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Senate Bill 610 (as enacted)
Sponsor: Senator Margaret E. O'Brien
Senate Committee: Local Government
House Committee: Local Government

PUBLIC ACT 233 of 2016

Date Completed: 7-14-16

RATIONALE

The Condominium Act requires a condominium subdivision plan for each condominium project to be prepared by a licensed architect, licensed professional surveyor, or licensed professional engineer, and to contain documents and information specified in the Act. These items include building sections showing the existing and proposed structures and improvements. Any proposed structure and improvement shown must be labeled either "must be built" or "need not be built". The developer is required to complete all structures or improvements designated "must be built". The Act contains provisions under which the developer has 10 years to complete the development and construction of portions of a condominium project identified as "need not be built"; if those portions are not developed, they are automatically transferred to the condominium association, unless the developer has withdrawn the undeveloped portions from the project. The transferred portions remain part of the condominium project as general common elements and all rights to construct units on that land cease. These provisions have caused confusion regarding the timing of the transfer of property and the title history of transferred property. It was suggested, therefore, that the process of transferring undeveloped portions of a condominium project to the association of condominium co-owners be revised.

CONTENT

The bill amends the Condominium Act to revise provisions under which a developer may withdraw undeveloped portions from a project without the prior consent of co-owners, mortgagees, or other interested parties; and provisions under which undeveloped portions that are not withdrawn after a specified time period remain as general common elements and construction rights cease. Regarding undeveloped land or condominium units not withdrawn, the bill 1) allows an association of co-owners, by an affirmative two-thirds vote, to declare that the undeveloped land will remain part of the project but revert to common elements and that rights to construct condominium units on that undeveloped land cease; and 2) allows the developer, within 60 days, to withdraw the undeveloped land or convert the undeveloped condominium units to "must be built".

If a condominium developer has not completed development and construction of units or improvements in a condominium project that are identified as "need not be built" within 10 years after construction of the project began, the developer, its successors, or its assigns have the right to withdraw from the project all undeveloped portions of it that are not identified as "must be built", without 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 six years after the developer exercised its rights with respect to expansion, contraction, or convertibility, whichever right was exercised last. The undeveloped portions of the project withdrawn are automatically granted easements for utility and access purposes through the condominium project for the benefit of the undeveloped portions.

The bill revises the provisions described above. Specifically, for 10 years after the recording of the master deed, the developer, its successors, or assigns may withdraw from the project any undeveloped land or convert the undeveloped condominium units located on that land to "must be built" without the prior consent of any co-owners, mortgagees of condominium units in the project, or any other party having an interest in the project. If the master deed confers on the developer expansion, contraction, or convertibility rights with respect to condominium units or common elements in the condominium project, then the time period is 10 years after the recording of the master deed or six years after the recording of the amendment to the master deed by which the developer last exercised its expansion, contraction, or convertibility rights, whichever period ends later. Any undeveloped land so withdrawn will be automatically granted easements for utility and access purposes through the condominium project for the benefit of the undeveloped land.

Currently, if the developer does not withdraw the undeveloped portions of the project from the project before the specified time period expires, the undeveloped land must remain part of the project as general common elements and all rights to construct units on that land cease. The bill instead provides that, if the developer does not withdraw undeveloped land from the project or convert undeveloped condominium units to "must be built" before the applicable time period expires, the association of co-owners, by an affirmative two-thirds majority vote of members in good standing, may declare that the undeveloped land remains part of the project but reverts to general common elements and that all rights to construct condominium units on that undeveloped land cease.

When a declaration described above is made, the association of co-owners will have to give written notice of it to the developer or any successor developer by first-class mail at its last known address. Within 60 days after receiving the notice, the developer or any successor developer may withdraw the undeveloped land or convert the undeveloped units to "must be built". If the undeveloped land is not withdrawn or the undeveloped condominium units are not converted within 60 days, however, the association may file the notice of the declaration with the register of deeds. The declaration will take effect upon recording by the register of deeds. The association also must file notice of the declaration with the local supervisor or assessing officer.

A reversion of undeveloped land to common elements, as described above, whether occurring before or after the bill's effective date, will not be effective unless the election, notice, and recording requirements are met.

The provisions that the bill amends will not apply to condominium units no longer owned by the developer or by the owner of the property at the time it becomes part of the condominium project, unless the purchaser from the developer or previous owner is a successor developer.

The bill defines "undeveloped land" as land on which were recorded one or more condominium units, none of which either were identified in the condominium subdivision plan as "must be built" or have had construction commenced, although infrastructure construction or common element construction may have begun. The term does not include condominium units that are depicted or described on the condominium subdivision plan as containing no vertical improvements.

The bill will take effect on September 21, 2016.

MCL 559.167

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The current process by which certain undeveloped parcels of a condominium project are transferred from the developer to the association of condominium co-owners is confusing. Under the Condominium Act, portions of a project that are labeled "need not be built" are to be transferred to the condominium association and be retained as common elements if the developer has not

completed development and construction of units or improvements in the condominium project or withdrawn the property from the project within 10 years after the date of "commencement of construction" of the project. Since "commencement of construction" is not defined in the Act, there has been confusion about what constitutes the beginning of construction (e.g., the design of the project, the laying out of streets and lots, the breaking of ground for infrastructure, or the actual construction of condominium units). By specifying that the developer may withdraw any undeveloped land from the project or convert undeveloped condominium units located on that land to "must be built" for 10 years after the recording of the master deed, the bill provides a specific time frame for the developer to take action. The bill's revisions also allow the developer to convert undeveloped land to "must be built", rather than withdrawing it from the project; this will keep the property in the project and require the development of units on that property.

Supporting Argument

The current process for transferring undeveloped property does not adequately balance the rights of the developer and the association of co-owners. Automatically transferring undeveloped land that has not been withdrawn from the condominium project is unfair and limiting. The developer has no option to reclassify the property and, if it misses the elusive statutory deadline, can lose title to valuable property. By allowing a developer to either withdraw the property from the project or convert it to "must be built" within the appropriate period, and requiring a 60-day notice period after the condominium association declares its intent to assume the undeveloped land and convert it to common elements of the association, the bill protects the developer's investment and ensures that the condominium project remains on track for development.

In addition, the statutory process for automatic transfer of undeveloped land in the condominium project can unfairly saddle a condominium association with additional parcels that must be converted to common elements. Such a conversion may be contrary to the best interests and desires of the association of co-owners, who might not want the responsibility for the undeveloped parcels. Indeed, an association may prefer to have that property developed into more condominium units so the tax liability can be distributed among more co-owners. By establishing a system under which the developer may convert portions of the project to "must be built", and providing for a transfer of undeveloped land to the association only upon a two-thirds affirmative vote of the co-owners, the bill allows various options to be explored.

Opposing Argument

One of the benefits of the Condominium Act is that it helps to prevent incomplete condominium projects and provide an end date for a project's development. The current land transfer provision, under which undeveloped land automatically converts to common elements, is significant to a condominium project's association of co-owners because it allows the association to take over undeveloped land and terminate rights to construction on it. This provides certainty and gives the association the opportunity to prepare a budget, determine maintenance needs and costs, levy assessments, and determine the necessary amount of funds to hold in reserve in order to maintain land held as common elements. By eliminating the automatic transfer of property, requiring a two-thirds vote of an association's co-owners, and giving the developer an additional 60 days to take action, the bill undermines the certainty that the current system affords to an association.

While automatic transfer without some additional affirmative action may create potential title insurance issues, placing the onus for the property transfer on the co-owners is not an appropriate remedy. Rather than requiring an affirmative vote of association members to transfer undeveloped property, perhaps the law should retain the automatic transfer process but require that an amendment to the master deed be filed with the register of deeds to reflect the property transfer.

Opposing Argument

The revised land transfer procedure will not apply to condominium units no longer owned by the developer or by the owner of the property at the time it became part of the condominium project, unless the purchaser of that property is a successor developer. This prevents anyone other than a developer or successor developer from asserting developer rights under the transfer process. A co-owner who has purchased a condominium unit that has not yet been built, for instance, may not withdraw the property from the condominium project as a developer may do. This restriction, however, may be a hindrance to the association of co-owners because it opens the door to the

possibility of land remaining undeveloped indefinitely and claims that any unbuilt units that are not owned by the developer or a successor developer may not be converted to common elements of the association. The law should allow the land transfer process to proceed regardless of who owns unbuilt units when the relevant time period expires.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton