



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 534

131st General Assembly  
(As Introduced)

**Reps.** Grossman and Perales, Bocchieri, Rezabek, Duffey

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## BILL SUMMARY

- Requires the Division of Real Estate and Professional Licensing to establish and maintain a database registry of the names of condominium unit owners associations in Ohio and to adopt rules regarding registration and fees.
- Requires the board of directors of a unit owners association to apply to the Division to register the association in the database and to subsequently display a certificate or registration issued by the Division.
- Requires all meetings of a unit owners association's board of directors to be open to all unit owners.
- Requires the board of directors to vote on the record.
- Requires notice of a meeting of the board of directors to be posted in common areas of the property and website and to be sent to certain unit owners.
- Requires the board of directors to provide to all unit owners a summary of the unit owners association budget not later than 30 days after adoption.
- Expands the records that a unit owners association must keep.
- Extends the permission afforded to any member of a unit owners association to examine and copy information the association is required to keep to a manager or managing agent of the condominium property.
- Requires a unit owner, manager, or managing agent to submit notice five days in advance of the date the person intends to examine the information the association is required to keep.

- Permits the board of directors to establish a policy requiring supervision of the examination of information and a fee for such supervision.
- Establishes mediation and investigation procedures by the Superintendent of Real Estate and Professional Licensing relating to the Ohio Condominium Law.
- Requires blanket fidelity insurance coverage for any person who controls or disburses association funds.
- Adds that liens that attach for unpaid common expenses are continuing liens that are subject to automatic subsequent adjustments that reflect certain additional unpaid assessments.
- Modifies the priority of liens that attach to properties for unpaid common expenses.
- Requires the Director of Commerce to adopt rules requiring an addendum to the disclosure form required for residential real property transfers relating to properties subject to Ohio Condominium Law and Ohio Planned Community law.
- Permits a directed or undirected proxy executed by a unit owner to vote in certain cases.
- Adds "condominium association" to the definition of "unit owners association."
- Defines "manager" and "managing agent" for purposes of the Ohio Condominium Law.

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## CONTENT AND OPERATION

### Overview of the Ohio Condominium Law

Condominiums in Ohio are governed by the Ohio Condominium Law, which provides for self-governance of condominium developments by a unit owners association and its elected board of directors. The declaration and bylaws required by law, as well as the Ohio Condominium Law and the operating rules the association adopts, establish the duties and responsibilities of the association and its board of directors.<sup>1</sup>

### Registry of unit owners associations

The bill requires the Division of Real Estate and Professional Licensing (the Division) in the Department of Commerce (the Department) to establish and maintain a registry, in the form of a database, of the names of all unit owners associations in Ohio. Information in the database must be available for public viewing, and the Division must include access to the information in the database on the Division's website and in other materials, as determined by the Superintendent of Real Estate and Professional Licensing (the Superintendent).

The bill directs the Division to perform all of the following duties:

- Adopt, amend, and rescind rules in accordance with the Administrative Procedure Act to carry out the bill's provisions governing registration of unit owners associations;
- Prescribe the form and content of all applications to be used for registration and renewal of registration pursuant to the bill's provisions;
- Review applications for registration and issue registration certificates to unit owners associations that meet the requirements for registration pursuant to the bill;
- Collect all fees related to the registration and renewal of registration certificates for unit owners associations;
- Maintain a written record of each unit owners association registered with the Division, which is to include documentation as required by the Division. The record must be available for inspection by the public

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<sup>1</sup> Chapter 5311. of the Revised Code.



through the website and copies must be made available in accordance with the Public Records Law.

- Hire all division personnel necessary for the creation and maintenance of the database.<sup>2</sup>

### **Application, fees, and registration**

The bill requires a board of directors to apply to the Division to register the board's unit owners association on forms prescribed by the Division. Accompanying the application, the applicant must submit any information required by the Division and a registration fee as specified in rules adopted by the Superintendent. In no event may the registration fee exceed \$3 for each unit.<sup>3</sup>

The bill permits the Director of Commerce (the Director), by rule, to reduce the amount of the registration fee required by the bill in any year if the Director determines that the fee is generating more funds than the Division needs to carry out its powers and duties under the Ohio Condominium Law. If the Director reduces the amount of the registration fee, the Director must reduce it for all owners or other persons required to pay the fee. If the Director has reduced the fee, the Director may later raise it up to the amounts permitted by the bill if, in any year, the Director determines that the total amount of funds the fee is generating at the reduced amount is insufficient for the Division to carry out its powers and duties.<sup>4</sup>

Upon receipt of the completed application form, documentation, and registration fee, the bill directs the Division to issue a certificate of registration to the unit owners association. The board of directors of the association must display the certificate in a conspicuous place on the premises of the condominium property for which the registration was obtained. If no appropriate place for displaying the certificate exists on the premises, the board of directors must keep the certificate on file and available for public inspection at the board's office or the office of the unit association's managing agent.<sup>5</sup>

The bill provides that each registration issued pursuant to the provisions of the bill expire annually on August 31 and may be renewed. The renewal fee must be the same as the initial registration fee. If a board of directors fails to timely file its renewal,

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<sup>2</sup> R.C. 5311.082 and R.C. Chapter 119; R.C. 149.43, not in the bill.

<sup>3</sup> R.C. 5311.083(A)(1).

<sup>4</sup> R.C. 5311.083(A)(2).

<sup>5</sup> R.C. 5311.083(B).



it is required to pay a late penalty fee in an amount equal to 50% of the renewal fee. All registration and renewal fees collected for registration and renewal must be paid into the state treasury to the credit of the Division to be used by the Division to carry out its powers and duties under the Ohio Condominium Law.

If the board of directors fails to register the association or renew its registration, the Superintendent must assess the board a civil penalty of not more than \$200 for each violation. If a board of directors fails to pay this civil penalty within the time prescribed by the Superintendent, the Superintendent must forward to the Attorney General the name of the board's unit owners association and the amount of the civil penalty, for the purpose of collecting that civil penalty. In addition to the civil penalty, the board must also pay any fee assessed by the Attorney General for collection of the civil penalty.<sup>6</sup>

### **Effective date for registry provisions**

The bill delays the effective date of the provisions regarding the statewide registry. These provisions will take effect 120 days after the effective date of the bill. During that period, the Superintendent must collect and process applications for unit owners association registration and issue certificates of registration. During that time, no association is required to have a certificate of registration.<sup>7</sup>

### **Mediation and investigations**

The bill directs the Superintendent to mediate and investigate all of the following:

- General complaints and disputes between a unit owner and a unit owners association or board of directors;
- Request by a majority of unit owners in a unit owners association or upon a motion of the board of directors of an association to audit the elections of the association;
- Disputes over access to records of a unit owners association or board of directors.

The Superintendent must establish and maintain an investigation and audit section to investigate complaints and conduct inspections, audits, and other inquiries as the Superintendent considers appropriate. The investigators or auditors have the right

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<sup>6</sup> R.C. 5311.083(C),(D), and (E).

<sup>7</sup> Section 3.



to review and audit all of the records required to be kept by the unit owners association during normal business hours (see "**Recordkeeping**," below).

The Superintendent may, in connection with investigations and audits, subpoena witnesses in the manner described in the bill (see "**Orders and subpoenas**," below).

The bill requires the Superintendent, the investigators and auditors, and other personnel of the Department to hold in confidence all information that is obtained by the Superintendent, investigators, and auditors performing investigations or conducting inspections, audits, and other inquiries under provisions of the bill and all reports, documents, and other work products that arise from that information and that are prepared by the investigators, auditors, or other personnel of the Department.<sup>8</sup>

These provisions take effect 120 days after the effective date of the bill.<sup>9</sup>

### **Process for filing and mediating complaints**

The bill permits any person with standing or the Superintendent upon the Superintendent's own motion to file a written complaint regarding the activity, practice, policy, or procedure of, or regarding an alleged violation of the provisions dealing with unit owners associations and their records, insurance, and boards of directors by any board of directors or unit owners association registered under the Ohio Condominium Law that adversely affects or may adversely affect the interest of a unit owner. All complaints must be in writing and submitted to the Division on forms provided by it.

Upon receiving a complaint, the Division must (1) acknowledge receipt of the complaint by sending written notice to the person who filed the complaint not more than 20 days after its receipt, (2) send written notice of the complaint within seven days after its receipt to the entity that is the subject of the complaints, and (3) before taking further action, allow the entity that is the subject of the complaint 30 days after the date the Division sends notice of the complaint to respond to the Division with respect to the complaint. Upon written request and for good cause shown, the Superintendent may extend these time limits. The Superintendent or Superintendent's designee must schedule mediation for each filed complaint within 180 days after its filing, unless it has been resolved by the parties to the complaint. All mediations must be held pursuant to the Uniform Mediation Act.<sup>10</sup>

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<sup>8</sup> R.C. 5311.30.

<sup>9</sup> Section 3.

<sup>10</sup> R.C. 5311.32.



The Superintendent, as a result of a complaint received or an audit and with good cause shown, may investigate or cause to be investigated alleged violations of the Ohio Condominium Law. If the Superintendent believes that a violation has occurred, the Superintendent may (1) request the prosecuting attorney of the county in which the alleged violation occurred to initiate appropriate proceedings and (2) in accordance with the provisions of the bill, audit the records of the condominium association named in the complaint to ensure compliance with the Law. The Superintendent, at any time, may dismiss a complaint if the Superintendent determines there is not good cause shown for the complaint. If a complaint is dismissed, the Superintendent must notify the person who filed the complaint within 20 days of reaching the Superintendent's decision and identify the reason why the complaint was dismissed.

If necessary, the Superintendent may issue subpoenas and compel the production of books, papers, records, and other forms of evidence. When the Superintendent determines that the nature of a complaint merits it, the Superintendent may maintain Division proceedings and records as confidential. In addition, if the Superintendent believes that a violation of the registration requirement under the bill has occurred, the Superintendent must request the prosecuting attorney of the county in which the alleged violation occurred to initiate appropriate proceedings.<sup>11</sup>

These provisions take effect 120 days after the effective date of the bill.<sup>12</sup>

### **Orders and subpoenas**

The bill permits the Superintendent to compel, by order or subpoena, the production of any book, paper, or document in relation to any matter over which the Superintendent has jurisdiction and that is the subject of an inquiry and investigation by the Superintendent. The bill also allows the Superintendent to compel, by order or subpoena, the attendance of witnesses to testify in a hearing held under the provision of the bill. For those purposes, the Superintendent has the same power as judges of courts of common pleas to administer oaths, compel the attendance of witnesses, and compel the production of any book, paper, or document. Service of the subpoena may be made by sheriffs or constables, or by certified mail, return receipt requested, and the subpoena will be deemed served on the date delivery is made or the date the person refused to accept delivery. Witnesses will receive, after their appearance before the Superintendent, the fees and mileage provided for under Ohio law. If two or more witnesses travel together in the same vehicle, the mileage fee will be paid to only one of

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<sup>11</sup> R.C. 5311.33.

<sup>12</sup> Section 3.



those witnesses, but the witnesses may agree to divide the fee among themselves in any manner.

If a person fails to file any statement or report, obey any subpoena, give testimony, answer questions, or produce any books, records, or papers that the Superintendent requires, the bill allows the Superintendent to apply to the court of common pleas of any county in Ohio to do the following:

- Make an order awarding process of subpoena or subpoena duces tecum for the person to appear and testify before the Superintendent;
- Order any person to give testimony and answer questions, and to produce books, records, or papers, as required by the Superintendent.

Upon the filing of such an order in the office of the clerk of the court of common pleas, the clerk, under the seal of the court, must issue process of subpoena for the person to appear before the Superintendent at a time and place named in the subpoena, and each day thereafter until the examination of the person is completed. The subpoena may contain a direction that the witness bring with the witness to the examination any books, records, or papers mentioned in the subpoena. The clerk must also issue, under the seal of the court, such other orders, in reference to the examination, appearance, and production of books, records, or papers, as the court directs.

If any person summoned by a subpoena fails to obey the subpoena, to give testimony, to answer questions as required, or to obey an order of the court, the court, on motion supported by proof, may order an attachment for contempt to be issued against the person charged with disobedience of any order or injunction issued by the court. If the person is brought before the court by virtue of the attachment, and if upon a hearing the disobedience appears, the court may order the offender to be committed and kept in close custody.<sup>13</sup>

These provisions take effect 120 days after the effective date of the bill.<sup>14</sup>

### **Other duties**

The Superintendent must adopt, amend, and rescind rules in accordance with the Administrative Procedure Act as are necessary in carrying out the Superintendent's duties, including rules relative to the following:

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<sup>13</sup> R.C. 5311.29.

<sup>14</sup> Section 3.





- Transacting the Division's business and managing its affairs;
- Establishing registration and renewal fees;
- Establishing procedures for receiving, reviewing, mediating, and responding to complaints filed under the Ohio Condominium Law;
- Conducting investigations in response to complaints filed under the Law;
- Auditing elections in accordance with the Law or as part of an investigation in response to a complaint filed under the Law;
- Conducting audits as provided in the Law;
- Resolving complaints by using informal techniques of mediation, conciliation, and persuasion, including requiring the parties involved in a complaint to be given prompt notice of any offers to resolve disputes and responses thereto;
- Advising all parties making a complaint, or who are the subject of a complaint, of any recommendations or findings of fact made by the Superintendent with respect to the complaint;
- Requesting the party who has filed a complaint or is the subject of a complaint, and is affected by recommendations of the Superintendent made with respect to the complaint, to notify the Superintendent within a time specified by the Superintendent of any action the party has taken in response to the Superintendent's recommendations;
- Maintaining Division proceedings and records as confidential when the Superintendent determines that the nature of the complaints merits that action;
- Determining the method to be used in serving notices as required by the Law.

The bill also requires the Superintendent to:

- Publicize information concerning the existence and duties of the Division and the procedure for filing complaints under the Law;
- Conduct mediations on complaints;



- Submit at least annually by July 31 a report on the Division's activities of the immediately preceding fiscal year to the Governor and the majority and minority leaders of the Senate and the House of Representatives. The report must indicate the total number of complaints received, initiated, and investigated pursuant to the provisions of the bill, the total number of complaints for which mediations were held, the total number of audits conducted, the total number of referrals made to prosecuting attorneys as provided in the bill, and information regarding the nature of the inappropriate conduct alleged in each referral and the status or disposition made of each referral occurring during the preceding two years.
- Review, at least once a year, all actions taken by the prosecuting attorneys in response to referrals made to them by the Superintendent;
- Perform all functions as are necessary in administering and enforcing the provisions regarding the Superintendent.<sup>15</sup>

These provisions take effect 120 days after the effective date of the bill.<sup>16</sup>

### **Board of directors – meeting requirements**

The bill requires all meetings of a unit owners association's board of directors to be open to all unit owners. It also requires a portion of each board meeting to be allocated for comments by unit owners. A unit owner may send an agent or representative, as authorized by a written statement of the unit owner, to attend a board meeting in the unit owner's place. The agent or representative may vote in the unit owner's place at the board meeting, as authorized by a notarized statement of the unit owner. (See "**Proxy voting**," below.)

Under the bill, at least five days prior to a meeting of the board of directors, the board must post a notice of the meeting in the common areas of the condominium property and on the website maintained by the association or managing agent, if there is such a website. The board must also send notice to a unit owner who has requested to be included in a mailing list, by email to the unit owner's email address or by traditional mail to the unit owner's home mailing address, as requested by the unit owner. The board must make all public materials provided to board members for the meeting available to unit owners upon request. The bill expands the existing law requirement that each member of the board be able to hear, participate, and respond to every other

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<sup>15</sup> R.C. 5311.31.

<sup>16</sup> Section 3.



member of the board to also apply to unit owners: each board member and unit owner that participates in a board meeting must be able to hear, participate, and respond to every other board member or unit owner.

The bill requires the board of directors to vote on the record and removes the requirement that, in lieu of conducting a meeting, the board may take action with the unanimous written consent of the members of the board, which written consent must currently be filed with the minutes of the meetings of the board.<sup>17</sup>

### **Board of directors – budget summary**

The bill requires the board of directors, not later than 30 days after it adopts a budget under provisions of the Ohio Condominium Law, to provide to all unit owners a summary of the budget including an explanation of the amount and method of calculating and funding reserves, if applicable. Continuing law requires the board to adopt and amend budgets for revenues, expenditures, and reserves unless otherwise provided in the declaration or bylaws of the unit owners association.<sup>18</sup>

### **Unit owners association – recordkeeping requirements**

Continuing law requires a unit owners association to keep certain information and to allow any member of the association to examine and copy books, records, and minutes. The bill expands the information that a unit owners association must keep to include the following:

- Records showing the names and addresses of the members of the board of directors and association officers;
- Records of all actions taken without a meeting of the board of directors;
- The original or restated declaration, bylaws, and drawings and any articles of incorporation, as recorded;
- All financial statements and tax returns, which must be kept for a minimum of three years;
- All current contracts into which the condominium development has entered;

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<sup>17</sup> R.C. 5311.08(A)(4).

<sup>18</sup> R.C. 5311.081.



- Records of approvals or denials for requests for design or architectural approval from the board of directors or the unit owners association;
- Ballots, proxies, and other voting records of the board of directors and the unit owners association, which must be kept for a minimum of one year.<sup>19</sup>

### **Examination and copying of records**

Law retained in part by the bill allows any member of the unit owners association to examine and copy the **books, records, and minutes** of the association pursuant to reasonable standards set forth in the declaration, bylaws, or board rules. The bill requires that any manager or managing agent of the condominium property, in addition to any member, be permitted to examine and copy **information** included in the records of the association (see "**Unit owners association – recordkeeping requirements**," above). The bill removes from the description of reasonable standards the example "standards governing the type of documents that are subject to examination and copying."

The bill expressly permits an association to establish a policy of requiring a reasonable fee to be charged for the supervision of examination of the records, in addition to a fee for copying the documents. Also, a member, manager, or managing agent desiring to examine or copy information must submit a notice five days in advance of the date of examination.<sup>20</sup>

### **Proxy voting**

The bill permits, unless otherwise provided in an association's declaration or bylaws, votes allocated to a unit to be cast by a directed or undirected proxy executed by a notarized statement by the unit owner, provided that a person may not cast votes representing more than 15% of the votes in the association pursuant to undirected proxies.<sup>21</sup>

### **Fidelity insurance**

The bill requires blanket fidelity insurance coverage for any person who controls or disburses association funds. Under the bill, "person who controls or disburses association funds" means any individual with authority or access to sign checks, conduct electronic transfers, or otherwise withdraw funds from any association account

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<sup>19</sup> R.C. 5311.09(A)(1)(e) through (k).

<sup>20</sup> R.C. 5311.091(A).

<sup>21</sup> R.C. 5311.22(E).

or deposit, including a management company, the company's principals and employees, a bookkeeper, and the president, secretary, treasurer, other board member, and employee of the unit owners association.

The blanket fidelity insurance must cover 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 operating expenses. The insurance must be in favor of the unit owners association and must protect against theft, embezzlement, misappropriation, or any other unauthorized taking or loss of association funds. The insurance must be the property of and for the sole benefit of the unit owners association. In addition, the policy for the insurance must include in its definition of "employee" the manager and the managing agent of the association's funds or provide for this inclusion by an endorsement to the policy. The policy must name the association as the insured party and include a provision requiring the issuer of the policy to provide ten days written notice to the association president or manager and the Division in the event of cancellation or substantial modification of the policy. The manager or managing agent of the association must be the designated agent on the policy.<sup>22</sup>

### **Lien for unpaid common expenses**

The bill modifies certain provisions under continuing law regarding liens for unpaid common expenses. Under continuing law, generally, an association has a lien upon the estate or interest of the owner in any unit and the appurtenant undivided interest in the common elements for the payment of certain expenses that remain unpaid for ten days after any portion becomes due. These expenses include the portion of the common expenses chargeable against the unit and the interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, and paralegal fees the association incurs, if authorized by the declaration, bylaws, or rules of the association and if chargeable against the unit. The bill makes this lien a continuing lien that is subject to automatic subsequent adjustments that reflect any additional unpaid assessments for common expenses, interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, paralegal fees, and court costs.<sup>23</sup>

The bill specifies that the lien for unpaid expenses in the amount equal to the lessor of the amount of the delinquency or six months of common expenses assessments charged to the unit (provided that the amount must not exceed 5% of the original amount of the first mortgage) is prior to any lien or encumbrance previously arising or created except liens for real estate taxes and assessments of political subdivisions.

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<sup>22</sup> R.C. 5311.16.

<sup>23</sup> R.C. 5311.18(A).



Following this security interest, as stated above, the association's lien returns to the priority outlined under continuing law. Under continuing law, liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been filed for record have priority.

The bill also makes other changes relating to the foreclosure action on properties subject to the lien. The bill permits that rent collected on the property subject to the foreclosure action to be collected from the owner or directly from the occupant, regardless of the filing or priority of liens. In addition, the bill removes the president and other chief officer's authority to foreclose on the liens and instead permits foreclosure actions by the association.<sup>24</sup>

### **Real property disclosure form**

Continuing law requires a person transferring residential real property to provide the transferee (generally the buyer) a form disclosing material matters relating to the condition of the property. The bill requires the Director to adopt rules not later than January 1, 2017, that prescribes an addendum to this disclosure form for residential real property transfers that are subject to Ohio Condominium Law and Planned Community Law. The form prescribed by the Director must include information that is reasonably attainable by the transferor including all of the following:

- A copy of the association declaration, bylaws, and code of regulations;
- A statement indicating the amount of any unit owners association common assessments or other fees and any deed restrictions;
- A copy of financial information regarding the planned community or condominium property available to all community or property residents, such as the budget for operating expenses and reserves in effect for the current fiscal year or the balance sheet and income-expense statements for the most recently completed fiscal year of the property;
- A statement from the association indicating the availability, if any, of special financing for planned community or condominium property unit owners through the U.S. Federal Housing Authority or another source;

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<sup>24</sup> R.C. 5311.18(B).

- Any information registered with the Division that is available for public inspection under the bill (See "**Registry of unit owners associations,**" above).<sup>25</sup>

## Ohio Condominium Law definitions

The bill includes "condominium association" in the definition of "unit owners association," as an organization that administers the property and consists of all the owners of units in a property.<sup>26</sup>

The bill defines "manager" or "managing agent" to mean a person that is responsible, alone or in concert with others, for the management of a condominium property.<sup>27</sup>

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## HISTORY

ACTION	DATE
Introduced	04-26-16

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<sup>25</sup> R.C. 5302.30.

<sup>26</sup> R.C. 5311.01(DD).

<sup>27</sup> R.C. 5311.01(GG).

