

CHAPTER 17

OTHER STATUTES

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17:1 CONDOMINIUM ACT P.A. 59 of 1978, as amended MCL 559.101 *et seq.***17:1.1 Definitions**

Condominium project: a plan or project consisting of not less than two condominium units established and approved in conformance with the Act.

Condominium subdivision plan: a visual representation of a site, including survey, utility and floor plans, floodplain delineation and sections, and existing and proposed structures and improvements.

Condominium unit: that portion of a condominium project designed and intended for separate ownership and use. The unit may consist of the structural portion of a building, or may be restricted to the air space between walls.

Conversion condominium: a project containing condominium units, some or all of which were occupied before the filing of a notice of taking reservations.

Expandable condominium: a project to which additional land may be added at a later date pursuant to provisions expressed in the master deed. Land subject to expansion must be identified in the deed.

Master deed: a recorded document containing by-laws, the approved subdivision plan, a legal description of the lands involved, numerical identification for each unit, the method or formula used to determine percentage of value for each unit, and the percentage assigned to each unit.

Mobile home condominium project: a project in which mobile homes are to be located on separate sites which constitute individual units. The Drain Commissioner is required to adopt standards regulating stormwater discharges from this type of condominium.

Notice of intent to establish a condominium: notice sent to all levels of government by first class or certified mail at least ten days before any one of the following actions occur:

- taking reservations under a preliminary reservation agreement
- recording a master deed
- beginning construction of a project.

Site condominium: a condominium subdivision where the owner of a unit also owns the defined lot on which the building is located. The lot may or may not conform to local site plan requirements.

17:1.2 Introduction

The Condominium Act provides an alternative means for dividing property. Established physical restrictions imposed by local regulation may be bypassed in favor of conditions and terms detailed in a master deed. Shareholders govern collectively while sharing expenses for

maintaining commons areas, streets and utilities. This co-operative form of governing ensures conformity with community standards within a development while preserving flexibility for growth.

The role of local and county government is sharply curtailed under the Act. Preliminary local review is conducted at the township or city level, often with little information. Traditional regulatory agencies, while not prevented from commenting, are specifically enjoined from intervening except under limited circumstances. Two conflicting elements of the law are of special interest to Drain Commissioners:

- Rules formulated under authority of the Land Division (subdivision control) Act may not be applied to a condominium project
- Rules created by Drain Commissioners to address concerns generated by a condominium project must be applicable to all similar types of development within a county.

The statute fails to recognize obvious similarities between standard and condominium subdivisions, and a Drain Commissioner is limited to enforcing requirements that are applicable to general development within a county. Condominium projects should be listed in this category as a regulated type of land use.

17:1.3 Categories of Condominiums

Although several types of condominium projects have been identified, most fall into one of the follow broad categories:

(1) Standard Condominium Project

Standard Condominium Project consists of two or more units lying within a physical boundary identified in a master deed. A project may consist of a single building with many units, or may involve a collection of separate units. Ownership may be restricted to a single building, a portion of a building, or a defined parcel of land around and including a building (site condominium).

(2) Conversion Condominiums

Conversion condominiums involve units that are already occupied, or are occupied in part. Large buildings lend themselves to projects of this type. Individuals may own a portion of the structural component, or may be restricted to ownership of air space between walls.

(3) Mobile Home Condominiums

Mobile home condominiums are a distinct form of site condominium. Physical development is regulated under the Mobile Home Commission Act that also directs the Drain Commissioner to adopt standards governing outlet drainage. The authority granted is unique from other types of condominium projects.

17:1.4 Jurisdiction**(1) Review**

a) Most of the actual review of a condominium project occurs at the state level.

1. The Department of Consumer and Industry Services (DCIS) is designated as the administrative authority in the Act. DCIS oversees provisions of the master deed which determines the method and physical manner in which a project will be developed. Internal improvements are approved by the Environmental Health Section of MDEQ except when streets and utilities are intended to become part of a local public system.
2. Initial site plan review for a condominium project is conducted by city or township officials. Although a project must comply with land use zoning ordinances, other physical restrictions may not apply.
3. Location, width and layout of internal streets are exempt from standards of county agencies, as are size and location of storm drains.
4. County health departments are included in the review process only if public water and sewer are unavailable.

b) Local and county officials should adopt cooperative procedures to protect infrastructure investments.

(2) Master Deed Review

The Drain Commissioner's office should review the Master Deed and Bylaws for any condominium development where the drainage will become a public drain. The purpose for the review is that these documents are drafted by the developers and may often times contain language that is inconsistent with the Drain Code. Boilerplate language relative to a drainage district created under a 433 Agreement for use in the Master Deed can be found at Appendix Item 17:1.2.

17:1.5 Opportunities for Increasing Local Input

Several useful tools are available to local and county government for controlling development.

1. Publicly-owned utilities may continue to regulate water and sewer connections.
2. Local government may petition DCIS for adoption of stringent rules governing mobile home development within its corporation boundaries.
3. New construction must generally comply with state and local building construction codes.
4. Application of local restrictions against developing within flood plain areas are enforceable.
5. Counties (cities) may regulate ingress and egress to public roadways. If internal streets are to be dedicated, approval must be sought from the appropriate local agency.
6. Many government agencies already required dedication of storm drains serving public streets, thus providing an opportunity for input by the Drain Commissioner.
7. Condominium projects must comply with accepted erosion control practices and rules formulated by county enforcing agents.
8. Drain Commissioners may apply published rules regulating allowable discharges to a public drain provided the regulations are not punitive.
9. Drain Commissioners retain all authority granted under the Michigan Drain Code, controlling existing storm drains and easements within a project. New drains may be dedicated by agreement and are subject to requirements and rules adopted by the Drain Commissioner.

17:1.6 Procedure

- a) The process for approving a condominium project is similar to that followed for standard subdivision development except that final approval is a responsibility of state government.
 1. A request for rezoning is filed with a city, township or county and a hearing scheduled.
 2. A public hearing is conducted to determine merits of a project, subject to state and local requirements. Detailed information is not required for the hearing although building density may be a factor if specified in local zoning ordinances.

3. After rezoning is approved, the condominium developer notifies state, county and local officials at least 10 days before one of the following occurs, whichever comes first:

- a master deed is recorded
 - preliminary reservation agreements are taken
 - construction begins
4. A detailed condominium subdivision plan is submitted to DCIS for state approval. Local health departments are informed and have 30 days to request jurisdiction for those projects lacking public water and sewer.
 5. Permits to construct are issued by MDEQ, typically on condition that local permits also be obtained.
- b) Upon receipt of a notice of intent to establish a condominium project, a Drain Commissioner should be ready to respond immediately with the following:
1. A copy of adopted rules that may influence the manner in which a project can be developed.
 2. A request for documentation necessary to evaluate impact on existing county drains, including:
 - A preliminary site plan. Developers are not required to submit detailed construction plans to local agencies.
 - Identification of the proposed storm water outlet and calculations for determining rates of discharge. A Drain Commissioner may establish minimum uniform standards for this information.
 - A copy of the master deed to determine if the project will be expandable
 - If a master deed is not yet available, a notarized affidavit stating that the project will or will not be expandable
 3. Descriptions or copies of drainage easements across the parcel, and watershed boundaries which may need to be amended. Include a list of steps necessary to address those concerns.
 4. Requirements for obtaining an erosion control permit if the Drain Commissioner is also the county enforcing agent.
 - If the Drain Commissioner is not the CEA, a copy of permit requirements of that agency could be included in the Drain Commissioner's response.
 - Notice that construction surety may be required before an erosion control permit will be issued. There are no provisions in Part 91, Act 451 of 1994 for

issuing permits to anyone other than a landowner. Therefore, to assure compliance, a bond of sufficient amount should be secured from the developer.

5. A schedule of fees if applicable.
- c) Because they too are given only 10 days notice, copies of the entire response should be sent to the local unit of government and to DCIS.

17:1.7 Planning for Condominium Development

A key element to dealing fairly with a condominium developer is a unified response from all levels of government. The Drain Commissioner is in a position to assume a lead role and should consider the following:

- a) Comprehensive stormwater rules are critical to sound planning.
 - Adopt standards applicable to all types of development.
 - Include separate sections for subdivision control rules and for rules affecting discharge from mobile home sites.
 - Establish runoff criteria for the entire county, or selected districts if appropriate, and a formal process for review, approval and appeal.
- b) Encourage local units of government to adopt ordinances requiring review and approval for all major projects by the Drain Commissioner.
- c) Encourage county road commissions to require dedication of drains serving their roadways before accepting new streets from developers.
- d) Develop a written policy to protect existing drainage easements (crossing and occupation).
- e) Make copies of adopted rules available to local officials and interested parties.

17:1.8 Assessing Condominiums

Any special drain assessments must be levied against individual owners of units after the year in which a project is established rather than an association or the developer.

- a) Determining location of a Drainage District boundary across a parcel during the initial review process will identify units will be affected by assessment.
- b) The master deed lists percentages of value for each unit and the method used for determination. Because percents of value often include a portion of commons area, the figures may be helpful when apportioning drainage benefits.

APPENDIX

1. Response Letter
2. Draft Language for Site Condominium Master Deeds

◆ ◆ *SAMPLE* ◆ ◆

LETTERHEAD

Date: CERTIFIED MAIL# _____

Name of Proposed Condominium

Dear Sir or Madam:

We are in receipt of your Notice of Intent to Establish a Condominium Project. The following items are being sent under separate cover:

- ___ Stormwater rules adopted __ (date) ___
- ___ Record of known drainage easements across the property
- ___ Erosion control permit requirements
- ___ Schedule of Fees

Before we can review the potential impact of the proposal on existing public drains we will need the following:

- ___ Preliminary layout of site with contour elevations at 1-foot intervals.
- ___ Drainage calculations supporting proposed storm water discharges from the site and location(s) of proposed outlet(s).
- ___ A copy of the master deed to determine if additional land may be added in the future, or a notarized affidavit that the project is not subject to expansion.

Please forward the requested information as soon as possible so we can expedite our review.

Cordially,

Drain Commissioner

◆ ◆ **SAMPLE** ◆ ◆**DRAFT LANGUAGE FOR SITE CONDOMINIUM MASTER DEEDS**

- I. _____ DRAIN DRAINAGE DISTRICT
- A. Attached as Exhibit A is an Agreement establishing the _____ Drain Drainage District, pursuant to Section 433 of Act No. 40 of the Public Acts of 1956, as amended. A copy of the 433 Agreement is recorded in the _____ County Register of Deeds at Liber _____ Page _____.
- B. Easements. There shall exist easements over all units and common elements for purposes of construction, maintenance and improvement of storm water drainage and retention or detention as designated on the plat. The easements are granted in favor of the _____ Drain Drainage District. The Drainage District shall have the right to sell, assign, transfer or convey this easement to any other governmental unit. The _____ County _____ Drain Commissioner, and his agents, contractors and designated representatives shall have the right of entry on, and to gain access to, the easement property.
- No unit owner shall disturb the grade or otherwise modify the areas within the easements in any way inconsistent with the Drain. No unit owner shall install, maintain, repair or replace landscaping materials located within the Drain easement areas lying within such unit owner's area in any way inconsistent with the use by the Drainage District. All unit owners shall release Grantee and its successors, assigns or transferees from any and all claims to damages in any way arising from or incidental to the construction and maintenance of the Drain, or otherwise arising from or incidental to the exercise by the Drainage District of its rights under said easements, and all unit owners covenant not to sue the Drainage District for any such damages.
- C. Assessments for the _____ Drain. All costs relating to the maintenance and improvement of the _____ Drain shall be borne by the Drainage District and assessed to the unit owners pursuant to Act No. 40 of the Public Acts of 1956, as amended.

QUESTION AND ANSWERS

1. Does the Drain Commissioner have any control and/or review authority over internal drainage for a condominium development?

A: Unless a County Drain has been established in the development via a 433 Agreement, the Drain Commissioner is limited to enforcing requirements that are applicable to general developments in a County (i.e. outlet). However, a local municipality, by ordinance, can give the Drain Commissioner the authority to review and approve internal drainage of the development.

2. What is a site condominium?

A: A site condominium is a condominium subdivision where the owner of a unit has individual rights to the defined lot on which the building is located. Site condominium developments tend to look like normal subdivisions, but typically have less stringent set back requirements, and may either have public or private roads.

3. What is the difference between a mobile home condominium development and a mobile home park?

A: A mobile home condominium has separate sites, where the sites constitute individual units. A mobile home park is owned by a developer, where residents rent the site. A mobile home condominium is regulated under the Mobile Home Commission Act. Therefore, a mobile home condominium is unique from other condominium developments in that there are more opportunities for local regulation.

4. How quickly should I respond to a notice of intent to establish a condominium project?

A: Immediately. Once the notice is received, a Drain Commissioner should provide the developer with a copy of the adopted rules impacting the development, and should request documentation allowing the Drain Commissioner to identify any impact on a County Drain. If you receive notice from the developer's attorney, all responses should be sent to the attorney, rather than directly to the developer, with a copy to the local unit of government.