within any condominium project, which unit has a sales price of more than \$250,000.00 and is offered, used, or intended to be used for other than residential or recreational purposes.

(6) “Business day” means a day of the year excluding a Saturday, Sunday, or legal holiday.

(7) “Common elements” means the portions of the condominium project other than the condominium units.

(8) “Condominium buyer's handbook” means the informational pamphlet created by the administrator.

(9) “Condominium bylaws” or “bylaws” means the required set of bylaws for the condominium project attached to the master deed.

(10) “Condominium documents” means the master deed, recorded pursuant to this act, and any other instrument referred to in the master deed or bylaws which affects the rights and obligations of a co-owner in the condominium.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

### **559.104 Definitions; C.**

Sec. 4. (1) “Condominium project” or “project” means a plan or project consisting of not less than 2 condominium units established in conformance with this act.

(2) “Condominium subdivision plan” means the drawings and information prepared pursuant to section 66.

(3) “Condominium unit” means that portion of the condominium project designed and intended for separate ownership and use, as described in the master deed, regardless of whether it is intended for residential, office, industrial, business, recreational, use as a time-share unit, or any other type of use.

(4) “Consolidating master deed” means the final amended master deed for a contractable condominium project, an expandable condominium project, or a condominium project containing convertible land or convertible space, which final amended master deed fully describes the condominium project as completed.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

### **559.105 Definitions; C.**

Sec. 5. (1) “Contractable condominium” means a condominium project from which any portion of the submitted land or buildings may be withdrawn in accordance with this act.

(2) “Conversion condominium” means a condominium project containing condominium units some or all of which were occupied before the filing of a notice of taking reservations under section 71.

(3) “Convertible area” means a unit or a portion of the common elements of the condominium project referred to in the condominium documents within which additional condominium units or general or limited common elements may be created in accordance with this act.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

### **559.106 Definitions; C to G.**

Sec. 6. (1) “Co-owner” means a person, firm, corporation, partnership, association, trust, or other legal entity or any combination of those entities, who owns a condominium unit within the condominium project. Co-owner includes land contract vendees and land contract vendors, who are considered jointly and severally liable under this act and the condominium documents, except as the recorded condominium documents provide otherwise.

(2) “Developer” means a person engaged in the business of developing a condominium project as provided in this act. Developer does not include any of the following:

(a) A real estate broker acting as agent for the developer in selling condominium units.

(b) A residential builder who acquires title to 1 or more condominium units for the purpose of residential construction on those condominium units and subsequent resale.

(c) Other persons exempted from this definition by rule or order of the administrator.

(3) “Escrow agent” means a bank, savings and loan association, or title insurance company, licensed or authorized to do business in this state or a representative designated to administer escrow funds in the name, and on behalf, of the escrow agent.

(4) “Expandable condominium” means a condominium project to which additional land may be added in accordance with this act.

(5) “General common elements” means the common elements other than the limited common elements.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 1983, Act 113, Imd. Eff. July 12, 1983;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

### **559.107 Definitions; L to M.**

Sec. 7. (1) “Leasehold condominium” means a condominium project in which each co-owner owns an estate for years in all or any part of the condominium project if the leasehold interests will expire naturally at the same time.

(2) “Limited common elements” means a portion of the common elements reserved in the master deed for the exclusive use of less than all of the co-owners.

(3) “Mobile home condominium project” means a condominium project in which mobile homes as defined in section 30a of Act No. 300 of the Public Acts of 1949, being section 257.30a of the Michigan Compiled Laws, are intended to be located upon separate sites which constitute individual condominium units.

**History:** 1978, Act 59, Eff. July 1, 1978.

### **559.108 “Master deed” defined.**

Sec. 8. “Master deed” means the condominium document recording the condominium project to which are attached as exhibits and incorporated by reference the bylaws for the project and the condominium subdivision plan for the project. The master deed shall include all of the following:

(a) An accurate legal description of the land involved in the project.

(b) A statement designating the condominium units served by the limited common elements and clearly defining the rights in the limited common elements.

(c) A statement showing the total percentage of value for the condominium project and the separate percentages of values assigned to each individual condominium unit identifying the condominium units by the numbers assigned in the condominium subdivision plan.

(d) Identification of the local unit of government with which the detailed architectural plans and specifications for the project have been filed.

(e) Any other matter which is appropriate for the project.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

### **559.109 Definitions; P.**

Sec. 9. (1) "Percentage of value" means the percentage assigned to each condominium unit in the condominium master deed. The percentage shall total 100% in the project. Percentages of value shall be determinative only with respect to those matters to which they are specifically deemed to relate either in this act or in the condominium documents. Percentages of value for each condominium unit shall be determined with reference to reasonable comparative characteristics. A master deed shall state the method or formula used by the developer in the determination of percentage of value. Factors which may be considered in determining percentage of value are any of the following comparative characteristics, as determined by the developer:

- (a) Market value.
- (b) Size.
- (c) Duration of a time-share estate, if applicable.
- (d) Location.
- (e) Allocable expenses of maintenance.

(2) "Person" means an individual, firm, corporation, partnership, association, trust, the state or an agency of the state, or other legal entity, or any combination thereof.

(3) "Phase of a condominium project" means either of the following:

(a) The land and condominium units of the condominium project which may be developed under the initially recorded master deed without amendment to the master deed.

(b) Each additional parcel of land and condominium unit added to the condominium project as provided in section 32.

(4) "Preliminary reservation agreement" means an agreement to afford a prospective purchaser an opportunity to purchase a particular condominium unit for a limited period of time upon sale terms to be later determined.

(5) "Purchase agreement" means an agreement under which a developer agrees to sell and a person agrees to purchase a condominium unit as provided in section 84.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 4, Imd. Eff. Feb. 4, 1982;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

### **559.110 Definitions; R to T.**

Sec. 10. (1) "Record" means to record pursuant to the laws of this state relating to the recording of deeds except that the provisions of the land division act, 1967 PA 288, MCL 560.101 to 560.293, do not control divisions made for any condominium project.

(2) "Residential builder" is a person licensed as a residential builder under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412.

(3) "Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each condominium unit as computed by reference to the condominium subdivision plan and rounded off to a whole number. Certain spaces within the condominium units including, without limitation, attic, basement, and garage space may be omitted from the calculation or partially discounted by the use of a ratio, if the same basis of calculation is employed for all condominium units in the condominium project, that basis is used for each condominium unit in the condominium project, and that basis is disclosed in appropriate condominium documents furnished to each co-owner.

(4) "Time-share unit" means a condominium unit in which a time-share estate or a time-share license exists.

(5) "Time-share estate" means a right to occupy a condominium unit or any of several condominium units during 5 or more separated time periods over a period of at least 5 years, including renewal options, coupled with a freehold estate or an estate for years.

(6) "Time-share license" means a right to occupy a condominium unit or any of several condominium units during 5 or more separated time periods over a period of at least 5 years, including renewal options, not coupled with a freehold estate or an estate for years.

(7) "Transitional control date" means the date on which a board of directors for an association of co-owners takes office pursuant to an election in which the votes that may be cast by eligible co-owners unaffiliated with the developer exceed the votes which may be cast by the developer.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

### **559.111 Offering residential condominium for sale; compliance with occupational code required.**

Sec. 11. A residential condominium in this state shall not be offered for sale unless in compliance with

article 24 or article 25 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2401 to 339.2412 and 339.2501 to 339.2516 of the Michigan Compiled Laws.

**History:** Add. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.115 Construction or interpretation of act.**

Sec. 15. This act shall not be construed or interpreted as to authorize or permit the incurring of indebtedness of the state contrary to the provisions of the state constitution of 1963.

**History:** Add. 1982, Act 4, Imd. Eff. Feb. 4, 1982.

#### **559.121 Offering condominium unit or project for sale; liabilities and penalties; duties of developer; compliance by association of co-owners.**

Sec. 21. (1) A condominium unit located within this state shall not be offered for its initial sale in this state unless the offering is made in accordance with this act or the offering is exempt by rule of the administrator. An interest in a condominium unit located outside of this state which is offered for sale in this state is not subject to this act.

(2) In addition to other liabilities and penalties, a developer who violates this section is subject to section 115.

(3) Except as provided in subsections (4) and (5), a condominium project or condominium unit which was approved under former Act No. 229 of the Public Acts of 1963, may be offered for sale without further compliance with this act.

(4) A developer of a condominium project which was approved under former Act No. 229 of the Public Acts of 1963 shall do all of the following:

(a) Provide documents as provided in section 84a.

(b) Establish an escrow account pursuant to section 103b or 173(1)(a)(ii).

(c) Provide notice of conversion pursuant to section 104(2) if the condominium project is a conversion condominium project.

(5) An association of co-owners of a condominium project approved under former Act No. 229 of the Public Acts of 1963 shall comply with section 68.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 1983, Act 113, Imd. Eff. July 12, 1983

**Compiler's note:** Act 229 of 1963, referred to in this section, was repealed by Act 59 of 1978.

#### **559.131 Condominium project containing convertible area; contents of master deed.**

Sec. 31. If the condominium project contains any convertible area, the master deed shall contain the following:

(a) A reasonably specific reference to the convertible area within the condominium project.

(b) A statement of the maximum number of condominium units that may be created within the convertible area.

(c) A general statement describing what types of condominium units may be created on the convertible area.

(d) A statement of the extent to which a structure erected on the convertible area will be compatible with structures on other portions of the condominium project.

(e) A general description of improvements that may be made on the convertible area within the condominium project.

(f) A description of the developer's reserved right, if any, to create limited common elements within any convertible area, and to designate common elements therein which may subsequently be assigned as limited common elements.

(g) A time limit of not more than 6 years after initial recording of the master deed, by which the election to use this option expires.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.132 Expandable condominium project; contents of master deed.**

Sec. 32. If the condominium project is an expandable condominium project, the master deed shall contain the following:

(a) The explicit reservation of an election on the part of the developer or its successors to expand the condominium project.

(b) A statement of any restrictions on the election in subdivision (a), including, without limitation, a statement as to whether the consent of any co-owners is required, and if so, a statement as to the method

whereby the consent is ascertained; or a statement that the limitations do not exist.

(c) A time limit based on size and nature of the project, of not more than 6 years after the initial recording of the master deed, upon which the election to expand the condominium project expires.

(d) A description of the land that may be added to the condominium project. The description shall be a legal description by metes and bounds or by reference to subdivided land unless the land to be added can be otherwise specifically described.

(e) A statement as to whether, if any of the additional land is added to the condominium project, all of it or any particular portion of it must be added, and if not, a statement of any limitations as to what portions may be added.

(f) A statement as to whether portions of the additional land may be added to the condominium project at different times, together with appropriate restrictions fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds of the land and regulating the order in which they may be added to the condominium project. If the order in which portions of the additional land may be added is not restricted, a statement shall be included that the restrictions do not exist.

(g) A statement of the specific restrictions, if any, as to the locations of any improvements that may be made on any portions of the additional land added to the condominium project.

(h) A statement of the maximum number of condominium units that may be created on the additional land. If portions of the additional land may be added to the condominium project and the boundaries of those portions are fixed in accordance with subdivision (f), the master deed shall state the maximum number of condominium units that may be created on each portion added to the condominium project.

(i) With respect to the additional land and to the portion or portions of the additional land that may be added to the condominium project, a statement of the maximum percentage of the aggregate land and floor area of all condominium units that may be created on the additional land that may be occupied by condominium units not restricted exclusively to residential use.

(j) A statement of the extent to which any structures erected on any portion of the additional land added to the condominium project are compatible with structures on the land included in the original master deed.

(k) A description of improvements that shall be made on any portion of the additional land added to the condominium project or a statement of any restrictions as to what other improvements may be made on the additional land.

(l) A statement of any restrictions as to the types of condominium units that may be created on the additional land.

(m) A description of the developer's reserved right, if any, to create limited common elements within any portion of the original condominium project or additional land added to the condominium project and to designate common elements which may subsequently be assigned as limited common elements.

(n) A statement as to whether the condominium project shall be expanded by a series of successive amendments to the master deed, each adding additional land to the condominium project as then constituted, or whether a series of separate condominium projects shall be created within the additional land area, all or some of which shall then be merged into an expanded condominium project or projects by the ultimate recordation of a consolidating master deed.

(o) A description of the developer's reserved right, if any, to create easements within any portion of the original condominium project for the benefit of land outside the condominium project.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

### **559.133 Contractable condominium project; contents of master deed.**

Sec. 33. If the condominium project is a contractable condominium project, the master deed shall contain the following:

(a) The explicit reservation of an election on the part of the developer or its successors to contract the condominium project.

(b) A statement of the restrictions on that election, including, without limitation, a statement as to whether the consent of any co-owners are required, and if so, a statement as to the method whereby the consent shall be ascertained.

(c) A time limit of not more than 6 years after the initial recording of the master deed, by which the election to contract the condominium project expires, together with a statement of the circumstances, if any, which terminate that option before the expiration of the specified time limit.

(d) A general description of the land which may be withdrawn from the condominium project.

(e) A statement as to whether portions of the land may be withdrawn from the condominium project at different times, together with the restrictions fixing the boundaries of those portions by general descriptions of the land and regulating the order in which they may be withdrawn from the condominium project.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

**559.134 Leasehold condominium project; lease terms; required contents of master deed; termination of co-owner's leasehold interest by lessor prohibited.**

Sec. 34. (1) The terms of a lease in a leasehold condominium project shall not be unconscionable to prospective co-owners as determined at the time of signing the lease.

(2) If the condominium project is a leasehold condominium project, then with respect to any ground lease or other leases the expiration or termination of which shall or may terminate the condominium project, the master deed shall identify precisely the location of the leased property and the master deed shall contain the following:

(a) The date upon which each lease is due to expire.

(b) A statement as to whether any land and improvements will be owned by the co-owners in fee simple, and if so, then all of the following:

(i) A description of the land and improvements which will be owned by the co-owners in fee simple, including without limitation a legal description by metes and bounds of the land.

(ii) A statement of any rights the co-owners shall have to remove the improvements within a reasonable time after the expiration or termination of the lease involved.

(iii) A statement of the rights the co-owners shall have to redeem the reversion or any of the reversions, or a statement that they shall not have those rights.

(3) After the recording of the master deed, a lessor who consented in writing to the master deed or a successor in interest to the lessor shall not terminate any part of the leasehold interest of a co-owner who makes timely payment of the share of the rent to the person or persons designated in the master deed for the receipt of the rent and who otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

**559.135 Easements; creation; description; contents.**

Sec. 35. Where fulfillment of the purposes of sections 31, 32, 33 or any other sections of this act reasonably requires the creation of easements, then the easements shall be created in the condominium documents or in other appropriate instruments and shall be reasonably described in the condominium documents. The easements shall contain the following:

(a) A description of the permitted use.

(b) If less than all co-owners are entitled to utilize the easement, a statement of the relevant restrictions on the utilization of the easement.

(c) If any persons other than those entitled to the use of the condominium units may utilize an easement, a statement of the rights of others to utilization of the same and a statement of the obligations, if any, of all persons required to contribute to the financial support of the easement.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.136 Addition of undivided interests in land as common elements; tenancy of co-owners; condominium unit on lands prohibited; description in master deed.**

Sec. 36. The master deed may provide that undivided interests in land may be added to the condominium project as common elements in which land the co-owners may be tenants in common, joint tenants, or life tenants with other persons. A condominium unit shall not be situated on the lands. The master deed, or any amendment to master deed under which the land is submitted to the condominium project shall include a legal description thereof and shall describe the nature of the co-owners' estate therein.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.137 Allocation to condominium unit of undivided interest in common elements proportionate to percentage of value assigned; statement, table, exhibit, or schedule in master deed; formula; basis of reallocation; allocating percentage of value to convertible space; alteration of undivided interest in common elements; partition of common elements.**

Sec. 37. (1) The master deed may allocate to each condominium unit an undivided interest in the common elements proportionate to its percentage of value assigned as provided in this act.

(2) If an equal percentage of value is allocated to each condominium unit, the master deed may simply state that fact and need not express the fraction or percentage so allocated.

(3) If an equal percentage of value is not assigned, the percentage of value allocated to each condominium

unit shall be reflected by a table in the master deed or by an exhibit or schedule accompanying the master deed and recorded simultaneously therewith. The table shall identify the condominium units, listing them serially or grouping them together in the case of condominium units to which identical percentages of value are allocated, and setting forth the respective percentages relative to the several condominium units. The master deed or the exhibit or schedule shall set forth, with reasonable clarity, the formula upon which the percentages were allocated in the original master deed and the basis upon which the same will be reallocated in any modification of the master deed by which condominium units will be added, withdrawn, or modified, which basis may provide for reasonable flexibility if different types of condominium units are introduced into the condominium project in subsequent phases thereof.

(4) A convertible space shall be allocated a percentage of value in accordance with the formula used to derive the original percentage of value.

(5) Except to the extent otherwise expressly provided by this act, the undivided interest in the common elements allocated to any condominium unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the condominium unit to which it appertains is void.

(6) The common elements shall not be subject to an action for partition unless the condominium project is terminated.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.138 Creation of condominium units within convertible or additional lands; allocation of interests in common elements; amended master deed and condominium subdivision plan; revised schedule.**

Sec. 38. Interests in the common elements shall not be allocated to condominium units to be created within convertible land or within additional land until the master deed is duly amended and an amended condominium subdivision plan depicting the new condominium units is recorded. The amendment to the master deed shall contain a revised schedule of undivided interests in the common elements so that the condominium units depicted on the amended condominium subdivision plan shall be allocated undivided interests in the common elements in accordance with the formula for allocation of the undivided interests as described in the original master deed.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.139 Assignment and reassignment of limited common elements; application; amendment to master deed.**

Sec. 39. (1) Assignments and reassignments of limited common elements shall be reflected by the original master deed or an amendment to the master deed. A limited common element shall not be assigned or reassigned except in accordance with this act and the condominium documents.

(2) Unless expressly prohibited by the condominium documents, a limited common element may be reassigned upon written application of the co-owners concerned to the principal officer of the association of co-owners or to other persons as the condominium documents may specify. The officer or persons to whom the application is duly made shall promptly prepare and execute an amendment to the master deed reassigning all rights and obligations with respect to the limited common element involved. The amendment shall be delivered to the co-owners of the condominium units concerned upon payment by them of all reasonable costs for the preparation and recording of the amendment to the master deed.

(3) A common element not previously assigned as a limited common element shall be so assigned only in pursuance of the provisions of the condominium documents and of this act. The amendment to the master deed making the assignment shall be prepared and executed by the principal officer of the association of co-owners or by other persons as the condominium documents specify.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.140 Easement for encroachment.**

Sec. 40. To the extent that a condominium unit or common element encroaches on any other condominium unit or common element, whether by reason of any deviation from the plans in the construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for the encroachment shall exist. 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.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

**559.141 Conversion of convertible area into condominium units or common elements; amendment; identifying number; allocating portion of undivided interest; description of limited common elements.**

Sec. 41. (1) The developer may convert all or any portion of any convertible area into condominium units or common elements, including, without limitation, limited common elements, subject to the restrictions which the condominium documents may specify.

(2) The developer shall promptly prepare, execute, and record an amendment to the master deed describing the conversion. The amendment shall assign an identifying number to each condominium unit formed out of convertible area and shall allocate to each condominium unit a portion of the undivided interest in the common elements appertaining to that area. The amendment shall describe or delineate any limited common elements formed out of the convertible area, showing or designating the condominium unit or condominium units to which each is assigned.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.143 Expansion, contraction, or conversion of land or space; time of occurrence; consolidating master deed.**

Sec. 43. An expansion, contraction, or conversion of land or space in accordance with this act and the condominium documents shall be deemed to have occurred at the time of recording of an amendment to the master deed embodying all essential elements of the expansion, contraction, or conversion. At the conclusion of expansion of a condominium project a consolidating master deed shall be prepared and recorded by the developer in accordance with the provisions of this act and the condominium documents.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

**559.144 Transferable easement as to common elements for purpose of making improvements.**

Sec. 44. Subject to any restrictions the condominium documents may specify, the developer has a transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those documents and of this act, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.145 Offices, model units, and other facilities; maintenance; costs; restoration of facilities.**

Sec. 45. The developer and its duly authorized agents, representatives, and employees, and residential builders who receive an assignment of rights from the developer, may maintain offices, model units, and other facilities on the submitted land. The developer may include provisions in the condominium documents relative to the facilities as may reasonably facilitate development and sale of the project. The developer shall pay or be responsible to require a residential builder to pay all costs related to the condominium units or common elements while owned by developer and to restore the facilities to habitable status upon termination of use.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

**559.146 Restrictions and covenants.**

Sec. 46. The developer or a co-owner may impose reasonable restrictions or covenants running with the land upon a condominium unit in the condominium project, in addition to the reasonable restrictions and covenants as may be contained in the condominium documents, so long as such restrictions and covenants are not otherwise prohibited by law and as long as they are consistent with the condominium documents. The restrictions and covenants may include provisions governing the joint or common ownership of condominium units in the condominium project and the basis upon which the usage of the condominium unit or condominium units may be shared from time to time by the joint or common owners thereof.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.147 Improvements or alterations by co-owners.**

Sec. 47. (1) Subject to the prohibitions and restrictions in the condominium documents, a co-owner may make improvements or alterations within a condominium unit that do not impair the structural integrity of a structure or otherwise lessen the support of a portion of the condominium project. Except as provided in section 47a, a co-owner shall not do anything which would change the exterior appearance of a condominium

unit or of any other portion of the condominium project except to the extent and subject to the conditions as the condominium documents may specify.

(2) If a co-owner acquires an adjoining condominium unit, or an adjoining part of a condominium unit, then the co-owner may remove all or part of an intervening partition or create doorways or other apertures therein, notwithstanding that the partition may in whole or in part be a common element, so long as a portion of any bearing wall or bearing column is not weakened or removed and a portion of any common element other than that partition is not damaged, destroyed, or endangered. The creation of doorways or other apertures shall not be deemed an alteration of condominium unit boundaries.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1987, Act 31, Imd. Eff. May 27, 1987.

#### **559.147a Persons with disabilities; improvements or modifications by co-owner to facilitate access or movement; alleviation of hazardous conditions.**

Sec. 47a. (1) A co-owner may make improvements or modifications to the co-owner's condominium unit, including improvements or modifications to common elements and to the route from the public way to the door of the co-owner's condominium unit, at his or her expense, if the purpose of the improvement or modification is to facilitate access to or movement within the unit for persons with disabilities who reside in or regularly visit the unit, or to alleviate conditions that could be hazardous to persons with disabilities who reside in or regularly visit the unit. The improvement or modification shall not impair the structural integrity of a structure or otherwise lessen the support of a portion of the condominium project. The co-owner is liable for the cost of repairing any damage to a common element caused by building or maintaining the improvement or modification, unless the damage could reasonably be expected in the normal course of building or maintaining the improvement or modification. The improvement or modification may be made notwithstanding prohibitions and restrictions in the condominium documents, but shall comply with all applicable state and local building code requirements and health and safety laws and ordinances and shall be made as closely as reasonably possible in conformity with the intent of applicable prohibitions and restrictions regarding safety and aesthetics of the proposed modification.

(2) An improvement or modification allowed by this section that affects the exterior of the condominium unit shall not unreasonably prevent passage by other residents of the condominium project. A co-owner who has made exterior improvements or modifications allowed by this section shall notify the association of co-owners in writing of the co-owner's intention to convey or lease his or her condominium unit to another at least 30 days before the conveyance or lease. Not more than 30 days after receiving a notice from a co-owner under this subsection, the association of co-owners may require the co-owner to remove the improvement or modification at the co-owner's expense. If the co-owner fails to give timely notice of a conveyance or lease, the association of co-owners at any time may remove or require the co-owner to remove the improvement or modification at the co-owner's expense. However, the association of co-owners may not remove or require the removal of an improvement or modification if a co-owner intends to resume residing in the unit within 12 months or a co-owner conveys or leases his or her condominium unit to a person with disabilities who needs the same type of improvement or modification or who has a person residing with him or her who requires the same type of improvement or modification.

(3) If a co-owner makes an exterior improvement or modification allowed under this section, the co-owner shall maintain liability insurance, underwritten by an insurer authorized to do business in this state and naming the association of co-owners as an additional insured, in an amount adequate to compensate for personal injuries caused by the exterior improvement or modification. The co-owner is not liable for acts or omissions of the association of co-owners with respect to the exterior improvement or modification and is not required to maintain liability insurance with respect to any common element. The association of co-owners is responsible for maintenance, repair, and replacement of the improvement or modification only to the extent of the cost currently incurred by the association of co-owners for maintenance, replacement, and repair of the common elements covered or replaced by the improvement or modification. All costs of maintenance, repair, and replacement of the improvement or modification exceeding that currently incurred by the association of co-owners for maintenance, repair, and replacement of the common elements covered or replaced by the improvement or modification shall be assessed to and paid by the co-owner or the unit serviced by the improvement or modification.

(4) Before an improvement or modification allowed by this section is made, the co-owner shall submit plans and specifications for the improvements or modifications to the association of co-owners for review and approval. The association of co-owners shall determine whether the proposed improvement or modification substantially conforms to the requirements of this section and shall not deny a proposed improvement or modification without good cause. If the association of co-owners denies a proposed improvement or modification, the association of co-owners shall list, in writing, the changes needed to make the proposed

improvement or modification conform to the requirements of this section and shall deliver that list to the co-owner. The association of co-owners shall approve or deny the proposed improvement or modification not later than 60 days after the plans and specifications are submitted by the co-owner proposing the improvement or modification to the association of co-owners. If the association of co-owners does not approve or deny submitted plans and specifications within the 60-day period, the co-owner may make the proposed improvement or modification without the approval of the association of co-owners. A co-owner may bring an action against the association of co-owners and the officers and directors to compel those persons to comply with this section if the co-owner disagrees with a denial by the association of co-owners of the co-owner's proposed improvement or modification.

(5) This section applies to condominium units existing on May 27, 1987 and to those built or converted after May 27, 1987.

(6) This section does not apply to a condominium unit that is otherwise required by law to be barrier-free and does not impose on a co-owner the cost of maintaining that barrier-free unit.

(7) As used in this section, "person with disabilities" means that term as defined in section 2 of the state construction code act of 1972, 1972 PA 230, MCL 125.1502.

**History:** Add. 1987, Act 31, Imd. Eff. May 27, 1987;—Am. 1998, Act 36, Imd. Eff. Mar. 18, 1998;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

### **559.148 Relocation of boundaries between adjoining condominium units.**

Sec. 48. (1) If the condominium documents expressly permit the relocation of boundaries between adjoining condominium units, then the boundaries between the condominium units may be relocated in accordance with this section and any restrictions not otherwise unlawful which the condominium documents may specify. The boundaries between adjoining condominium units shall not be relocated unless the condominium documents expressly permit it. A relocation of boundaries shall not occur without approval of an affected mortgagee.

(2) If the co-owners of adjoining condominium units whose mutual boundaries may be relocated desire to relocate the boundaries, then the principal officer of the association of co-owners or other persons as the condominium documents may specify, shall, upon written application of the co-owners, forthwith prepare and execute an amendment to the master deed duly relocating the boundaries pursuant to the condominium documents and this act.

(3) An amendment to the master deed shall identify the condominium units involved and shall state that the boundaries between those condominium units are being relocated by agreement of the co-owners thereof, which amendment shall contain conveyancing between those co-owners. If the co-owners of the condominium units involved have specified in their written application a reasonable reallocation as between the condominium units involved of the aggregate undivided interest in the common elements appertaining to those condominium units, the amendment to the master deed shall reflect that reallocation.

(4) If the co-owners of the condominium units involved have specified in their written application a reasonable reallocation as between the condominium units involved of the aggregate number of votes in the association of co-owners allocated to those condominium units, an amendment to the bylaws shall reflect that reallocation and a proportionate reallocation of liability for expenses of administration and rights to receipts of administration as between those condominium units.

**History:** 1978, Act 59, Eff. July 1, 1978.

### **559.149 Subdivision of condominium units.**

Sec. 49. (1) If the condominium documents expressly permit the subdivision of any condominium units, then the condominium units may be subdivided in accordance with this section and any restrictions not otherwise unlawful which the condominium documents may specify. A condominium unit shall not be subdivided unless the condominium documents expressly permit it.

(2) If the co-owner of a condominium unit which may be subdivided desires to subdivide the condominium unit, then the principal officer of the association of co-owners or other persons as the condominium documents specify, shall, upon written application of the co-owner, prepare and execute an amendment to the master deed duly subdividing the condominium unit pursuant to the condominium documents and this act.

(3) An amendment to the master deed shall assign new identifying numbers to the new condominium units created by the subdivision of a condominium unit and shall allocate to those condominium units, on a reasonable basis, all of the undivided interest in the common elements appertaining to the subdivided condominium unit. The new condominium units shall jointly share all rights, and shall be equally liable, jointly and severally for all obligations, with regard to any limited common elements assigned to the subdivided condominium unit except to the extent that an amendment shall provide that portions of any

limited common element assigned to the subdivided condominium unit exclusively should be assigned to any, but less than all, of the new condominium units.

(4) An amendment to the bylaws shall allocate to the new condominium units, on a reasonable basis, the votes in the association of co-owners allocated to the subdivided condominium unit, and shall reflect a proportionate allocation to the new condominium units of the liability for expenses of administration and rights to receipts of administration formerly appertaining to the subdivided condominium unit.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.150 Termination of condominium project or amendment of master deed by developer.**

Sec. 50. If there is no co-owner other than the developer, the developer, with the consent of any interested mortgagee, may unilaterally terminate the condominium project or amend the master deed. A termination or amendment under this section shall become effective upon the recordation thereof if executed by the developer.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.151 Termination of condominium project by agreement of developer and unaffiliated co-owners.**

Sec. 51. (1) If there is a co-owner other than the developer, then the condominium project shall be terminated only by the agreement of the developer and unaffiliated co-owners of condominium units to which 4/5 of the votes in the association of co-owners appertain, or a larger majority as the condominium documents may specify.

(2) If none of the condominium units in the condominium project are restricted exclusively to residential use, then the condominium documents may specify voting majorities less than the minimums specified by subsection (1).

(3) Agreement of the required majority of co-owners to termination of the condominium shall be evidenced by their execution of the termination agreement or of ratifications thereof, and the termination shall become effective only when the agreement is so evidenced of record.

(4) Upon recordation of an instrument terminating a condominium project the property constituting the condominium project shall be owned by the co-owners as tenants in common in proportion to their respective undivided interests in the common elements immediately before recordation. As long as the tenancy in common lasts, each co-owner or the heirs, successors, or assigns thereof shall have an exclusive right of occupancy of that portion of the property which formerly constituted the condominium unit.

(5) Upon recordation of an instrument terminating a condominium project, any rights the co-owners may have to the assets of the association of co-owners shall be in proportion to their respective undivided interests in the common elements immediately before recordation, except that common profits shall be distributed in accordance with the condominium documents and this act.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.152 Advisory committee of nondeveloper co-owners; establishment; meeting with condominium project board of directors; cessation; right to elect directors; formula; recording consolidating master deed; copy; "units that may be created" defined; time of sale to nondeveloper co-owner.**

Sec. 52. (1) An advisory committee of nondeveloper co-owners shall be established either 120 days after conveyance of legal or equitable title to nondeveloper co-owners of 1/3 of the units that may be created or 1 year after the initial conveyance of legal or equitable title to a nondeveloper co-owner of a unit in the project, whichever occurs first. The advisory committee shall meet with the condominium project board of directors for the purpose of facilitating communication and aiding the transition of control to the association of co-owners. The advisory committee shall cease to exist when a majority of the board of directors of the association of co-owners is elected by the nondeveloper co-owners.

(2) Not later than 120 days after conveyance of legal or equitable title to nondeveloper co-owners of 25% of the units that may be created, at least 1 director and not less than 25% of the board of directors of the association of co-owners shall be elected by nondeveloper co-owners. Not later than 120 days after conveyance of legal or equitable title to nondeveloper co-owners of 50% of the units that may be created, not less than 33-1/3% of the board of directors shall be elected by nondeveloper co-owners. Not later than 120 days after conveyance of legal or equitable title to nondeveloper co-owners of 75% of the units that may be created, and before conveyance of 90% of such units, the nondeveloper co-owners shall elect all directors on the board, except that the developer shall have the right to designate at least 1 director as long as the developer owns and offers for sale at least 10% of the units in the project or as long as 10% of the units

remain that may be created.

(3) Notwithstanding the formula provided in subsection (2), 54 months after the first conveyance of legal or equitable title to a nondeveloper co-owner of a unit in the project, if title to not less than 75% of the units that may be created has not been conveyed, the nondeveloper co-owners have the right to elect, as provided in the condominium documents, a number of members of the board of directors of the association of co-owners equal to the percentage of units they hold and the developer has the right to elect, as provided in the condominium documents, a number of members of the board equal to the percentage of units which are owned by the developer and for which all assessments are payable by the developer. This election may increase, but does not reduce, the minimum election and designation rights otherwise established in subsection (2). Application of this subsection does not require a change in the size of the board as determined in the condominium documents.

(4) If the calculation of the percentage of members of the board that the nondeveloper co-owners have the right to elect under subsection (2), or if the product of the number of members of the board multiplied by the percentage of units held by the nondeveloper co-owners under subsection (3) results in a right of nondeveloper co-owners to elect a fractional number of members of the board, then a fractional election right of 0.5 or greater shall be rounded up to the nearest whole number, which number shall be the number of members of the board that the nondeveloper co-owners have the right to elect. After application of the formula contained in this subsection, the developer has the right to elect the remaining members of the board. Application of this subsection does not eliminate the right of the developer to designate 1 member as provided in subsection (2).

(5) A consolidating master deed and plans showing the condominium as built shall be recorded not later than 1 year after completion of construction in order to consolidate all phases or amendments of a condominium project. A copy of the recorded consolidating master deed shall be provided to the association of co-owners.

(6) As used in this section, "units that may be created" means the maximum number of units in all phases of the condominium project as stated in the master deed.

(7) For purposes of calculating the timing of events described in this section, conveyance by a developer to a residential builder, even though not an affiliate of the developer, is not considered a sale to a nondeveloper co-owner until such time as the residential builder conveys that unit with a completed residence on it or until it contains a completed residence which is occupied.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

#### **559.153 Bylaws governing administration of condominium project; amendments; recording.**

Sec. 53. The administration of a condominium project shall be governed by bylaws recorded as part of the master deed, or as provided in the master deed. An amendment to the bylaws of any condominium project shall not eliminate the mandatory provisions required by section 54. An amendment shall be inoperative until recorded.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.154 Bylaws; mandatory provisions; allocation of votes; dispute, claim, or grievance; applicability of subsections (8), (9), and (10).**

Sec. 54. (1) The bylaws shall contain provisions for the designation of persons to administer the affairs of the condominium project and shall require that those persons keep books and records with a detailed account of the expenditures and receipts affecting the condominium project and its administration, and which specify the operating expenses of the project.

(2) The bylaws shall provide that the person designated to administer the affairs of the project shall be assessed as the person in possession for any tangible personal property of the project owned or possessed in common by the co-owners. Personal property taxes based on that tangible personal property shall be treated as expenses of administration.

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

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

(5) The bylaws shall provide that the association of co-owners shall prepare and distribute to each owner at

least once each year a financial statement, the contents of which shall be defined by the association of co-owners.

(6) The bylaws shall provide an indemnification clause for the board of directors of the association of co-owners. The indemnification clause shall require that 10 days' notice, before payment under the clause, be given to the co-owners. The indemnification clause shall exclude indemnification for willful and wanton misconduct and for gross negligence.

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

(8) The bylaws shall contain a provision providing that arbitration of disputes, claims, and grievances arising out of or relating to the interpretation of the application of the condominium document or arising out of disputes among or between co-owners shall be submitted to arbitration and that the parties to the dispute, claim, or grievance shall accept the arbitrator's decision as final and binding, upon the election and written consent of the parties to the disputes, claims, or grievances and upon written notice to the association. The commercial arbitration rules of the American arbitration association are applicable to any such arbitration.

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

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

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

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001;—Am. 2002, Act 283, Imd. Eff. May 9, 2002.

#### **559.155 Voiding service contract and management contract.**

Sec. 55. (1) A service contract which exists between the association of co-owners and the developer or affiliates of the developer and a management contract with the developer or affiliates of the developer is voidable by the board of directors of the association of co-owners on the transitional control date or within 90 days thereafter, and on 30 days' notice at any time thereafter for cause.

(2) To the extent that any management contract extends beyond 1 year after the transitional control date, the excess period under the contract may be voided by the board of directors of the association of co-owners by notice to the management agent at least 30 days before the expiration of the 1 year.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.156 Bylaws; permissible provisions.**

Sec. 56. The bylaws may contain provisions:

(a) As are deemed appropriate for the administration of the condominium project not inconsistent with this act or any other applicable laws.

(b) For restrictions on the sale, lease, license to use, or occupancy of condominium units.

(c) For insuring the co-owners against risks affecting the condominium project, without prejudice to the right of each co-owner to insure his condominium unit or condominium units on his own account and for his own benefit.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.156a Displaying United States flag on condominium unit; applicability of section.**

Sec. 56a. A developer or association of co-owners shall not prohibit a co-owner from displaying a single United States flag of a size not greater than 3 feet by 5 feet anywhere on the exterior of the co-owner's condominium unit. A developer or association of co-owners shall not enforce a prohibition in existence before the effective date of this section on or after that effective date.

**History:** Add. 1991, Act 183, Imd. Eff. Dec. 27, 1991.

#### **559.157 Books, records, and contracts; examination; audit.**

Sec. 57. The books, records, and contracts concerning the administration and operation of the condominium project shall be available for examination by any of the co-owners and their mortgagees at convenient times and all books and records shall be audited or reviewed by independent accountants annually. Such audits need not be certified.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.158 Acquisition of title by foreclosure of first mortgage; liability for assessments.**

Sec. 58. If the mortgagee of a first mortgage of record or other purchaser of a condominium unit obtains title to the condominium unit as a result of foreclosure of the first mortgage, that mortgagee or purchaser and his or her successors and assigns are not liable for the assessments by the administering body chargeable to the unit that became due prior to the acquisition of title to the unit by that mortgagee or purchaser and his or her successors and assigns.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001;—Am. 2002, Act 283, Imd. Eff. May 9, 2002.

**559.159 Submission of property with mortgage of record.**

Sec. 59. Property upon which there is a mortgage of record shall not be submitted to a condominium project without the written consent of the mortgagee.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.160 Action on behalf of and against co-owners.**

Sec. 60. Actions on behalf of and against the co-owners shall be brought in the name of the association of co-owners. The association of co-owners may assert, defend, or settle claims on behalf of all co-owners in connection with the common elements of the condominium project.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.161 Condominium unit as sole property.**

Sec. 61. Upon the establishment of a condominium project each condominium unit, together with and inseparable from its appurtenant share of the common elements, shall be a sole property subject to ownership, mortgaging, taxation, possession, sale, and all types of juridicial acts, inter vivos or causa mortis independent of the other condominium units.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.162 Ownership of condominium unit.**

Sec. 62. A condominium unit may be jointly or commonly owned by more than 1 person.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.163 Rights of co-owner.**

Sec. 63. Each co-owner has an exclusive right to his condominium unit and has such rights to share with other co-owners the common elements of the condominium project as are designated by the master deed.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.164 Conveyance and other instruments affecting title to condominium unit; description of unit; recordation.**

Sec. 64. Conveyances and other instruments affecting title to any condominium unit in a condominium project shall describe the same by reference to the condominium unit number of the condominium subdivision plan and the caption thereof, together with a reference to the liber and page of the county records in which the master deed is recorded. The conveyances and other instruments are recordable.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.165 Compliance with master deed, bylaws, rules, and regulations.**

Sec. 65. Each unit co-owner, tenant, or nonco-owner occupant shall comply with the master deed, bylaws, and rules and regulations of the condominium project and this act.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.166 Condominium subdivision plan; preparation; signature and seal; contents; recording; structures and improvements to be completed by developer.**

Sec. 66. (1) The condominium subdivision plan for each condominium project shall be prepared by an architect, land surveyor, or engineer licensed to practice and shall bear the signature and seal of such architect, land surveyor, or engineer. The condominium subdivision plan shall be reproductions of original drawings.

(2) A complete condominium subdivision plan shall include all of the following:

- (a) A cover sheet.
- (b) A survey plan.
- (c) A floodplain plan, if the condominium lies within or abuts a floodplain area.

- (d) A site plan.
  - (e) A utility plan.
  - (f) Floor plans.
  - (g) The size, location, area, and horizontal boundaries of each condominium unit.
  - (h) A number assigned to each condominium unit.
  - (i) The vertical boundaries and volume for each unit comprised of enclosed air space.
  - (j) Building sections showing the existing and proposed structures and improvements including their location on the land. Any proposed structure and improvement shown shall be labeled either “must be built” or “need not be built”. To the extent that a developer is contractually obligated to deliver utility conduits, buildings, sidewalks, driveways, landscaping and an access road, the same shall be shown and designated as “must be built”, but the obligation to deliver such items exists whether or not they are so shown and designated.
  - (k) The nature, location, and approximate size of the common elements.
  - (l) Other items the administrator requires by rule.
- (3) Condominium subdivision plans shall be numbered consecutively when recorded by the register of deeds and shall be designated \_\_\_\_\_ county condominium subdivision plan number \_\_\_\_\_.
- (4) The developer shall complete all structures and improvements labeled pursuant to subsection (2)(j) “must be built”.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 1983, Act 113, Imd. Eff. July 12, 1983

**559.167 Changes in condominium project; amendment; replat of condominium subdivision plan; right of withdrawal.**

Sec. 67. (1) A change in a condominium project shall be reflected in an amendment to the appropriate condominium document. An amendment to the condominium document is subject to sections 90, 90a, and 91.

(2) If a change involves a change in the boundaries of a condominium unit or the addition or elimination of condominium units, a replat of the condominium subdivision plan shall be prepared and recorded assigning a condominium unit number to each condominium unit in the amended project. The replat of the condominium subdivision plan shall be designated replat number \_\_\_\_\_ of \_\_\_\_\_ county condominium subdivision plan number \_\_\_\_\_, using the same plan number assigned to the original condominium subdivision plan.

(3) Notwithstanding section 33, if the developer has not completed development and construction of units or improvements in the condominium project that are identified as “need not be built” during a period ending 10 years after the date of commencement of construction by the developer of the project, the developer, its successors, or assigns have the right to withdraw from the project all undeveloped portions of the project not identified as “must be built” without the prior consent of any co-owners, mortgagees of units in the project, or any other party having an interest in the project. If the master deed contains provisions permitting the expansion, contraction, or rights of convertibility of units or common elements in the condominium project, then the time period is 6 years after the date the developer exercised its rights with respect to either expansion, contraction, or rights of convertibility, whichever right was exercised last. The undeveloped portions of the project withdrawn shall also automatically be granted easements for utility and access purposes through the condominium project for the benefit of the undeveloped portions of the project. If the developer does not withdraw the undeveloped portions of the project from the project before expiration of the time periods, those undeveloped lands shall remain part of the project as general common elements and all rights to construct units upon that land shall cease. In such an event, if it becomes necessary to adjust percentages of value as a result of fewer units existing, a co-owner or the association of co-owners may bring an action to require revisions to the percentages of value under section 95.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001;—Am. 2002, Act 283, Imd. Eff. May 9, 2002.

**559.168 Availability of condominium documents.**

Sec. 68. An association of co-owners shall keep current copies of the master deed, all amendments to the master deed, and other condominium documents for the condominium project available at reasonable hours to co-owners, prospective purchasers, and prospective mortgagees of condominium units in the condominium projects.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

**559.169 Assessment of common expenses; contribution of co-owner.**

Sec. 69. (1) Except to the extent that the condominium documents provide otherwise, common expenses associated with the maintenance, repair, renovation, restoration, or replacement of a limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time the expenses were incurred. If the limited common element involved was assigned to more than 1 condominium unit, the expenses shall be specially assessed against each of the condominium units equally so that the total of the special assessments equals the total of the expenses, except to the extent that the condominium documents provide otherwise.

(2) To the extent that the condominium documents expressly so provide, any other unusual common expenses benefiting less than all of the condominium units, or any expenses incurred as a result of the conduct of less than all those entitled to occupy the condominium project or by their licensees or invitees, shall be specially assessed against the condominium unit or condominium units involved, in accordance with reasonable provisions as the condominium documents may provide.

(3) The amount of all common expenses not specially assessed under subsections (1) and (2) shall be assessed against the condominium units in proportion to the percentages of value or other provisions as may be contained in the master deed for apportionment of expenses of administration.

(4) A co-owner shall not be exempt from contributing as provided in this act by nonuse or waiver of the use of any of the common elements or by abandonment of his or her condominium unit.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001;—Am. 2002, Act 283, Imd. Eff. May 9, 2002.

### **559.170 Repealed. 1982, Act 538, Imd. Eff. Jan. 17, 1983.**

**Compiler's note:** The repealed section pertained to review of filing.

### **559.171 Notice of proposed action.**

Sec. 71. Not less than 10 days before taking reservations under a preliminary reservation agreement for a unit in a condominium project, recording a master deed for a project, or beginning construction of a project which is intended to be a condominium project at the time construction is begun, whichever is earliest, a written notice of the proposed action shall be provided to each of the following:

- (a) The appropriate city, village, township, or county.
- (b) The appropriate county road commission and county drain commissioner.
- (c) The department of environmental quality.
- (d) The state transportation department.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1980, Act 513, Imd. Eff. Jan. 26, 1981;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 2002, Act 283, Imd. Eff. May 9, 2002.

### **559.171a Rules applicable to condominium project not served by public water and public sewers; submission of plan to department of public health; approval or rejection.**

Sec. 71a. (1) The rules of the department of public health relating to suitability of soils and groundwater supply for subdivisions not served by public water and public sewers shall apply to a condominium project not served by public water and public sewers.

(2) If public water and public sewers are not available and accessible to the land proposed to be included in a project, a developer shall submit 3 copies of the condominium subdivision plan to the department of public health. The department of public health shall transmit these copies to a local health department that elects to maintain jurisdiction over the approval or rejection of the plan pursuant to subsection (3).

(3) Not later than 30 days after receipt of the condominium subdivision plan, the state department of public health or, if the local health department elects to maintain jurisdiction over approval or rejection of the plan, the local health department shall approve the plan and note its approval on the copy to be returned to the developer or reject all or such portion of the plan that is not suitable. If rejected, the department rejecting the plan shall notify the developer and the governing body in writing of the reasons for rejection of the plan and the requirements for approval.

**History:** Add. 1983, Act 113, Imd. Eff. July 12, 1983.

### **559.172 Establishment of condominium project; sale of condominium unit before master deed recorded prohibited; exception; substantial failure of master deed to comply with act; marketability of title.**

Sec. 72. (1) A condominium project for any property shall be established upon the recording of a master deed that complies with this act.

(2) Except as provided in section 88, a condominium unit shall not be sold by or on behalf of the developer before a master deed is recorded for the condominium units in the project.

(3) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the master deed to comply with this act. Whether a substantial failure of the master deed to comply with this act impairs marketability is not affected by this subsection.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 1983, Act 113, Imd. Eff. July 12, 1983

#### **559.172a Recordation of master deed; creation of time-share unit; amendment of documents as material alteration.**

Sec. 72a. If the master deed for a condominium project is recorded after the effective date of this section, a time-share unit shall not be created unless expressly provided for in the condominium documents. If the master deed for a condominium project was recorded on or before the effective date of this section, a time-share unit shall not be created unless the condominium documents are amended to expressly provide for the creation of time-share units. An amendment of the condominium documents to expressly provide for the creation of time-share units is a material alteration of the rights of co-owners and requires the consent of 2/3 of the votes of co-owners and mortgagees as provided in section 90.

**History:** Add. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.172b Air space over fee.**

Sec. 72b. (1) A condominium project may be established for property consisting of a separate legal parcel in space that is considered the air space over a fee, improved or unimproved, in real property law. Such a condominium project may be provided easements, licenses, and other rights as may be necessary to provide access to and otherwise serve the needs of the project from the underlying surface parcel.

(2) This section applies to any question regarding whether any air space existing over a fee may be submitted to, and established as, a condominium under this act and applies to development as a condominium of air space over a fee.

**History:** Add. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

#### **559.173 Recordation of master deed and amendment; certification by treasurer; filing copy of master deed with local supervisor or assessing officer; filing architectural plans and specifications or affidavit with local unit of government.**

Sec. 73. (1) A master deed and an amendment to the master deed shall be recorded.

(2) A master deed shall not be recorded without a certification by the treasurer collecting the property taxes and special assessments that all property taxes and current installments of special assessments which became a lien on the property involved in the project are paid in full.

(3) When recorded, a copy of the master deed and a copy of any subsequently amended master deed or amendment shall be filed with the local supervisor or assessing officer.

(4) Detailed architectural plans and specifications for the condominium project, if that condominium project contains any units that require architectural plans and specifications to construct, shall be filed with the local unit of government in which the project is located. However, in the case of a conversion condominium where detailed architectural plans and specifications are not available, the developer shall file with the local unit of government an affidavit stating the fact that detailed architectural plans and specifications are not available.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

#### **559.174 Delivery and retention of condominium subdivision plan; recordation of consolidating master deed.**

Sec. 74. (1) The condominium subdivision plan of a size as provided by rule of the administrator shall be delivered to and retained by the local register of deeds office.

(2) A consolidating master deed shall be recorded at the register of deeds office. The register of deeds shall not deny recording of a consolidating master deed because the property taxes and special assessments are not paid in full.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.181 Service of process.**

Sec. 81. (1) When a person, including a nonresident of this state, files a notice under section 71, records a master deed, or engages in conduct prohibited or made actionable by this act or a rule promulgated or order issued under this act and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the administrator as his or her attorney

to receive service of process in any noncriminal action or proceeding against the person or the person's successor, personal representative, or administrator which grows out of that conduct and which is brought under this act or any rule promulgated or order issued under this act, with the same force and validity as if served on the person personally.

(2) Service under subsection (1) may be made by filing a copy of the process in the office of the administrator together with a \$25.00 fee. Service is not effective unless the plaintiff, which may be the administrator in an action or proceeding instituted by it, immediately sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the person's last known address, or takes other steps which are reasonably calculated to give actual notice and unless the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.181a Promotional material; labeling structure or improvement “need not be built.”**

Sec. 81a. If any structure or improvement proposed in a condominium project is labeled pursuant to section 66 “need not be built”, or is to be located within a portion of the condominium project with respect to which the developer has reserved a development right, promotional material may not be displayed or delivered to prospective purchasers which describes or portrays that structure or improvement unless the description or portrayal of the structure or improvement in the promotional material is conspicuously labeled “need not be built”.

**History:** Add. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.182 Repealed. 1982, Act 538, Imd. Eff. Jan. 17, 1983.**

**Compiler's note:** The repealed section pertained to escrow account and escrow agent.

#### **559.183 Preliminary reservation agreement; use; condominium buyer's handbook; placing payment in escrow; cancellation of agreement; refund; treating payment as if made under purchase agreement.**

Sec. 83. (1) After filing a notice under section 71, a preliminary reservation agreement may be used by a developer to reserve a condominium unit for a prospective purchaser. During the time reservations are being accepted, a condominium buyer's handbook shall be available at the condominium project for all prospective purchasers.

(2) Upon receipt of payment under a preliminary reservation agreement, the developer shall place the payment in an escrow account with an escrow agent.

(3) A prospective purchaser who has made a payment under a preliminary reservation agreement may cancel that agreement. The developer shall fully refund within 3 business days after notice of cancellation is received all payments made.

(4) If a person who has entered into a preliminary reservation agreement subsequently enters into a purchase agreement, the developer shall treat a payment originally made under the preliminary reservation agreement as if made under a purchase agreement pursuant to section 84.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.184 Section inapplicable to business condominium unit; withdrawal from signed purchase agreement; depositing and retaining funds in escrow; contents of purchase agreement; waiver of right of withdrawal; form.**

Sec. 84. (1) This section shall not apply to a business condominium unit.

(2) Except as provided in subsection (5), a signed purchase agreement shall not become binding on a purchaser and a purchaser may withdraw from a signed purchase agreement without cause and without penalty before conveyance of the unit and within 9 business days after receipt of the documents required in section 84a. The calculation of the 9 business day period shall include the day on which the documents required under section 84a are received if that day is a business day.

(3) Upon receipt of payment under a purchase agreement, the developer shall deposit all funds in an escrow account with an escrow agent. Funds due a developer from the closing of a unit sale need not be deposited in escrow if such funds are not required by other provisions of this act to be retained in escrow after such closing. After the expiration of the withdrawal period provided in subsection (2), the developer shall retain amounts in escrow or provide other adequate security as provided in section 103b to assure completion of only those uncompleted structures and improvements labeled under the terms of the condominium documents, “must be built”.

(4) A purchase agreement shall contain all of the following:

(a) A statement that all funds paid by the prospective purchaser in connection with the purchase of a unit shall be deposited in an escrow account with an escrow agent and shall be returned to the purchaser within 3 business days after withdrawal from the purchase agreement as provided in subdivision (b). The statement shall include the name and address of the escrow agent.

(b) A statement that unless the purchaser waives the right of withdrawal, the purchaser may withdraw from a signed purchase agreement without cause and without penalty if the withdrawal is made before conveyance of the unit and within 9 business days after receipt of the documents required in section 84a including the day on which the documents are received if that day is a business day.

(c) A statement that after the expiration of the withdrawal period provided in subsection (2), the developer is required to retain sufficient funds in escrow or to provide sufficient security to assure completion of only those uncompleted structures and improvements labeled under the terms of the condominium documents, "must be built".

(d) The following paragraph:

"At the exclusive option of the purchaser, any claim which might be the subject of a civil action against the developer which involves an amount less than \$2,500.00, and arises out of or relates to this purchase agreement or the unit or project to which this agreement relates, shall be settled by binding arbitration conducted by the American arbitration association. The arbitration shall be conducted in accordance with applicable law and the currently applicable rules of the American arbitration association. Judgment upon the award rendered by arbitration may be entered in a circuit court of appropriate jurisdiction."

(e) A statement that the escrow agreement between the developer and the escrow agent is incorporated by reference.

(5) The right of withdrawal in subsection (2) may be waived in exceptional cases, by a purchaser who is provided all of the documents listed in subsection (4) and who knowingly and voluntarily waives in writing the purchaser's right to the protection provided by the right of withdrawal. The waiver form shall include an explanation of this section.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 1983, Act 113, Imd. Eff. July 12, 1983

**559.184a Providing copies of listed documents to prospective purchaser of condominium unit; amendment to purchase agreement and condominium documents; signature on form as evidence; providing prospective purchaser of business condominium unit copy of recorded master deed; misleading statements; violation.**

Sec. 84a. (1) The developer shall provide copies of all of the following documents to a prospective purchaser of a condominium unit, other than a business condominium unit:

(a) The recorded master deed.

(b) A copy of a purchase agreement that conforms with section 84, and that is in a form in which the purchaser may sign the agreement, together with a copy of the escrow agreement.

(c) A condominium buyer's handbook. The handbook shall contain, in a prominent location and in boldface type, the name, telephone number, and address of the person designated by the administrator to respond to complaints. The handbook shall contain a listing of the available remedies as provided in section 145.

(d) A disclosure statement relating to the project containing all of the following:

(i) An explanation of the association of co-owners' possible liability pursuant to section 58.

(ii) The names, addresses, and previous experience with condominium projects of each developer and any management agency, real estate broker, residential builder, and residential maintenance and alteration contractor.

(iii) A projected budget for the first year of operation of the association of co-owners.

(iv) An explanation of the escrow arrangement.

(v) Any express warranties undertaken by the developer, together with a statement that express warranties are not provided unless specifically stated.

(vi) If the condominium project is an expandable condominium project, an explanation of the contents of the master deed relating to the election to expand the project prescribed in section 32, and an explanation of the material consequences of expanding the project.

(vii) If the condominium project is a contractable condominium project, an explanation of the contents of the master deed relating to the election to contract the project prescribed in section 33, an explanation of the material consequences of contracting the project, and a statement that any structures or improvements proposed to be located in a contractable area need not be built.

(viii) If section 66(2)(j) is applicable, an identification of all structures and improvements labeled pursuant

to section 66 “need not be built”.

(ix) If section 66(2)(j) is applicable, the extent to which financial arrangements have been provided for completion of all structures and improvements labeled pursuant to section 66 “must be built”.

(x) Other material information about the condominium project and the developer that the administrator requires by rule.

(e) If a project is a conversion condominium, the developer shall disclose the following additional information:

(i) A statement, if known, of the condition of the main components of the building, including the roofs; foundations; external and supporting walls; heating, cooling, mechanical ventilating, electrical, and plumbing systems; and structural components. If the condition of any of the components of the building listed in this subparagraph is unknown, the developer shall fully disclose that fact.

(ii) A list of any outstanding building code or other municipal regulation violations and the dates the premises were last inspected for compliance with building and housing codes.

(iii) The year or years of completion of construction of the building or buildings in the project.

(2) A purchase agreement may be amended by agreement of the purchaser and developer before or after the agreement is signed. An amendment to the purchase agreement does not afford the purchaser any right or time to withdraw in addition to that provided in section 84(2). An amendment to the condominium documents effected in the manner provided in the documents or provided by law does not afford the purchaser any right or time to withdraw in addition to that provided in section 84(2).

(3) At the time the purchaser receives the documents required in subsection (1) the developer shall provide a separate form that explains the provisions of this section. The signature of the purchaser upon this form is prima facie evidence that the documents required in subsection (1) were received and understood by the purchaser.

(4) Promptly after recording a master deed for a condominium project containing a business condominium unit, the developer shall provide to a prospective purchaser of a business condominium unit a copy of the recorded master deed for the project.

(5) With regard to any documents required under this section, a developer shall not make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(6) The developer promptly shall amend a document required under this section to reflect any material change or to correct any omission in the document.

(7) In addition to other liabilities and penalties, a developer who violates this section is subject to section 115.

**History:** Add. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 1983, Act 113, Imd. Eff. July 12, 1983.

#### **559.185 Liquidated damages in case of default; actual damages; receipt of escrowed funds.**

Sec. 85. A provision in a purchase agreement for liquidated damages in case of default shall be limited to a reasonable percentage of the purchase price of the condominium unit. This provision shall not prevent the developer from recovering actual damages. Such an agreement shall not permit the developer to receive escrowed funds until there is a default, or until conveyance of legal or equitable title to the purchaser.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.186, 559.187 Repealed. 1982, Act 538, Imd. Eff. Jan. 17, 1983.**

**Compiler's note:** The repealed sections pertained to advertising and reservations for purchase of condominium unit.

#### **559.188 Offering for sale and entering into purchase agreement with respect to condominium unit proposed to be included within additional land of expandable condominium or within convertible land without recording amended master deed.**

Sec. 88. After recording a master deed for the initial phase of an expandable or convertible condominium project, the developer may offer for sale and enter into a binding purchase agreement with respect to any condominium unit proposed to be included within the additional land of the expandable condominium or within the convertible land, without recording an amended master deed, if all of the following occur:

(a) The condominium unit is one which the developer may properly include in the condominium project.

(b) There is a site plan showing the location of the unit.

(c) A substantially identical condominium unit was already included within the project or plans for the condominium unit which describe the physical characteristics of the unit exist and are appended to the purchase agreement.

(d) The purchase agreement states that the condominium unit shall be conveyed to the prospective

purchaser within 1 year after the execution of the purchase agreement. If conveyance is not made within that time the agreement is voidable under the conditions set forth in the agreement.

(e) Within 6 months after the date the purchase agreement becomes binding, an amendment to the master deed is recorded which includes the unit.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

### **559.189 Repealed. 1982, Act 538, Imd. Eff. Jan. 17, 1983.**

**Compiler's note:** The repealed section pertained to documents to be provided prospective purchaser.

### **559.190 Amendment of condominium documents; consent; void provision superseded by subsection (2); reservation of right to amend; notice of proposed amendments; costs and expenses; master deed amendment; affirmative vote.**

Sec. 90. (1) The condominium documents may be amended without the consent of co-owners or mortgagees if the amendment does not materially alter or change the rights of a co-owner or mortgagee and if the condominium documents contain a reservation of the right to amend for that purpose to the developer or the association of co-owners. An amendment that does not materially change the rights of a co-owner or mortgagee includes, but is not limited to, a modification of the types and sizes of unsold condominium units and their appurtenant limited common elements.

(2) Except as provided in this section, the master deed, bylaws, and condominium subdivision plan may be amended, even if the amendment will materially alter or change the rights of the co-owners or mortgagees, with the consent of not less than 2/3 of the votes of the co-owners and mortgagees. A mortgagee shall have 1 vote for each mortgage held. The 2/3 majority required in this section may not be increased by the terms of the condominium documents, and a provision in any condominium documents that requires the consent of a greater proportion of co-owners or mortgagees for the purposes described in this subsection is void and is superseded by this subsection. 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.

(3) The developer may reserve, in the condominium documents, the right to amend materially the condominium documents to achieve specified purposes, except a purpose provided for in subsection (4). Reserved rights shall not be amended except by or with the consent of the developer. If a proper reservation is made, the condominium documents may be amended to achieve the specified purposes without the consent of co-owners or mortgagees.

(4) The method or 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. A co-owner's condominium unit dimensions or appurtenant limited common elements may not be modified without the co-owner's consent.

(5) Co-owners shall be notified of proposed amendments under this section not less than 10 days before the amendment is recorded.

(6) A person causing or requesting an amendment to the condominium documents shall be responsible for costs and expenses of the amendment, except for amendments based upon a vote of a prescribed majority of co-owners and mortgagees or based upon the advisory committee's decision, the costs of which are expenses of administration.

(7) A master deed amendment, including the consolidating master deed, dealing with the addition, withdrawal, or modification of units or other physical characteristics of the project shall comply with the standards prescribed in section 66 for preparation of an original condominium subdivision plan for the project.

(8) For purposes of this section, the affirmative vote of a 2/3 of co-owners is considered 2/3 of all co-owners entitled to vote as of the record date for such votes.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 1988, Act 147, Imd. Eff. June 7, 1988;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001;—Am. 2002, Act 283, Imd. Eff. May 9, 2002.

### **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.

#### **559.191 Recording of amendment to recorded condominium document required; copy to co-owner.**

Sec. 91. (1) An amendment to the master deed or other recorded condominium document shall not be effective until the amendment is recorded.

(2) A copy of the recorded amendment shall be delivered to each co-owner of the project.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

**559.192, 559.193 Repealed. 1982, Act 538, Imd. Eff. Jan. 17, 1983.**

**Compiler's note:** The repealed sections pertained to disposition of fees and charges, and to conditions for refusing permit to sell or permit to take reservations.

**559.194 Title insurance policy.**

Sec. 94. The developer shall furnish a purchaser buying a condominium unit from the developer a title insurance policy, in the amount of the purchase price, by a title insurance company licensed to do business in the state.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.195 Revision of condominium subdivision plan; altering percentage of value; revisions in percentage of value per condominium unit.**

Sec. 95. If the condominium subdivision plan is revised subsequent to its initial filing, and the revisions would alter the percentage of value per condominium unit when applied to the formula used to derive the percentage of value, then the percentage of value shall be altered by the developer to reflect the revisions. If the percentage of value is not altered to reflect these revisions, then a co-owner may bring an action or initiate a proceeding to require revisions in the percentage of value per condominium unit, without the consent of the co-owners, mortgagees, or other interested parties, as are determined to be fair, just, and equitable in accordance with the basic formula used to originally establish the percentage of value for the project.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

**559.201-559.203 Repealed. 1982, Act 538, Imd. Eff. Jan. 17, 1983.**

**Compiler's note:** The repealed sections pertained to disclosure statements and to escrow or security requirements for construction of recreational facilities.

**559.203a Repealed. 1983, Act 113, Imd. Eff. July 12, 1983.**

**Compiler's note:** The repealed section pertained to the release of escrow funds.

**559.203b Section inapplicable to business condominium unit; release of deposits or amounts retained in escrow; conditions; substantial completion; furnishing escrow agent with evidence of adequate security in place of retaining funds; certificate; notice to developer; release of interest paid on amounts escrowed; escrow agent deemed independent party; liability; certification by licensed professional architect or engineer; "licensed professional engineer or architect" defined.**

Sec. 103b. (1) This section shall not apply to a business condominium unit.

(2) Deposits in escrow with an escrow agent required under sections 83 and 84 shall be released pursuant to those sections upon cancellation of a preliminary reservation agreement or withdrawal from a purchase agreement, and in all other cases shall be retained and released pursuant to this section and condominium documents which are not inconsistent with this section.

(3) Except as provided in subsection (5), amounts required to be retained in escrow in connection with the purchase of a unit shall be released to the developer pursuant to subsection (6) only upon all of the following:

(a) Issuance of a certificate of occupancy for the unit, if required by local ordinance.

(b) Conveyance of legal or equitable title to the unit to the purchaser.

(c) Receipt by the escrow agent of a certificate signed by a licensed professional engineer or architect either confirming that those portions of the phase of the project in which the condominium unit is located and which on the condominium subdivision plan are labeled "must be built" are substantially complete, or determining the amount necessary for substantial completion thereof.

(d) Receipt by the escrow agent of a certificate signed by a licensed professional engineer or architect either confirming that recreational or other facilities which on the condominium subdivision plan are labeled "must be built", whether located within or outside of the phase of the project in which the condominium unit is located, and which are intended for common use, are substantially complete, or determining the amount necessary for substantial completion thereof.

(4)

(a) Substantial completion and the estimated cost for substantial completion of the items described in subsections (3)(c) and (3)(d) and in subsection (6) shall be determined by a licensed professional engineer or architect, as provided in subsection (4)(b), subject to the following:

(i) Items referred to in subsection (3)(c) shall be substantially complete only after all utility mains and leads, all major structural components of buildings, all building exteriors and all sidewalks, driveways,

landscaping and access roads, to the extent such items are designated on the condominium subdivision plan as “must be built”, are substantially complete in accordance with the pertinent plans therefor.

(ii) If the estimated cost of substantial completion of any of the items referred to in subsection (3)(c) and (d) cannot be determined by a licensed professional engineer or architect due to the absence of plans, specifications, or other details that are sufficiently complete to enable such a determination to be made, such cost shall be the minimum expenditure specified in the recorded master deed or amendment for completion thereof. To the extent that any item referred to in subsection (3)(c) and (d) is specifically depicted on the condominium subdivision plan, an estimate of the cost of substantial completion prepared by a licensed professional engineer or architect shall be required in place of the minimum expenditure specified in the recorded master deed or amendment.

(b) A structure, element, facility or other improvement shall be deemed to be substantially complete when it can be reasonably employed for its intended use and, for purposes of certification under this section, shall not be required to be constructed, installed, or furnished precisely in accordance with the specifications for the project. A certificate of substantial completion shall not be deemed to be a certification as to the quality of the items to which it relates.

(5) In place of retaining funds in escrow under subsection (3), the developer may, if the escrow agreement so provides, furnish an escrow agent with evidence of adequate security, including, without limitation, an irrevocable letter of credit, lending commitment, indemnification agreement, or other resource having a value, in the judgment of the escrow agent, of not less than the amount retained pursuant to subsection (3).

(6) Upon receipt of a certificate issued pursuant to subsection (3)(c) and (d) determining the amounts necessary for substantial completion, the escrow agent may release to the developer all funds in escrow in excess of the amounts determined by the issuer of such certificate to be necessary for substantial completion. In addition, upon receipt by the escrow agent of a certificate signed by a licensed professional engineer or architect confirming substantial completion in accordance with the pertinent plans of an item for which funds have been deposited in escrow, the escrow agent shall release to the developer the amount of such funds specified by the issuer of the certificate as being attributable to such substantially completed item. However, if the amounts remaining in escrow after such partial release would be insufficient in the opinion of the issuer of such certificate for substantial completion of any remaining incomplete items for which funds have been deposited in escrow, only the amount in escrow in excess of such estimated cost to substantially complete shall be released by the escrow agent to the developer. Notwithstanding a release of escrowed funds that is authorized or required by this section, an escrow agent may refuse to release funds from an escrow account if the escrow agent, in its judgment, has sufficient cause to believe the certificate confirming substantial completion or determining the amount necessary for substantial completion is fraudulent or without factual basis.

(7) Not earlier than 9 months after closing the sale of the first unit in a phase of a condominium project for which escrowed funds have been retained under subsection (3)(c) or for which security has been provided under subsection (5), an escrow agent, upon the request of the association or any interested co-owner, shall notify the developer of the amount of funds deposited under subsection (3)(c) or security provided under subsection (5) for such purpose that remains, and of the date determined under this subsection upon which those funds can be released. In the case of a recreational facility or other facility intended for general common use, not earlier than 9 months after the date on which the facility was promised in the condominium documents to be completed by the developer, an escrow agent, upon the request of the association or any interested co-owner, shall notify the developer of the amount of funds deposited under subsection (3)(d) or security provided under subsection (5) for such purpose that remains, and of the date determined under this subsection upon which those funds can be released. Three months after receipt of a request pertaining to funds described in subsection (3)(c) or (3)(d), funds that have not yet been released to the developer may be released by the escrow agent for the purpose of completing incomplete improvements for which the funds were originally retained, or for a purpose specified in a written agreement between the association and the developer entered into after the transitional control date. The agreement may specify that issues relating to the use of the funds be submitted to arbitration. The escrow agent may release funds in the manner provided in such an agreement or may initiate an interpleader action and deposit retained funds with a court of competent jurisdiction. In any interpleader action, the circuit court shall be empowered, in its discretion, to appoint a receiver to administer the application of the funds. Any notice or request provided for in this subsection shall be in writing.

(8) If interest is paid on the amounts escrowed under this act, that interest shall be released in the same manner as provided for release of funds in this section except that the parties may, by written agreement, provide that interest on funds refunded to a depositor upon withdrawal may be paid to the developer.

(9) The escrow agent in the performance of its duties under this section shall be deemed an independent

party not acting as the agent of the developer, any purchaser, co-owner, or other interested party. So long as the escrow agent relies upon any certificate, cost estimate, or determination made by a licensed professional engineer or architect, as described in this act, the escrow agent shall have no liability whatever to the developer or to any purchaser, co-owner, or other interested party for any error in such certificate, cost estimate, or determination, or for any act or omission by the escrow agent in reliance thereon. The escrow agent shall be relieved of all liability upon release, in accordance with this section, of all amounts deposited with it pursuant to this act.

(10) A licensed professional architect or engineer undertaking to make a certification under this section shall be held to the normal standard of care required of a member of that profession in determining substantial completion and the estimated cost of substantial completion under this act, but such architect or engineer shall not be required to have designed the improvement or item or to have inspected or to have otherwise exercised supervisory control thereof during the course of construction or installation of the improvement or item with respect to which the certificate is delivered. The certification by a licensed professional architect or engineer shall not be construed to limit the developer's liability for any defect in construction.

(11) For purposes of this section, "licensed professional engineer or architect" means a member of those professions who satisfies all requirements of the laws of this state for the practice of the profession, and who is not an employee of the developer or of a firm in which the developer or an officer or director of the developer is a principal or holds 10% or more of the outstanding shares of that firm.

**History:** Add. 1983, Act 113, Imd. Eff. July 12, 1983.

#### **559.204 Conversion condominium project; notice; termination of tenancy.**

Sec. 104. (1) Except for the requirements of subsection (2), this section shall not apply to a business condominium unit.

(2) Before offering any unit for sale, the developer of a conversion condominium project shall notify each existing tenant of any unit in the proposed conversion condominium project of all of the following:

(a) The proposed conversion.

(b) The right of a prospective purchaser to receive the disclosure documents enumerated in section 84a.

(c) The right to remain in the unit of residence for 120 days after receipt of this notice, or until expiration of the term of the lease, whichever is longer.

(d) The right to terminate tenancy after receipt of this notice upon 60 days' notice to the developer. The notice shall be physically delivered or sent by first class mail to each unit, addressed to the tenant. A tenancy in a conversion condominium, whether month to month or otherwise, shall not be terminated by the lessor without cause within 120 days after delivery of notice under this subsection, or until expiration of the term of the lease, whichever is longer.

(3) A tenant who receives notice under subsection (2) may terminate his or her tenancy, at any time, if notice of termination of tenancy is given to the developer not less than 60 days before the date of termination.

(4) If a developer of a conversion condominium project desires to take reservations before delivery of the notice required under subsection (2), the developer shall, before taking any reservations, notify each existing tenant of any unit in the proposed conversion condominium of both of the following:

(a) The tenant's lease is not affected by the taking of reservations for units in the proposed conversion condominium.

(b) If a conversion condominium project is established, the tenant may obtain from the developer a full statement of the rights and options available to the tenant.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.204a Terminating tenancy of certain persons without cause prohibited; criteria; notice.**

Sec. 104a. The tenancy of a person who meets all of the following criteria on the date a master deed is filed for the conversion of a building to a condominium, shall not be terminated without cause within 1 year after receipt of notice required under section 104(2):

(a) The person is 65 years of age or older or paraplegic, quadriplegic, hemiplegic, or blind as that term is defined in section 504 of the state income tax act of 1967, Act No. 281 of the Public Acts of 1967, as amended, being section 206.504 of the Michigan Compiled Laws.

(b) The person is a resident of the building.

(c) The person does not qualify for an extended lease arrangement under section 104b.

**History:** Add. 1980, Act 283, Imd. Eff. Oct. 10, 1980;—Am. 1980, Act 513, Imd. Eff. Jan. 26, 1981;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.204b Definitions; applicability of section; notice of right to elect extended lease**

**arrangement; election; extended lease arrangement provisions; number of years lease renewable; notice by developer entering into restricted lease arrangement; assignment, device, sublease, or transfer of lease by qualified senior citizen or person with disabilities prohibited; automatic termination of lease; liability of lessor violating rental restrictions; recovery of possession of restricted unit; transfer of restricted unit.**

Sec. 104b. (1) As used in this section and sections 104a, 104d, 104e, and 131:

(a) "Qualified conversion condominium project" means a structure or group of structures containing a total of 6 or more residential units occupied before the establishment of a conversion condominium project.

(b) "Qualified person with disabilities" means a person who is a resident of a qualified conversion condominium project and paraplegic, quadriplegic, hemiplegic, or blind as that term is defined in section 504 of the income tax act of 1967, 1967 PA 281, MCL 206.504.

(c) "Qualified senior citizen" means an individual who is both of the following:

(i) A resident, on October 10, 1980, of a unit in a qualified conversion condominium project who on or after June 1, 1980, was a party to an oral or written agreement to pay less than \$450.00 monthly rent for an apartment in the project having 1 bedroom or less, or less than \$500.00 monthly rent for an apartment in the project having 2 or more bedrooms.

(ii) Sixty-five years of age or older on October 10, 1980.

(d) "Rent" or "monthly rent" means the total monthly amount payable to the lessor, and shall include any amount payable to the lessor for utilities.

(e) "Resident" means an individual who uses a unit as his or her primary residence, to which the individual intends to return whenever absent.

(f) "Restricted unit" means an apartment that is subject to an extended lease arrangement as provided in subsection (4).

(2) Except as to a developer who has been issued a permit to sell before October 10, 1980, this section applies to a developer of a qualified conversion condominium project.

(3) A developer shall notify each existing tenant at the same time notice is given under section 104(2), of the right to elect an extended lease arrangement and the terms and conditions of an extended lease arrangement. A qualified senior citizen or qualified person with disabilities shall have not more than 60 days after receipt of notice under this subsection to communicate the election of an extended lease arrangement to the developer.

(4) An extended lease arrangement shall be in writing and shall provide for the following:

(a) A written lease renewable from year to year for the number of years specified in subsection (5) with respect to a unit occupied by a qualified senior citizen, and for the number of years specified in subsection (6) with respect to a unit occupied by a qualified person with disabilities.

(b) That the number of years for which a lease subject to an extended lease arrangement may be renewed shall be measured from the date on which the election of an extended lease arrangement is communicated to the developer.

(c) That any increase in the rent during the time the unit is a restricted unit will not be an unreasonable increase beyond the fair market rent for a comparable apartment.

(d) That upon request of the resident of a restricted unit, the owner shall disclose all information used in determining a reasonable rent increase based upon the standard in subdivision (c).

(5) Except as provided in section 104d, the number of years for which a qualified senior citizen may renew a lease subject to an extended lease arrangement shall be determined by his or her age on the date of receipt of the notice required under section 104(2), as follows:

(a) A person who is not less than 65 years of age and not more than 69 years of age may renew year to year for 4 years. However, if the developer is notified that sufficient loan funds are not available under former section 104c, the period of renewal under this subdivision is reduced 2 years. The developer immediately shall notify affected qualified senior citizens of a reduction in the number of years of renewal.

(b) A person who is not less than 70 years of age and not more than 74 years of age may renew year to year for 6 years.

(c) A person who is not less than 75 years of age and not more than 79 years of age may renew year to year for 7 years.

(d) A person who is 80 years of age or more may renew year to year for 10 years.

(6) Except as provided in section 104d, a person who is a qualified person with disabilities on the date of receipt of notice required under section 104(2) may renew a lease subject to an extended lease arrangement year to year for 4 years; or, if the qualified person with disabilities is also a qualified senior citizen, for the number of years provided in subsection (5), whichever is greater.

(7) A developer who enters into a restricted lease arrangement or the developer's successor shall notify:

(a) The Michigan state housing development authority of each tenant who elects an extended lease arrangement as soon as practicable after the election is communicated to the developer.

(b) The office of services to the aging created in section 5 of the older Michiganians act, 1981 PA 180, MCL 400.585, 18 months before the expiration of the extended lease arrangement for a qualified senior citizen who is in the age categories described in subsection (5)(c) and (d).

(8) A lease subject to an extended lease arrangement shall not be assigned, devised, subleased, or transferred by the qualified senior citizen or qualified person with disabilities.

(9) A lease subject to an extended lease arrangement shall terminate automatically upon the death of the qualified senior citizen or qualified person with disabilities. However, a surviving spouse of a qualified senior citizen who is 65 years of age or older at the time the qualified senior citizen dies shall have the right to execute a lease under an extended lease arrangement subject to the right of renewal, and other conditions, that applied to the deceased. A surviving spouse who does not qualify for an extended lease shall have 6 months in which to vacate the premises, during which time the conditions of the deceased spouse's extended lease shall apply, except for the right of renewal.

(10) A lessor who violates the rental restrictions of subsection (4)(c) is liable to the qualified senior citizen or qualified person with disabilities in an amount equal to 3 times the amount by which the rental payments exceed the fair market rent, to be recovered in a civil action.

(11) The owner may recover possession of a restricted unit for nonpayment of rent, illegal use or occupancy of the premises, or other grounds for recovery of possession under chapter 57 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5701 to 600.5759.

(12) A restricted unit may be transferred by the owner to any person, subject to the extended lease arrangement.

**History:** Add. 1980, Act 283, Imd. Eff. Oct. 10, 1980;—Am. 1980, Act 513, Imd. Eff. Jan. 26, 1981;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 1998, Act 36, Imd. Eff. Mar. 18, 1998.

#### **559.204c Repealed. 1985, Act 183, Imd. Eff. Dec. 18, 1985.**

**Compiler's note:** The repealed section pertained to loans to developers of qualified conversion condominium projects.

#### **559.204d Developer not required to offer extended lease arrangement; conditions; compliance.**

Sec. 104d. (1) A developer, but not a successor developer, who meets all of the following conditions, shall not be required to offer an extended lease arrangement described in section 104b for longer than 1 year:

(a) Not later than January 1, 1980, is the legal or equitable owner of a qualified conversion condominium project.

(b) Not later than March 1, 1980, has filed an application for a permit to sell units in that qualified conversion condominium project, and not later than March 1, 1980 has transmitted the required fee.

(c) On October 10, 1980, a permit to sell has not been issued by the administrator for the qualified conversion condominium project described in subdivision (b).

(d) Has received notice from the Michigan state housing development authority that sufficient funds are not available to advance the full amount of loans for which application has been made by the developer.

(2) A developer described in subsection (1) shall comply with, and be subject to, section 104b(1) to (3), (4)(b) to (d), and (8) to (12).

**History:** Add. 1980, Act 283, Imd. Eff. Oct. 10, 1980;—Am. 1980, Act 513, Imd. Eff. Jan. 26, 1981;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.204e Legislative intent; examination of relevant information; recommendation.**

Sec. 104e. It is the intent of the legislature to enable continued occupancy of restricted units by qualified senior citizens described in section 104b(5)(c) and (d) following the expiration of an extended lease arrangement. In furtherance of this intent, the office of services to the aging created in section 2 of Act No. 146 of the Public Acts of 1975, as amended, in consultation with the department of commerce and the Michigan state housing development authority, shall examine all relevant information and within 2 years after the effective date of this section, recommend to the legislature appropriate action to effectuate the intent expressed in this section.

**History:** Add. 1980, Act 283, Imd. Eff. Oct. 10, 1980.

**Compiler's note:** Act 146 of 1975, referred to in this section, was repealed by Act 180 of 1980.

#### **559.205 Reserve fund.**

Sec. 105. A reserve fund for major repairs and replacement of common elements shall be maintained by the associations of co-owners. The administrator may by rule establish minimum standards for reserve funds.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.206 Default by co-owner; relief.**

Sec. 106. A default by a co-owner shall entitle the association of co-owners to the following relief:

(a) Failure to comply with any of the terms or provisions of the condominium documents, shall be grounds for relief, which may include without limitations, an action to recover sums due for damages, injunctive relief, foreclosure of lien if default in payment of assessment, or any combination thereof.

(b) In a proceeding arising because of an alleged default by a co-owner, the association of co-owners or the co-owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent the condominium documents expressly so provide.

(c) Such other reasonable remedies the condominium documents may provide including but without limitation the levying of fines against co-owners after notice and hearing thereon and the imposition of late charges for nonpayment of assessments as provided in the condominium bylaws or rules and regulations of the condominium.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

#### **559.207 Action to enforce terms and provisions of condominium documents; action for injunctive relief or damages.**

Sec. 107. A co-owner may maintain an action against the association of co-owners and its officers and directors to compel these persons to enforce the terms and provisions of the condominium documents. In such a proceeding, the association of co-owners or the co-owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent that the condominium documents expressly so provide. A co-owner may maintain an action against any other co-owner for injunctive relief or for damages or any combination thereof for noncompliance with the terms and provisions of the condominium documents or this act.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

#### **559.208 Assessment lien; priority; foreclosure; bid; actions; receiver.**

Sec. 108. (1) Sums assessed to a co-owner by the association of co-owners that are unpaid together with interest on such sums, collection and late charges, advances made by the association of co-owners for taxes or other liens to protect its lien, attorney fees, and fines in accordance with the condominium documents, constitute a lien upon the unit or units in the project owned by the co-owner at the time of the assessment before other liens except tax liens on the condominium unit in favor of any state or federal taxing authority and sums unpaid on a first mortgage of record, except that past due assessments that are evidenced by a notice of lien recorded as set forth in subsection (3) have priority over a first mortgage recorded subsequent to the recording of the notice of lien. The lien upon each condominium unit owned by the co-owner shall be in the amount assessed against the condominium unit, plus a proportionate share of the total of all other unpaid assessments attributable to condominium units no longer owned by the co-owner but which became due while the co-owner had title to the condominium units. The lien may be foreclosed by an action or by advertisement by the association of co-owners in the name of the condominium project on behalf of the other co-owners.

(2) A foreclosure shall be in the same manner as a foreclosure under the laws relating to foreclosure of real estate mortgages by advertisement or judicial action except that to the extent the condominium documents provide, the association of co-owners is entitled to reasonable interest, expenses, costs, and attorney fees for foreclosure by advertisement or judicial action. The redemption period for a foreclosure is 6 months from the date of sale unless the property is abandoned, in which event the redemption period is 1 month from the date of sale.

(3) A foreclosure proceeding may not be commenced without recordation and service of notice of lien in accordance with the following:

(a) Notice of lien shall set forth all of the following:

(i) The legal description of the condominium unit or condominium units to which the lien attaches.

(ii) The name of the co-owner of record.

(iii) The amounts due the association of co-owners at the date of the notice, exclusive of interest, costs, attorney fees, and future assessments.

(b) The notice of lien shall be in recordable form, executed by an authorized representative of the association of co-owners and may contain other information that the association of co-owners considers appropriate.

(c) The notice of lien shall be recorded in the office of register of deeds in the county in which the condominium project is located and shall be served upon the delinquent co-owner by first-class mail, postage prepaid, addressed to the last known address of the co-owner at least 10 days in advance of commencement of the foreclosure proceeding.

(4) The association of co-owners, acting on behalf of all co-owners, unless prohibited by the master deed or bylaws, may bid in at the foreclosure sale, and acquire, hold, lease, mortgage, or convey the condominium unit.

(5) An action to recover money judgments for unpaid assessments may be maintained without foreclosing or waiving the lien.

(6) An action for money damages and foreclosure may be combined in 1 action.

(7) A receiver may be appointed in an action for foreclosure of the assessment lien and may be empowered to take possession of the condominium unit, if not occupied by the co-owner, and to lease the condominium unit and collect and apply the rental from the condominium unit.

(8) The co-owner of a condominium unit subject to foreclosure under this section, and any purchaser, grantee, successor, or assignee of the co-owner's interest in the condominium unit, is liable for assessments by the association of co-owners chargeable to the condominium unit that become due before expiration of the period of redemption together with interest, advances made by the association of co-owners for taxes or other liens to protect its lien, costs, and attorney fees incurred in their collection.

(9) The mortgagee of a first mortgage of record of a condominium unit shall give notice to the association of co-owners of the commencement of foreclosure of the first mortgage by advertisement by serving a copy of the published notice of foreclosure required by statute upon the association of co-owners by certified mail, return receipt requested, addressed to the resident agent of the association of co-owners at the agent's address as shown on the records of the Michigan corporation and securities bureau, or to the address the association provides to the mortgagee, if any, in those cases where the address is not registered, within 10 days after the first publication of the notice. The mortgagee of a first mortgage of record of a condominium unit shall give notice to the association of co-owners of intent to commence foreclosure of the first mortgage by judicial action by serving a notice setting forth the names of the mortgagors, the mortgagee, and the foreclosing assignee of a recorded assignment of the mortgage, if any; the date of the mortgage and the date the mortgage was recorded; the amount claimed to be due on the mortgage on the date of the notice; and a description of the mortgaged premises that substantially conforms with the description contained in the mortgage upon the association of co-owners by certified mail, return receipt requested, addressed to the resident agent of the association of co-owners at the agent's address as shown on the records of the Michigan corporation and securities bureau, or to the address the association provides to the mortgagee, if any, in those cases where the address is not registered, not less than 10 days before commencement of the judicial action. Failure of the mortgagee to provide notice as required by this section shall only provide the association with legal recourse and will not, in any event, invalidate any foreclosure proceeding between a mortgagee and mortgagor.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001;—Am. 2002, Act 283, Imd. Eff. May 9, 2002.

#### **559.209 Liability for torts.**

Sec. 109. Neither the association of co-owners nor the co-owners, other than the developer, shall be liable for torts caused by the developer or his agents or employees of the developer within the common elements.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.210 Repealed. 1982, Act 538, Imd. Eff. Jan. 17, 1983.**

**Compiler's note:** The repealed section pertained to disclosure and form of warranty.

#### **559.211 Sale or conveyance of condominium unit; payment and statement of unpaid assessments; liability for unpaid assessments.**

Sec. 111. (1) Upon the sale or conveyance of a condominium unit, all unpaid assessments, interest, late charges, fines, costs, and attorney fees against a condominium unit shall be paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature except the following:

(a) Amounts due the state, or any subdivision thereof, or any municipality for taxes and special assessments due and unpaid on the condominium unit.

(b) Payments due under a first mortgage having priority thereto.

(2) A purchaser or grantee is entitled to a written statement from the association of co-owners setting forth the amount of unpaid assessments, interest, late charges, fines, costs, and attorney fees against the seller or grantor and the purchaser or grantee is not liable for, nor is the condominium unit conveyed or granted subject to a lien for any unpaid assessments, interest, late charges, fines, costs, and attorney fees against the seller or

grantor in excess of the amount set forth in the written statement. Unless the purchaser or grantee requests a written statement from the association of co-owners as provided in this act, at least 5 days before sale, the purchaser or grantee shall be liable for any unpaid assessments against the condominium unit together with interest, costs, fines, late charges, and attorney fees incurred in the collection thereof.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

**559.212 Renting or leasing condominium unit; disclosure; review of lease form; notice; compliance required; action by association upon noncompliance; notice of arrearage; deduction of arrearage and future assessments from rental payments.**

Sec. 112. (1) 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 shall be controlled by the provisions of the condominium documents as recorded by the developer and shall not be changed without developer approval. After the transitional control date, the association of co-owners may amend the condominium documents as to the rental of condominium units or terms of occupancy. The amendment shall not affect the rights of any lessors or lessees under a written lease otherwise in compliance with this section and executed before the effective date of the amendment, or condominium units that are owned or leased by the developer.

(2) A co-owner, including the developer, desiring to rent or lease a condominium unit shall disclose that fact in writing to the association of co-owners at least 10 days before presenting a lease or otherwise agreeing to grant possession of a condominium unit to potential lessees or occupants and, at the same time, shall supply the association of co-owners with a copy of the exact lease for its review for its compliance with the condominium documents. The co-owner or developer shall also provide the association of co-owners with a copy of the executed lease. If no lease is to be used, then the co-owner or developer shall supply the association of co-owners 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.

(3) Tenants or nonco-owner occupants shall comply with all of the conditions of the condominium documents of the condominium project, and all leases and rental agreements shall so state.

(4) If the association of co-owners determines that the tenant or nonco-owner occupant failed to comply with the conditions of the condominium documents, the association of co-owners shall take the following action:

(a) The association of co-owners shall notify the co-owner by certified mail, advising of the alleged violation by the tenant. The co-owner shall have 15 days after receipt of the notice to investigate and correct the alleged breach by the tenant or advise the association of co-owners that a violation has not occurred.

(b) If after 15 days the association of co-owners believes that the alleged breach is not cured or may be repeated, it may institute on its behalf or derivatively by the co-owners on behalf of the association of co-owners, if it is under the control of the developer, an action for both eviction against the tenant or nonco-owner occupant and, simultaneously, for money damages against the co-owner and tenant or nonco-owner occupant for breach of the conditions of the condominium documents. The relief provided for in this section may be by summary proceeding. The association of co-owners may hold both the tenant and the co-owner liable for any damages to the general common elements caused by the co-owner or tenant in connection with the condominium unit or condominium project.

(5) When a co-owner is in arrearage to the association of co-owners for assessments, the association of co-owners may give written notice of the arrearage to a tenant occupying a co-owner's condominium unit under a lease or rental agreement, and the tenant, after receiving the notice, shall deduct from rental payments due the co-owner the arrearage and future assessments as they fall due and pay them to the association of co-owners. The deduction does not constitute a breach of the rental agreement or lease by the tenant. If the tenant, after being notified, fails or refuses to remit rent otherwise due the co-owner to the association of co-owners, then the association of co-owners may do the following:

(a) Issue a statutory notice to quit for non-payment of rent to the tenant and shall have the right to enforce that notice by summary proceeding.

(b) Initiate proceedings pursuant to subsection (4)(b).

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001;—Am. 2002, Act 283, Imd. Eff. May 9, 2002.

**559.213 Financing.**

Sec. 113. A developer, residential builder, or sales agent shall not require that a prospective purchaser of a condominium unit obtain financing from a specific financial institution exclusively.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

#### **559.214 Homestead exemption.**

Sec. 114. The laws of this state relating to the exemption of homestead property from levy and execution shall be applicable to condominium units occupied as homesteads.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.215 Action by person or association adversely affected by violation of or failure to comply with act, rules, agreement, or master deed; costs; violation of MCL 559.121 or 559.184a; liability.**

Sec. 115. (1) A person or association of co-owners adversely affected by a violation of or failure to comply with this act, rules promulgated under this act, or any provision of an agreement or a master deed may bring an action for relief in a court of competent jurisdiction. The court may award costs to the prevailing party.

(2) A developer who offers or sells a condominium unit in violation of section 21 or 84a is liable to the person purchasing the condominium unit for damages.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.221 Mobile home condominium project; establishment, operation, and regulation; compliance.**

Sec. 121. The establishment, operation, and regulation of mobile home condominium projects shall comply with this act, rules promulgated under this act, and with the following:

(a) A mobile home located on a mobile home condominium site shall be contained entirely within that site. The mobile home condominium master deed shall set forth the minimum and maximum size of a mobile home that may be located on the mobile home condominium site.

(b) The association of co-owners may remove a mobile home from a mobile home condominium site if the mobile home does not conform to the reasonable standards set forth by the association of co-owners in the bylaws.

(c) Upon completion of foreclosure of a lien of the association of co-owners for nonpayment of assessments on a condominium unit pursuant to section 108, the association of co-owners may remove a mobile home and other personal property from the condominium unit and cause the mobile home and other personal property to be stored at the expense of the co-owner of the mobile home.

(d) Except as provided in section 127, the mobile home commission shall not act for the purpose of regulating mobile home condominiums that are not located within a mobile home park, except as relates to the business, sales, and service practices of mobile home dealers, and the business of mobile home installers and repairers, or the setup and installation of mobile homes, as provided in the mobile home commission act, Act No. 419 of the Public Acts of 1976.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.222 Mobile home condominium project; disclosure.**

Sec. 122. The developer of a mobile home condominium project shall disclose to a prospective mobile home condominium purchaser, in a manner and form to be promulgated by rule of the administrator, an affiliation between the developer and the seller of skirting and the seller of the mobile home, if the purchaser as a condition to buying a site must also purchase a mobile home or skirting from the developer or an affiliate of the developer. The administrator may prohibit required purchases of skirting from the developer or a source designated by the developer, as prescribed in Act No. 419 of the Public Acts of 1976, being sections 125.1101 to 125.1147 of the Michigan Compiled Laws.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.222a Mobile home conversion condominium project; notification of tenants; termination of tenancy.**

Sec. 122a. The developer of a mobile home conversion condominium project shall notify each existing tenant of any mobile home in the proposed mobile home conversion condominium project that the mobile home park is proposed to be converted to a condominium project. The notice shall be physically delivered or sent by first class mail to each unit addressed to the tenant. Except as provided in section 122b, a tenancy in a mobile home that is proposed to be a conversion condominium, whether month to month or otherwise, shall not be terminated without cause until 1 year after receipt of the notice required under this section, or until termination of the lease, whichever is later.

**History:** Add. 1982, Act 42, Imd. Eff. Mar. 16, 1982;—Am. 1984, Act 356, Eff. Mar. 29, 1985.

### **559.222b Extended lease arrangement.**

Sec. 122b. (1) A developer shall notify each existing qualified senior citizen, at the same time notice is given under section 122a, of the right to elect an extended lease arrangement for the lot on which the senior citizen's mobile home is located, and the terms and conditions of an extended lease arrangement. A qualified senior citizen shall, within 60 days after receipt of notice under this subsection, communicate the election of an extended lease arrangement to the developer.

(2) An extended lease arrangement shall be in writing and shall provide for all of the following:

(a) A written lease for the lot on which the senior citizen's mobile home is located, renewable from year to year for the number of years specified in subsection (3).

(b) That the number of years for which a lease subject to an extended lease arrangement may be renewed shall be measured from the date on which the election of an extended lease arrangement is communicated to the developer.

(c) That any increase in the rent during the time the mobile home lot is a restricted mobile home lot will not be an unreasonable increase beyond the fair market rent for a comparable mobile home lot.

(d) That upon request of the lessee of a restricted mobile home lot, the lessor shall disclose all information used in determining a reasonable rent increase based upon the standard in subdivision (c).

(3) The number of years for which a qualified senior citizen may renew a lease subject to an extended lease arrangement shall be determined by his or her age on the date of receipt of the notice required under subsection (1), as follows:

(a) A person who is not less than 65 years of age and not more than 69 years of age may renew year to year for 4 years.

(b) A person who is not less than 70 years of age and not more than 74 years of age may renew year to year for 6 years.

(c) A person who is not less than 75 years of age and not more than 79 years of age may renew year to year for 7 years.

(d) A person who is 80 years of age or more may renew year to year for 10 years.

(4) A developer who enters into an extended lease arrangement or the developer's successor shall notify both of the following of each extended lease arrangement:

(a) The Michigan state housing development authority of each qualified senior citizen who elects an extended lease arrangement as soon as practicable after the election is communicated to the developer.

(b) The office of services to the aging created in section 5 of the older Michigianians act, Act No. 180 of the Public Acts of 1981, being section 400.585 of the Michigan Compiled Laws, 18 months before the expiration of the extended lease arrangement for a qualified senior citizen who is in the age categories described in subsection (3)(c) and (d).

(5) A lease subject to an extended lease arrangement shall not be assigned, devised, subleased, or transferred by the qualified senior citizen.

(6) A lease subject to an extended lease arrangement shall terminate automatically upon the death of the qualified senior citizen. However, a surviving spouse of a qualified senior citizen who is 65 years of age or older at the time the qualified senior citizen dies shall have the right to execute a lease under an extended lease arrangement subject to the right of renewal, and other conditions, that applied to the deceased. A surviving spouse who does not qualify for an extended lease shall have 6 months in which to vacate the mobile home lot, during which time the conditions of the deceased spouse's extended lease shall apply, except for the right of renewal.

(7) A lessor who violates the rental restrictions of subsection (2)(c) shall be liable to the qualified senior citizen in an amount equal to 3 times the amount by which the rental payments exceed the fair market rent, to be recovered in a civil action.

(8) The lessor in an extended lease arrangement may recover possession of a restricted mobile home lot for nonpayment of rent or other grounds for recovery of possession under chapter 57 of the revised judiciary act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.5701 to 600.5759 of the Michigan Compiled Laws.

(9) A restricted mobile home lot may be transferred to any person by the lessor in an extended lease arrangement, subject to the extended lease arrangement.

(10) As used in this section:

(a) "Qualified senior citizen" means an individual who is all of the following:

(i) On the date that notice is given under subsection (1), the owner and resident of a mobile home in a mobile home conversion condominium project containing 6 or more mobile homes.

(ii) A party to an oral or written agreement providing for the rental of the lot on which a mobile home

described in subparagraph (i) is located.

(iii) Sixty-five years of age or older on the date that notice is given under subsection (1).

(b) "Rent" means the total monthly amount payable to the lessor for the mobile home lot and utilities.

(c) "Resident" means an individual who uses his or her mobile home as a primary residence to which he or she intends to return whenever absent.

(d) "Restricted mobile home lot" means a mobile home lot that is subject to an extended lease arrangement as provided in subsection (2).

(11) This section does not apply to a developer of a mobile home conversion condominium project if the developer was issued a permit to sell before the effective date of this section.

**History:** Add. 1984, Act 356, Eff. Mar. 29, 1985.

#### **559.223 Mobile home condominium project; leasing agreements.**

Sec. 123. A developer or an affiliate of a developer shall not develop a mobile home condominium project which involves, as a condition of sale, leasing agreements covering the recreational facilities, amenities, other common elements, or mobile home condominium sites.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.224 Title to mobile home condominium site; undivided interest in common elements; removal of mobile home; sale of site.**

Sec. 124. (1) A mobile home condominium co-owner shall receive good and marketable title to his particular mobile home condominium site together with an undivided interest in the common elements.

(2) A mobile home condominium co-owner may remove a mobile home from the mobile home condominium site, and sell his rights and interest in the mobile home condominium site, but may not remove any of the common elements.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.225, 559.226 Repealed. 1982, Act 538, Imd. Eff. Jan. 17, 1983.**

**Compiler's note:** The repealed sections pertained to spacing of mobile homes, minimum green space, compliance with local ordinance, and rules.

#### **559.227 Compliance by developer of mobile home condominium; prohibited requirements.**

Sec. 127. A developer of a mobile home condominium shall comply with Act No. 419 of the Public Acts of 1976, being sections 125.1101 to 125.1147 of the Michigan Compiled Laws. The administrator shall not impose requirements relating to density, zoning, layout, or construction inconsistent with rules regarding density, zoning, layout, or construction promulgated under Act No. 419 of the Public Acts of 1976.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.231 Special assessments and property taxes.**

Sec. 131. (1) Special assessments and property taxes shall be assessed against the individual condominium units identified as units of the condominium subdivision plan and not on the total property of the project or any other part of the project, except for the year in which the condominium project was established subsequent to the tax day. Taxes and special assessments which become a lien against the property in that year subsequent to the establishment of the condominium project shall be expenses of administration of the project and paid by the co-owners as provided in section 69. The taxes and special assessments shall not be divided or apportioned on the tax roll any provision of any law to the contrary notwithstanding.

(2) Special assessments and property taxes in any year in which the property existed as an established condominium project on the tax day shall be assessed against the individual condominium unit, notwithstanding any subsequent vacation of the condominium project. Condominium units shall be described for such purposes by reference to the condominium unit number of the condominium subdivision plan and the caption of the plan together with the liber and page of the county records in which the approved master deed is recorded. Assessments for subsequent real property improvements to a specific condominium unit shall be assessed to that condominium unit description only. For property tax and special assessment purposes, each condominium unit shall be treated as a separate single unit of real property and shall not be combined with any other unit or units and no assessment of any fraction of any unit or combination of any unit with other units or fractions of any unit shall be made, nor shall any division or split of the assessment or taxes of any single condominium unit be made notwithstanding separate or common ownership of the unit.

(3) A restricted unit as defined in section 104b shall be exempt from any increase in ad valorem taxes on real property attributable to an increase in the true cash value of the restricted unit that is due to the conversion condominium project in which the restricted unit is located. For purposes of applying this

exemption, the total assessment of a restricted unit shall not exceed the total assessment for the tax year preceding the tax year in which the master deed for the property constituting the conversion condominium project was recorded, multiplied by the percentage of value of the restricted unit. The exemption provided in this subsection shall terminate for the tax year following the termination of tenancy in the restricted unit.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1980, Act 283, Imd. Eff. Oct. 10, 1980.

#### **559.232 Construction lien; limitations.**

Sec. 132. A construction lien otherwise arising under the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305, is subject to the following limitations:

(a) Except as provided in this section, a construction lien for work performed upon a condominium unit or upon a limited common element may attach only to the condominium unit upon which the work was performed or to which the limited common element is appurtenant.

(b) A construction lien for work authorized by the developer, residential builder, or principal contractor and performed upon the common elements may attach only to condominium units owned by the developer, residential builder, or principal contractor at the time of recording of the statement of account and lien.

(c) A construction lien for work authorized by the association of co-owners may attach to each condominium unit only to the proportionate extent that the co-owner of the condominium unit is required to contribute to the expenses of administration as provided by the condominium documents.

(d) A construction lien may not arise or attach to a condominium unit for work performed on the common elements not contracted by the developer, residential builder, or principal contractor or by the association of co-owners.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001.

#### **559.233 Eminent domain.**

Sec. 133. (1) If any portion of the common elements is taken by eminent domain, the award therefor shall be allocated to the co-owners in proportion to their respective undivided interests in the common elements. The association of co-owners, acting through its board of directors, may negotiate on behalf of all co-owners for any taking of common elements and any negotiated settlement approved by more than 2/3 of co-owners based upon assigned voting rights shall be binding on all co-owners.

(2) If a condominium unit is taken by eminent domain, the undivided interest in the common elements appertaining to the condominium unit shall thenceforth appertain to the remaining condominium units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the co-owner of the condominium unit taken for his undivided interest in the common elements as well as for the condominium unit.

(3) If portions of a condominium unit are taken by eminent domain, the court shall determine the fair market value of the portions of the condominium unit not taken. The undivided interest for each condominium unit in the common elements appertaining to the condominium units shall be reduced in proportion to the diminution in the fair market value of the condominium unit resulting from the taking. The portions of undivided interest in the common elements thereby divested from the co-owners of a condominium unit shall be reallocated among the other condominium units in the condominium project in proportion to their respective undivided interests in the common elements. A condominium unit partially taken shall receive the reallocation in proportion to its undivided interest as reduced by the court under this subsection. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include just compensation to the co-owner of the condominium unit partially taken for that portion of the undivided interest in the common elements divested from the co-owner and not revested in the co-owner pursuant to subsection (4), as well as for that portion of the condominium unit taken by eminent domain.

(4) If the taking of a portion of a condominium unit makes it impractical to use the remaining portion of that condominium unit for a lawful purpose permitted by the condominium documents, then the entire undivided interest in the common elements appertaining to that condominium unit shall thenceforth appertain to the remaining condominium units, being allocated to them in proportion to their respective undivided interests in the common elements. The remaining portion of that condominium unit shall thenceforth be a common element. The court shall enter an order reflecting the reallocation of undivided interests produced thereby, and the award shall include just compensation to the co-owner of the condominium unit for the co-owner's entire undivided interest in the common elements and for the entire condominium unit.

(5) Votes in the association of co-owners and liability for future expenses of administration appertaining to a condominium unit taken or partially taken by eminent domain shall thenceforth appertain to the remaining condominium units, being allocated to them in proportion to the relative voting strength in the association of

co-owners. A condominium unit partially taken shall receive a reallocation as though the voting strength in the association of co-owners was reduced in proportion to the reduction in the undivided interests in the common elements.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.234 Recreational facilities and other amenities; compliance.**

Sec. 134. Recreational facilities and other amenities, whether on condominium property or on adjacent property with respect to which the condominium has an obligation of support, shall comply with requirements prescribed by the administrator, to assure equitable treatment of all users.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.235 Successor developer.**

Sec. 135. (1) As used in this section, “successor developer” means a person who acquires title to the lesser of 10 units or 75% of the units in a condominium project, other than a business condominium project, by foreclosure, deed in lieu of foreclosure, purchase, or similar transaction.

(2) A successor developer shall do both of the following:

(a) Comply with this act in the same manner as a developer before selling any units.

(b) Except as provided in subsection (3), assume all express written contractual warranty obligations for defects in workmanship and materials undertaken by its predecessor in title. A successor developer shall not be required to assume, and shall not otherwise be liable for, any other contractual obligations of its predecessor in title.

(3) A successor developer shall not be required to comply with subsection (2)(b) with respect to any express written contractual warranty obligations for defects in workmanship and materials, if either of the following is maintained with respect to units for which such a warranty was undertaken by the predecessor in title:

(a) An insurance policy, in a form approved by the insurance bureau, that is underwritten by an insurer authorized to do business in this state. The insurance policy shall provide coverage for express written contractual warranty obligations for liability for defects in workmanship and materials.

(b) An aggregate escrow account with an escrow agent which contains not less than 0.5% of the sales price of each unit. If the escrow account described in this subdivision is initiated by a developer before a successor developer acquires title, 0.5% of the sales price of each unit in the project shall be deposited by the developer in the aggregate escrow account periodically upon the sale of each unit. If the escrow account described in this subdivision is initiated by a successor developer after acquisition of title, a total amount equal to 0.5% of the sales price of all units for which the warranty period plus 6 months has not expired shall be deposited by the successor developer in the aggregate escrow account, and 0.5% of the sales price of each unit shall be deposited by the successor developer in the aggregate escrow account periodically upon the sale of each remaining unit. Funds in an escrow account described in this subdivision shall not be released for a unit until 6 months after the expiration of the warranty period for that unit.

(4) A successor developer that acquires title to the lesser of 10 business condominium units or 75% of the business condominium units in the condominium project shall not be required to assume, and shall not otherwise be liable for, any contractual obligations of its predecessor in title.

(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 condominium unit the condominium documents that the developer is required to deliver to the purchasers 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.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 2000, Act 379, Imd. Eff. Jan. 2, 2001;—Am. 2002, Act 283, Imd. Eff. May 9, 2002.

#### **559.236 Repealed. 1982, Act 538, Imd. Eff. Jan. 17, 1983.**

**Compiler's note:** The repealed section pertained to assumption of written contractual obligations by successor developer.

#### **559.237 Obligations of developer not affected by transfer of interest.**

Sec. 137. The obligations of the developer to condominium unit purchasers and to the association of co-owners shall not be affected by the transfer of the developer's interest in the condominium project.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.238 Repealed. 1982, Act 538, Imd. Eff. Jan. 17, 1983.**

**Compiler's note:** The repealed section pertained to reporting change in mortgagee to administrator.

**559.239 Complaint for nonpayment of assessments; answer; set off.**

Sec. 139. A co-owner may not assert 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).

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.240 Reproduction of document; certified reproduction or certification as evidence.**

Sec. 140. (1) Upon request and at such reasonable charges as it prescribes, the administrator shall furnish to a person a reproduction pursuant to the records media act, certified under the seal of office if requested, of a document that is retained as a matter of public record. The administrator shall not charge or collect a fee for a reproduction of a document furnished to public officials for use in their official capacity.

(2) In a judicial or administrative proceeding or prosecution, if a reproduction in a medium pursuant to the records media act or a reproduction consisting of a printout or other output readable by sight from such a medium is certified as provided in subsection (1), that reproduction is prima facie evidence of the contents of the document certified and may be used for all purposes in place of the original.

(3) If the administrator is charged with the legal custody of a paper, document, record, or application and if an officer or employee of the administrator certifies that a diligent search was made in the files for the paper, document, record, or application, and the paper, document, record, or application does not exist, the certification is prima facie evidence of the facts so certified in all causes, matters, and proceedings in the same manner and with the like effect as if the officer or employee personally testified to the facts so certified in the court or hearing.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1992, Act 208, Imd. Eff. Oct. 5, 1992.

**559.241 Law, ordinance, or regulation of local unit of government; limitations.**

Sec. 141. (1) A condominium project shall comply with applicable local law, ordinances, and regulations. Except as provided in subsection (2), a proposed or existing condominium project shall not be prohibited nor treated differently by any law, regulation, or ordinance of any local unit of government, which would apply to that project or development under a different form of ownership.

(2) Except as to a city having a population of more than 1 million persons, a local unit of government is preempted by the provisions of this act from enacting a law, regulation, ordinance, or other provision, which imposes a moratorium on conversion condominiums, or which provides rights for tenants of conversion condominiums or apartment buildings proposed as conversion condominiums, other than those provided in this act.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1980, Act 283, Imd. Eff. Oct. 10, 1980;—Am. 1980, Act 513, Imd. Eff. Jan. 26, 1981

**559.242 Promulgation of rules, forms, and orders; definition of terms.**

Sec. 142. The administrator may promulgate rules, forms, and orders as are necessary to implement this act or which are necessary for the establishment of unusual forms of condominium projects; and may define any terms necessary in administration of the act. The rules and definition of terms shall be promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

**History:** 1978, Act 59, Eff. July 1, 1978.

**Administrative rules:** R 451.1301 et seq. and R 559.101 et seq. of the Michigan Administrative Code.

**559.244 Contract to settle by arbitration; execution; option; period of limitations; allocation of costs; conduct; appointment of arbitrator; method; applicable law; rules; arbitration award.**

Sec. 144. (1) A contract to settle by arbitration may be executed by the developer and any claimant with respect to any claim against the developer that might be the subject of a civil action.

(2) At the exclusive option of a purchaser, co-owner, or person occupying a restricted unit under section 104b, a contract to settle by arbitration shall be executed by the developer with respect to any claim that might be the subject of a civil action against the developer, which claim involves an amount less than \$2,500.00, and arises out of or relates to a purchase agreement, condominium unit, or project.

(3) At the exclusive option of the association of co-owners, a contract to settle by arbitration shall be executed by the developer with respect to any claim that might be the subject of a civil action against the developer, which claim arises out of or relates to the common elements of a condominium project, if the amount of the claim is \$10,000.00 or less.

(4) The period of limitations prescribed by law for the bringing of a civil action shall apply equally to the execution of a contract to settle by arbitration under this section.

(5) All costs of arbitration under this section shall be allocated in the manner provided by the arbitration association.

(6) A contract to settle by arbitration under this section shall specify that the arbitration association shall conduct the arbitration.

(7) The method of appointment of the arbitrator or arbitrators shall be pursuant to reasonable rules of the arbitration association.

(8) Arbitration under this act shall proceed according to sections 5001 to 5065 of Act No. 236 of the Public Acts of 1961, being sections 600.5001 to 600.5065 of the Michigan Compiled Laws, which may be supplemented by reasonable rules of the arbitration association.

(9) An arbitration award shall be binding on the parties to the arbitration.

**History:** Add. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.245 Complaint copy to developer; notice of available remedies.**

Sec. 145. Upon receipt of an oral or written complaint with respect to a developer of a condominium project, the administrator shall forward a copy of the complaint to the affected developer, and shall mail a notice of the available remedies to the complainant. The notice of available remedies shall include all of the following, at a minimum:

(a) The right to bring an action under section 115.

(b) The right to arbitration under section 144.

(c) The right to lodge a complaint pursuant to article 5 of the occupational code, sections 501 to 522 of Act No. 299 of the Public Acts of 1980, being sections 339.501 to 339.522 of the Michigan Compiled Laws.

(d) The right to initiate an investigation or bring an action under the Michigan consumer protection act, Act No. 331 of the Public Acts of 1976, being sections 445.901 to 445.922 of the Michigan Compiled Laws.

(e) The right to notify the appropriate enforcing agency of an alleged violation of the state construction code, other applicable building code, or construction regulations. As used in this subdivision, "enforcing agency" has the meaning ascribed to that term in the state construction code act of 1972, Act No. 230 of the Public Acts of 1972, being sections 125.1501 to 125.1531 of the Michigan Compiled Laws.

**History:** Add. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.250 Discretionary powers of administrator; exercise.**

Sec. 150. The discretionary powers granted to the administrator under sections 151 to 156 shall be exercised only with respect to actions which materially endanger or have endangered the public interest or the interest of condominium co-owners, as enumerated in section 154.

**History:** Add. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

#### **559.251-559.255 Repealed. 1982, Act 538, Eff. Jan. 18, 1986;—1988, Act 109, Imd. Eff. Apr. 11, 1988.**

**Compiler's note:** The repealed sections pertained to investigations of, and actions for, violations of the act or rules promulgated pursuant thereto.

As to validity of enactment of "sunset provision" under Const 1963, art 4, § 24, see OAG, 1987-1988, No 6438 (May 21, 1987).

#### **559.256 Prohibited representations.**

Sec. 156. A person may not represent that the fact that an application under this act is filed or a permit is granted constitutes a finding by the administrator that a document filed under this act is true, complete, or not misleading. A person may not represent that the administrator passed upon the merits or qualifications of, or recommended or gave approval to, a person, developer, transaction, or condominium project.

**History:** 1978, Act 59, Eff. July 1, 1978.

#### **559.257 Repealed. 1982, Act 538, Eff. Jan. 18, 1986;—1988, Act 109, Imd. Eff. Apr. 11, 1988.**

**Compiler's note:** The repealed section pertained to show cause orders and hearings concerning violations of the act or rules promulgated pursuant thereto.

As to validity of enactment of "sunset provision" under Const 1963, art 4, § 24, see OAG, 1987-1988, No 6438 (May 21, 1987).

#### **559.258 Prohibited conduct as misdemeanor; penalty; violation as separate offense;**

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**consecutive terms of imprisonment; aggregate fines; action by prosecuting attorney or department of attorney general.**

Sec. 158. A person who wilfully authorizes, directs, or aids in the publication, advertisement, distribution, or circulation of a statement or representation concerning a condominium project which misrepresents the facts concerning the condominium project as set forth in the recorded master deed; a person who, with knowledge that an advertisement pamphlet, prospectus, or letter concerning a condominium project contains a written statement that is false or fraudulent, issues, circulates, publishes, or distributes the advertisement, pamphlet, prospectus, or letter; or a person who represents or causes or permits the representation of any property as a condominium project when the property was not recorded as a condominium project under the terms of this act, is guilty of a misdemeanor and shall be punished by a fine of not more than \$10,000.00, or imprisonment for not more than 1 year, or both. Each violation constitutes a separate offense, the terms of imprisonment may run consecutively, and the fines may be aggregated. An action under this section shall be brought by the prosecuting attorney of the county in which the property is located, or by the department of attorney general.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

**559.259 Injunction.**

Sec. 159. In addition to any other penalty or remedy, the prosecuting attorney of the county in which the property is located or the department of attorney general may bring an action in a court of competent jurisdiction against a person to enjoin the person from engaging or continuing in a violation of this act.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

**559.260 Repealed. 1982, Act 538, Imd. Eff. Jan. 17, 1983.**

**Compiler's note:** The repealed section pertained to action under MCL 559.258 or MCL 559.259.

**559.270 Effect of act and 1982 amendatory act; consummation of proceedings; continuation or institution of proceedings.**

Sec. 170. (1) This act does not impair or affect any act done, offense committed or right accruing, accrued, or acquired, or a liability, penalty, forfeiture, or punishment incurred before this act takes effect, but the same may be enjoyed, asserted, and enforced, as fully and to the same extent as if this act had not been passed. Proceedings may be consummated under and in accordance with Act No. 229 of the Public Acts of 1963, as amended, being sections 559.1 to 559.31 of the Michigan Compiled Laws. Proceedings pending at the effective date of this act and proceedings instituted thereafter for any act, offense committed, right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred before the effective date of this act may be continued or instituted under and in accordance with Act No. 229 of the Public Acts of 1963, as amended.

(2) The 1982 amendatory act which added this subsection does not impair or affect any act done, offense committed, or right accruing, accrued, or acquired, or a liability, penalty, forfeiture, or punishment incurred before this 1982 amendatory act takes effect, but the same may be enjoyed, asserted, and enforced, as fully and to the same extent as if this 1982 amendatory act had not taken effect. Proceedings may be consummated under and in accordance with the provisions of Act No. 59 of the Public Acts of 1978, being sections 559.101 to 559.272 of the Michigan Compiled Laws, that were in effect 1 day before the effective date of this 1982 amendatory act. Proceedings pending at the effective date of this 1982 amendatory act and proceedings instituted thereafter for any act, offense committed, right accruing, accrued, or acquired, or liability, penalty, forfeiture, or punishment incurred before the effective date of this 1982 amendatory act may be continued or instituted under and in accordance with the provisions of Act No. 59 of the Public Acts of 1978, that were in effect 1 day before the effective date of this 1982 amendatory act.

**History:** 1978, Act 59, Eff. July 1, 1978;—Am. 1982, Act 538, Imd. Eff. Jan. 17, 1983.

**559.271 Repeal of MCL 559.1 to 559.31.**

Sec. 171. Act No. 229 of the Public Acts of 1963, as amended, being sections 559.1 to 559.31 of the Compiled Laws of 1970, is repealed.

**History:** 1978, Act 59, Eff. July 1, 1978.

**559.272 Effective date; requirements for disclosure statement.**

Sec. 172. This act shall take effect July 1, 1978. Requirements for the disclosure statement shall not take effect until October 1, 1978.

**History:** 1978, Act 59, Eff. July 1, 1978.

### **559.273 Applicability of amendatory act; applicability of certain subsections.**

Sec. 173. (1) This act applies to a condominium project or condominium unit as follows:

(a) For a condominium project for which a permit to sell has been issued on or before March 18, 1983, the developer may elect to comply with 1 or more of the following requirements in lieu of the specified provisions:

(i) In lieu of section 31, 32, 33, 52, or 66, or any combination of these sections, the developer may elect to comply with the terms of the master deed in effect as of March 18, 1983.

(ii) In lieu of sections 66(2)(j), 66(4), 84(3), 84(4)(a), (c), and (e), and 103b, the developer may elect to deposit all funds paid by a purchaser on or after January 17, 1983 into an escrow account pursuant to an escrow agreement the terms of which were approved by the administrator on or before March 18, 1983. The funds escrowed under this subdivision in excess of any amount or percentage of the escrowed funds that had been required to be escrowed by the administrator or a condominium document pursuant to former section 103 to cover the cost of construction of recreational facilities and other common elements, shall be released only upon conveyance of the condominium unit to that purchaser and issuance of a certificate of occupancy if required by local ordinance. Appropriate funds retained in escrow to cover the cost of construction of recreational facilities and other common elements shall be released to the developer upon completion of each recreational facility or other common element. The escrow agent shall be a bank, savings and loan association, or title insurance company, or person designated to act as the agent of a title insurance company, licensed or authorized to do business in this state.

(b) For a condominium project for which a permit to sell has been issued on or before March 18, 1983, the developer may elect to exempt the project from the application of sections 84(4)(d), 144, and 145(b).

(c) For promotional material filed with the administrator on or before March 18, 1983, the developer may elect to exempt the promotional material from the application of section 81a. For promotional material that has not been filed with the administrator on or before March 18, 1983 and that relates to a condominium project to which section 66 does not apply, the developer shall comply with section 81a as if section 66 was applicable to the condominium project.

(2) Sections 104a, 104b, and 104d and former section 104c apply to all condominium projects that on October 10, 1980 complied with the definition of qualified conversion condominium project provided in section 104b.

(3) Subsection (1)(a)(i) and (b) does not apply to any phase or convertible area of a condominium project if the phase is established or the convertibility option is exercised after March 18, 1983 and that establishment or exercise results in the addition of units to the condominium project or the creation of a facility intended for common use.

**History:** Add. 1982, Act 538, Imd. Eff. Jan. 17, 1983;—Am. 1983, Act 113, Imd. Eff. July 12, 1983;—Am. 2002, Act 283, Imd. Eff. May 9, 2002.

### **559.274 Repealed. 2002, Act 283, Imd. Eff. May 9, 2002.**

**Compiler's note:** The repealed section pertained to request to administrator to act on specific application or request.

### **559.275 Powers of administrator.**

Sec. 175. Notwithstanding any other provision of this act, prior laws, or condominium documents, the administrator after the effective date of this section, shall have no authority to review any condominium project or condominium documents or any amendments thereto, or to issue any approval or disapproval concerning any condominium project in this state, whenever established, nor shall it exercise other powers with respect to condominium projects, except that the administrator shall retain, until January 1, 1984, authority to review and approve, at the request of a condominium association, amendments offered by such condominium association to documents for a project approved under Act No. 59 of the Public Acts of 1978, if such approval is determined by the administrator to be necessary for the efficient operation of the project or essential to the viability of the project, and where such approval would not reduce or adversely impact the consumer protection provisions of this act. The administrator shall also retain its rule making and related powers under section 142 and its enforcement powers specifically authorized under sections 150, 151, 152, 153, 154, 155, and 157 while those sections are in effect.

**History:** Add. 1983, Act 113, Imd. Eff. July 12, 1983.

### **559.276 Statute of limitations.**

Sec. 176. (1) The following limitations apply in a cause of action arising out of the development or construction of the common elements of a condominium project, or the management, operation, or control of a condominium project:

(a) If the cause of action accrues on or before the transitional control date, a person shall not maintain an action against a developer, residential builder, licensed architect, contractor, sales agent, or manager of a condominium project later than 3 years after the transitional control date or 2 years after the date on which the cause of action accrued, whichever occurs later.

(b) If the cause of action accrues after the transitional control date, a person shall not maintain an action against a developer, residential builder, licensed architect, contractor, sales agent, or manager of a condominium project later than 2 years after the date on which the cause of action accrued.

(2) Subsection (1) applies only to condominium projects established on or after the effective date of the amendatory act that added this subsection.

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