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S.B. 61

134th General Assembly

Bill Analysis

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Version: As Reported by House Civil Justice

Primary Sponsors: Sens. Blessing and Antonio

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SUMMARY

Condominiums and planned communities

- Authorizes the board of directors for a condominium unit owners association (UOA) and planned community home owners association (HOA) to amend their declarations and bylaws to remove unlawful discriminatory covenants without the majority vote of the owners.
- Prohibits a majority of an UOA board of directors and HOA board of directors from consisting of owners or representatives from the same unit (condominiums) or owners or representatives from the same lot (planned communities) unless the board specifically makes an exception before such a majority is in place.
- Requires UOA boards of directors and HOA boards of directors to adopt budgets annually.
- Requires that the reserves included in a UOA budget be adequate to repair or replace major capital items in the normal course of operations without special assessments, unless an exception is applicable, and eliminates the requirement that the reserves be at least 10% of the annual budget.
- Requires, for both condominiums and planned communities, that any waiver of the reserve requirement be done annually in writing.
- Requires, generally, a UOA board or HOA board to maintain blanket fidelity, crime, or dishonesty insurance coverage for any person who controls or disburses association funds.
- Increases the amount of the fire and extended coverage insurance a UOA board must maintain for all buildings and structures of the condominium property from at least 80% of the property's fair market value to at least 90% of the property's replacement cost.

- Expands the authority of UOA and HOA boards to take part in legal actions to include land use proceedings and proceedings that involve two or more owners, impacts zoning, or otherwise relates to matters affecting the property.
- Requires an owner to obtain UOA or HOA board approval to examine or copy books, records, or minutes that are more than five years old.
- Shifts, for condominium unit owners, the default for examining or copying certain books, records, or minutes from permitting the condominium board to refuse permission to requiring the permission of the UOA board.
- Allows certain UOA or HOA notices to be sent by email.
- Makes the UOA lien for payment of specified expenses a continuing lien that allows collection of amounts that accrue after the lien is filed.
- Permits a UOA board to charge and collect fees for social activities or charitable contributions made on behalf of the UOA.
- Regulates the installation and use of solar energy collection devices on condominium property and in planned communities.

New Community Authority Law

- Changes the date from December 31, 2021, to December 31, 2024, in which a new community authority must be established to satisfy one of the three criteria required for a developer with a 99-year renewable lease of the land to qualify under the New Community Authority Law.

Recording fees

- Specifies that the fee the county recorder must collect for entering or indexing any reference by separate recorded instrument includes any marginal reference or a reference that was accomplished by a marginal reference but is now accomplished through electronic means.

DETAILED ANALYSIS

Condominiums and planned communities

Overview and terminology

Condominium properties and planned communities contain many similarities in Ohio Law. The bill makes several changes to bring those laws into greater alignment and makes a number of parallel changes to each. **Condominium property** is a form of real property ownership under which each owner has an individual ownership interest in a unit with the right to exclusive possession of that unit and an undivided ownership interest with the other unit owners in the common elements of the condominium property. The **unit owners association (UOA)** is the organization that administers the condominium property. It consists of all the owners of units in the condominium property. A **planned community** is a community

comprised of individual lots for which a deed, common plan, or declaration requires that owners become members of a home owners association (HOA) that governs the community, that owners or the HOA holds or leases property or facilities for the benefit of the owners, or that owners support by membership or fees, property or facilities for all owners to use. The **home owners association (HOA)** is comprised of owners of lots in a planned community and is responsible for the administrative governance, maintenance, and upkeep of the planned community. The **declaration** is the instrument that subjects the property to the Condominium Law or Planned Community Law, as applicable. Both UOA and HOA authority is exercised by a board of directors.¹

Discriminatory covenants

Continuing Ohio and federal law prohibit housing discrimination based on race, color, national origin, sex, religion, or familial status. As a result, provisions in deeds and other land documents, such as planned community and condominium declarations, that aim to implement such discrimination are unenforceable. If the documents were created prior to the enactment of the federal and state law protections, sometimes the discriminatory provisions remain in the documents, even though the discriminatory provisions are unenforceable.²

The bill authorizes UOA and HOA boards of directors to remove such discriminatory restrictive covenants from their declarations and bylaws without a vote of the HOA or UOA owners. Under existing law, such an amendment would require the vote of at least 75% of the HOA or UOA owners. The bill instead authorizes the UOA board to amend the declaration in any manner necessary to delete as void, any provision within the declaration or bylaws, or in any applicable restrictions or covenant, that prohibits or limits the conveyance, encumbrance, rental, occupancy, or use of the property on the basis of race, color, national origin, sex, religion, or familial status. Similarly, the bill authorizes the HOA board to do the same but requires the majority vote of the board.³

Composition of board of directors

The bill limits who may be on UOA and HOA boards of directors. Under continuing law, board members are elected by unit owners and lot owners. The bill prohibits a majority of board members from being elected from the same unit or lot unless the board votes to allow such a majority before it is elected.⁴

¹ R.C. 5311.01 and 5312.01, not in the bill.

² R.C. 4112.02(H) and 42 United States Code 3604, not in the bill.

³ R.C. 5311.05(E)(1)(g) and 5312.05(C).

⁴ R.C. 5311.08(A)(1) and 5312.03(A)(1).

Budgets

UOA budgets

Unless otherwise provided in the declaration or bylaws, under current law, the condominium board of directors must adopt and amend budgets for revenues, expenditures, and reserves. The bill makes this duty mandatory, removing existing law's authority for the declaration or the bylaws to provide otherwise. In addition, the bill clarifies that the budget adopted is an estimated budget and requires it to be adopted annually, making the requirement parallel to the Planned Community Law's budget requirements.

Under continuing law, the budget must generally include reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments. Under existing law, the amount set aside annually for reserves must be at least 10% of the annual budget, but the reserve requirement may be waived each year by majority vote of the unit owners.

The bill eliminates the requirement that the reserves be at least 10% of the annual budget. It also requires that waiver of the reserve requirement by a majority of the unit owners be approved in writing and adds another exception to the reserve requirement. Under that exception, a reserve is not required if the declaration or bylaws include language limiting the board's ability to increase assessments for common expenses without a vote of the unit owners.⁵

HOA budgets

Under existing law, unless otherwise provided in the declaration or bylaws, the HOA board of directors must annually adopt and amend an estimated budget for revenues and expenditures and collect assessments for common expenses from owners. The bill makes these duties mandatory with the board of directors, removing authority for the declaration or bylaws to provide otherwise.

Continuing law requires the budget to include reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments. The owners, exercising not less than a majority of the voting power of the HOA, may annually waive this reserve requirement. The bill requires the waiver to be in writing.⁶

Insurance

Blanket fidelity, crime, or dishonesty insurance

The bill requires the condominium board of directors, unless otherwise provided by the declaration or bylaws, to maintain, as a common expense, blanket fidelity, crime, or dishonesty insurance coverage for any person who controls or disburses association funds. Similarly, the

⁵ R.C. 5311.081(A)(1).

⁶ R.C. 5312.06(A).

bill requires that the HOA board of directors maintain, to the extent reasonably available and applicable, blanket fidelity, crime, or dishonesty insurance coverage for any person who controls or disburses association funds.

All of the following apply to this insurance:

- The coverage must be for the maximum amount of funds that will be in the custody of the association or its designated agent at any one time, plus three months of operating expenses;
- The insurance is to be the property of and for the sole benefit of the association, which is the insured party;
- It must protect against any unauthorized taking or loss of association funds;
- It must include in its definition of “employee” the manager and the managing agent of association funds;
- The insurance must include a provision requiring the insurer to provide a ten-day written notice in the event of cancellation or substantial modification of the policy.⁷

Condominiums – fire and extended coverage insurance

The bill increases the amount of the fire and extended coverage insurance the condominium board must maintain for all buildings and structures of the condominium property from not less than 80% of the property’s fair market value to at least 90% of the property’s replacement cost. Under continuing law, this insurance is a common expense.⁸

Legal actions

Unless otherwise provided in the declaration, continuing law allows a condominium board to take part in a civil, criminal, or administrative action or proceeding that is in the name of, or threatened against, the UOA, the board, or the condominium property. The Planned Community Law has an analogous provision. The bill expands the authority in both laws to specifically include land use planning proceedings and proceedings that impact zoning.

Under existing law, the condominium board or HOA board also may take part in actions that involve two or more unit owners (or owners) *and* that relate to matters affecting the property. The bill removes the requirement that both those requirements be met, and allows the board to take part in an action that involves two or more unit owners (or owners) *or* that relates to matters affecting the property.⁹

⁷ R.C. 5311.16(C) and 5312.06(B)(4).

⁸ R.C. 5311.16(B).

⁹ R.C. 5311.081(B)(2) and 5312.06(D).

Examination or copying of records

UOA records – permission needed for certain records

Generally, any member of a UOA may examine and copy the books, records, and minutes the UOA is required to keep. But, the condominium board may refuse to permit the examination or copying of certain types of records. The bill changes the default for examining these records from permitting the condominium board to refuse to permit the examination or copying to prohibiting the examination or copying *unless* the board gives its approval. This change brings the Condominium Law in line with the continuing Planned Community Law.

The records subject to this restriction are the following:

1. Information that pertains to property-related personnel matters;
2. Certain records pertaining to litigation or other property-related matters;
3. Information that pertains to transactions currently under negotiation, or information that is subject to confidentiality requirements in a contract;
4. Information that relates to enforcement of the association rules against other owners;
5. Information the disclosure of which is prohibited by law.¹⁰

UOA and HOA records – more than five years old

In addition, under the bill, a unit owner needs condominium board approval, and an owner needs HOA board approval, to examine or copy books, records, or minutes that date back more than five years prior to the date of the request.¹¹

Electronic notices

Notices to condominium unit owners

The bill allows the condominium board of directors, without a vote of the unit owners, to amend the declaration to permit notices to unit owners, that are required by the declaration or bylaws, to be sent by email and, if returned undeliverable, by regular mail, provided the condominium board has received the prior, written authorization from the owner.¹²

Notices to planned community owners regarding HOA meetings

The declaration and bylaws of a planned community must provide for the general governance of the HOA, including the manner of giving notice of meetings. The bill permits this notice to be sent by email, provided the HOA has received prior, written authorization from the owner.¹³

¹⁰ R.C. 5311.091 and 5312.07.

¹¹ R.C. 5311.091 and 5312.07.

¹² R.C. 5311.05(E)(1)(f).

¹³ R.C. 5312.02(B)(8).

Notice relating to assessments for enforcement or damages

Unless otherwise provided in the declaration, continuing law permits the condominium board to impose reasonable enforcement assessments for violations of the declaration, the bylaws, and UOA rules, and reasonable charges for damage to the common elements or other property. Prior to imposing such a charge, the board must give the unit owner a written notice describing the damage or violation, the amount of the charge or assessment, and a statement of the unit owner's rights and the procedures involved.

Similarly, under continuing law, an HOA may assess an individual lot for specified assessments and costs, including charges for damages and enforcement. Prior to imposing such a charge or assessment, the HOA board must give the owner a similar written notice.

The bill permits these types of notices to be by email to an email address previously provided by the owner or unit owner in writing.¹⁴

UOA lien for the payment of specified expenses

In a change that brings the Condominium Law in line with the Planned Community Law, the bill clarifies that the lien that the UOA has upon an owner's interest in a unit and common elements for the payment of specified expenses is a *continuing* lien. Consequently, amounts that have accrued since the filing of the lien also may be collected.

Under continuing law, the expenses for which the UOA has a lien are the portion of the common expenses chargeable against the unit and interest, late fees, enforcement assessments, and collection costs and fees the association incurs if chargeable against the unit and remain unpaid for ten days.

This lien may be foreclosed in the same manner as a mortgage on real property in an action brought on behalf of the UOA. The bill changes who may bring this action on behalf of the board so any person may bring the action "as authorized by the board." Currently the president or other chief officer of the association, pursuant to authority given to that individual by the board, may bring the action.¹⁵

Condominium board charges for social or charitable activities

The bill expands the authority of the condominium board to impose and collect fees or other charges to permit the board, to the extent provided in the declaration or bylaws, to charge and collect fees or other charges for social activities or to make charitable contributions on behalf of the UOA.¹⁶

¹⁴ R.C. 5311.081(B)(12) and (C) and 5312.11(A) and (C).

¹⁵ R.C. 5311.18(A)(1) and (B)(1) and *One Bratenahl Place Condo. Ass'n v. Sliwinski*, 8th Dist. Cuyahoga No. 102493, 2015-Ohio-3353, ¶¶ 16-19, 24.

¹⁶ R.C. 5311.081(B)(11).

Solar energy collection devices

The bill enacts provisions generally permitting the use of solar energy collection devices in condominiums and planned communities. A **solar energy collection device** is a device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.¹⁷

Condominiums

Unless specifically prohibited in the declaration, the bill permits an owner of a condominium unit that does not have any other units directly above or below it to install a solar energy collection device on the unit's roof if all of the following apply:

1. The unit, as defined by the declaration, includes the roof. Unless the declaration or drawings state otherwise, a condominium unit is only the interior of the building;
2. The cost to insure, maintain, repair, and replace is not a common expense and is instead the owner's responsibility;
3. The declaration specifically allows for and regulates the types and installation of solar energy collection devices in the common or limited common elements and establishes responsibility for the cost to insure, maintain, repair, and replace such devices.

A UOA board may establish reasonable restrictions concerning the size, place, and manner of placement of solar energy collection devices.¹⁸

Planned communities

Unless specifically prohibited in the declaration, an owner may install a solar energy collection device on the owner's dwelling unit or other location within the owner's lot if either of the following conditions apply:

- The cost to insure, maintain, repair, and replace the unit's roof or alternative location within the lot is not a common expense of the HOA and is instead the owner's responsibility;
- The declaration specifically allows for and regulates the type and installation of the solar energy collection device within the planned community and establishes responsibility for the cost to insure, maintain, repair, and replace the device.

An HOA board may establish reasonable restrictions concerning the size, place, and manner of placement of solar energy collection devices.

Prior to imposing a charge for damages or an enforcement assessment relating to the installation of a solar energy collection device, the HOA board must give the owner a written

¹⁷ R.C. 5311.192.

¹⁸ R.C. 5311.192 and R.C. 5311.03(D)(1), not in the bill.

notice, which may be sent to an email address previously provided by the owner. The notice must include all of the following:

1. A description of the property damage or violation;
2. The amount of the proposed charge or assessment;
3. A statement that the owner has a right to a hearing before the HOA board to contest the proposed charge or assessment;
4. The procedure to request a hearing;
5. A reasonable date by which the unit owner must cure the violation to avoid the proposed charge or assessment.¹⁹

New Community Authority Law

A new community authority is a special unit of government authorized under R.C. Chapter 349, in which a local government works with a developer for the development of a new community. In order to qualify as a developer under the law, the entity, which can be a private person, municipality, port authority, or county, must meet certain criteria such as owning or controlling the land of the new community.

A developer can also qualify if the developer is a lessor (i.e., landlord) that continues to own and control land for purposes of the New Community Authority Law pursuant to a lease with a 99-year renewable term, so long as (1) the developer's new community district consists of at least five leases that qualify under the law, (2) the leases are subject to forfeiture for failing to pay taxes and assessments, failing to pay an annual fee of up to 1% of rent for sanitary purposes and improvements made to streets, and failing to keep the premises as required by sanitary and police regulations of the developer, and (3) the new community is established on or before December 31, 2021. The bill extend this date to December 31, 2024.²⁰

Recording fees

Current law specifies documents that must be filed with the county recorder and the fees that the county recorder must collect for recording the document. Existing law requires the county recorder to charge and collect a fee for entering or indexing any reference by a separate recorded instrument. The bill specifies that the fee the county recorder must collect for entering or indexing any reference by separate recorded instrument includes any marginal reference or a reference that was accomplished by a marginal reference but is now accomplished through electronic means.²¹

¹⁹ R.C. 5312.16.

²⁰ R.C. 349.01(E)(3).

²¹ R.C. 317.32(C).

HISTORY

Action	Date
Introduced	02-17-21
Reported, S. Local Government and Elections	01-26-22
Passed Senate (32-1)	01-26-22
Reported, H. Civil Justice	05-05-22
