



Ohio Legislative Service Commission

Bill Analysis

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Am. S.B. 187*

128th General Assembly

(As Reported by S. State & Local Government & Veterans Affairs)

Sens. Seitz, Sawyer

BILL SUMMARY

- Requires any person establishing a new planned community to file a declaration and bylaws, providing for the operation of the planned community, with the county recorder.
- Requires a planned community to be administered by an owners association through a board of directors.
- Establishes certain rights of planned community lot owners.
- Establishes rules regarding board of director meetings, common expenses, and assessments.
- Authorizes an owners association, under specific circumstances, to place a lien upon the estate or interest in any lot.
- States that a board of directors of an owners association must comply with all applicable state and federal anti-discrimination laws.

CONTENT AND OPERATION

In general

The bill establishes requirements to govern the formation and operation of "planned communities." The bill defines a "planned community" as a community comprised of individual lots for which a deed, common plan, or declaration requires

* This analysis was prepared before the report of the Senate State and Local Government and Veterans Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

any of the following: (1) that owners become members of an owners association that governs the community, (2) that owners or the owners association holds or leases property or facilities for the benefit of the owners, (3) that owners support by membership or fees, property or facilities for all owners to use.

Condominium property is currently governed in similar fashion under R.C. Chapter 5311. The bill states that condominium property is not a planned community (R.C. 5312.01(M)). Ownership of a unit in a condominium property "includes the right to exclusive possession, use, and enjoyment of the interior surfaces . . ." (R.C. 5311.03(E) not in the bill), while an owner in a planned community, under the bill, means a person who owns a lot, which is a parcel or tract of land formed by the subdivision of a larger parcel of land under the Platting Law (R.C. Chapter 711.--not in the bill).

Applicability to existing planned communities

(R.C. 5312.02(A) and (C) and 5312.15)

Although the bill states that any planned community in the state is subject to provisions of the bill, existing planned communities apparently are not required to file a declaration (see "**Declaration**" below), with the county recorder; planned communities that have independently chosen to record a declaration before the effective date of the bill apparently are not required to adhere to the provisions of the bill respecting elements that must be included in the bylaws and declaration.

The bill stipulates that its provisions will supplement any planned community governing document that is in existence on the effective date of the bill. In the event of any conflict between the governing document and the bill, the governing document will control. If a governing document is silent with respect to any provision of the bill, the bill will control (R.C. 5312.15).

The bill states that nothing in it invalidates any provision of a document that governs a planned community if the document was in effect at the time the declaration was recorded and the declaration was recorded before the effective date of the bill (R.C. 5312.02(A) and (C)).

Declaration

(R.C. 5312.02)

The bill requires any person wishing to establish a new planned community to file and record an instrument with the office of the recorder of the county or counties in which the planned community is located. The instrument is called a "declaration" in the

bill, and its purpose is to declare that certain property is a planned community. The person also must file the bylaws of the planned community with the county recorder.

Owners association

(R.C. 5312.03, 5312.05, 5312.06(B) and (C), and 5312.08)

The bill requires that a planned community be administered by an "owners association" that is comprised of owners of lots in the planned community. The power and authority of the owners association must be exercised by a board of directors that is elected by owners from among the owners and their spouses. If the owner is not an individual, any principal, member of a limited liability company, partner, director, officer, trustee, or employee of the owner may be elected to the board.

The owner of the property who executes and records a declaration must establish an owners association no later than the date upon which the first lot in the planned community is sold, and may control the owners association for a period of time specified in the declaration, but not later than the time at which all of the lots have been transferred to owners. The owners association must be organized as a nonprofit corporation pursuant to R.C. Chapter 1702. (the Nonprofit Corporation Law) (R.C. 5312.03).

Unless otherwise specified in the declaration or bylaws, the owners, with the consent of 75% of the owners, may amend the declaration and bylaws, but no amendment may take effect until it is filed with the county recorder. The unanimous consent of the owners is required to terminate the declaration and to dissolve the planned community (R.C. 5312.05).

The owners association must maintain: (1) property insurance on the common elements, (2) liability insurance pertaining to the common elements, and (3) directors and officers liability insurance (R.C. 5312.06(B)).

Also, the owners association must maintain records including books of account, records showing collection of the common expenses, minutes of the meetings of the association and board, and records of the names and addresses of the owners (R.C. 5312.06(C)).

Unless otherwise provided by the declaration, the owners association is responsible for reasonable maintenance, repair, and replacement of the common elements of the property (see "**Definitions**") (R.C. 5312.08(A)).

Board of directors

(R.C. 5312.04 and 5312.06(A) and (D))

The bill requires the board of directors of a planned community to elect officers from among the members of the board to include a president, secretary, treasurer, and other officers as the board designates. The board may appoint persons to fill vacancies on the board for an unexpired portion of any term.

The board may act in all instances on behalf of the association unless a provision to the contrary exists elsewhere in the bill, or in the community's declaration or bylaws. The board must call a meeting of the owners association at least once a year, and the president or a majority of the board may call special meetings. Also, owners representing 50% of the voting power in the organization, or any lower share specified in the declaration or bylaws, may call a special meeting. In lieu of a meeting, the board may take action with the unanimous written consent of the board members.

The bill gives discretion to a board in determining the method of communication used for meetings and who may attend or participate.

The bill states that the board of directors of an owners association must comply with all applicable state and federal laws concerning prohibitions against discrimination on the basis of race, color, religion, sex, military status, national origin, disability, age, or ancestry, including, but not limited to, the Ohio Civil Rights Act. No private right of action additional to those already conferred by the applicable state or federal anti-discrimination law is conferred on any aggrieved individual by the bill's statement.

The bill also requires the owners association, through its board of directors, to annually adopt and amend an estimated budget for revenues and expenditures that includes reserves for major capital items needed in the normal course of operations without the necessity of special assessments, and to collect assessments for common expenses from owners. The owners, through a majority vote of the owners association, may waive the reserve requirement annually (R.C. 5312.06(A)).

Furthermore, the bill provides authority for an owners association, through its board of directors, to engage in many specific actions necessary for the management of the property, including hiring professionals, entering into contracts, adopting rules, and investing excess funds. For example, the owners association may adopt and enforce rules that regulate the maintenance, repair, replacement, modification, and appearance of common elements and any other rules provided for in the declaration. Also, the owners association may authorize entry to any portion of a planned community when conditions exist that involve imminent risk of damage to common elements, another

dwelling unit, or to the health and safety of occupants. Furthermore, the owners association may purchase insurance and fidelity bonds the directors consider appropriate and necessary. (R.C. 5312.06(D).)

Rights of lot owners

(R.C. 5312.07 and 5312.12(D))

Under the bill, lot owners have the right to examine and copy the books, records, and minutes of the owners association, pursuant to reasonable standards set forth in the declaration, bylaws, or rules the board promulgates. However, unless approved by the board of directors, an owner may not examine information that pertains to property-related personnel matters, communications with legal counsel or attorney work product pertaining to potential, threatened, or pending litigation, information pertaining to contracts or transactions currently under negotiation, confidential information, information that relates to the enforcement actions of the owners association against owners, or information, the disclosure of which is prohibited by state or federal law (R.C. 5312.07).

If the owners association places a lien upon the estate or interest in any lot for the payment of any assessment or charge, or other fee that is chargeable against the lot, the owner may commence an action for the discharge of the lien in the court of common pleas. If the court determines that the common expenses liability related to the lien were improperly charged to the owner, the court must enter an order that it determines to be just (R.C. 5312.12(D)).

Common expenses

(R.C. 5312.10)

In accordance with its declaration, all costs the owners association incurs in the administration, governance, maintenance of a planned community are common expenses. A common expense is defined as "any expense or financial liability of the owners association including allocations the association designates for reserves" (R.C. 5312.01(D)).

The common expense liability of each lot must be allocated in accordance with the allocation set forth in the declaration. If the declaration does not establish any allocation, the common expense liability must be allocated equally among all the lots. The board of directors must assess the common expense liability for each lot at least annually, based on a budget the board adopts at least annually, and the board must charge interest on any past due assessment or installment at the rate the board establishes (not to exceed any maximum allowed by law).

The board may not charge a common expense assessment unless the declaration provides for or contemplates the charging of such assessments. If the declaration limits the amount of such assessments, the board may not increase it without an amendment to the declaration by the consent of 75% of the owners (R.C. 5312.10(C)).

Assessments

(R.C. 5312.11)

An owners association may assess an individual lot for a number of specific reasons outlined in the bill, including costs of repair due to the willful or negligent act of an owner, costs associated with the enforcement of the declaration or the rules, and costs the declaration or bylaws permit to be charged or assessed. If the board of directors is charging an owner for damages or imposing an enforcement assessment on an owner, the board must give the owner a written notice that includes detailed information regarding the proposed charge or assessment. The owner has a right to a hearing regarding the charge or assessment, pursuant to certain procedures outlined in the bill (R.C. 5312.11(D)).

Lien for assessments

(R.C. 5312.12)

Under the bill, an owners association has a lien upon the estate or interest in any lot for the payment of any assessment or charge, as well as any related interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, and paralegal fees, that are chargeable against the lot and that remain unpaid ten days after any portion has become due and payable. The bill sets forth certain requirements to perfect and enforce such liens. The lien is effective on the date that a certificate of lien is filed for record in the office of the county recorder. The certificate must contain a description of the lot and the amount of the unpaid portion of the common expenses. The lien is a continuing lien subject to automatic adjustments reflecting any additional unpaid interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, paralegal fees, and court costs. Also, the lien is valid for a period of five years unless it is sooner released or satisfied in a manner provided by law.

If a holder of a lien commences a foreclosure action against the owner of a lot in a planned community, the holder must name the owners association as a defendant in the action and the owners association or the holder of the lien is entitled to the appointment of a receiver to collect rental payments due on the property. Unless prohibited by the declaration or the bylaws, the owners association is entitled to become a purchaser at the foreclosure sale.

Other provisions

(1) The owners association may sue or be sued as a separate legal entity (R.C. 5312.14).

(2) A mortgage on a lot may contain a provision that secures the mortgagee's advances for the payment of the portion of the common expenses chargeable against the lot (R.C. 5312.12(C)(3)).

(3) In any foreclosure action, it is not a defense, set off, counterclaim, or cross claim that the owners association has failed to provide the owner with any service, goods, work, or material, or failed in any other duty (R.C. 5312.12(C)(4)).

(4) The bill sets forth the conditions that must be met before an owners association may convey any fee interest or any security interest in any portion of the common elements or limited common elements of the property. A limited common element is property that is reserved for use by certain specified lots within the planned community. The owners association may not convey any fee interest in a limited common element without the approval of all of the owners of lots to which the element is allocated. (R.C. 5312.09.)

Definitions

The bill also includes the following definitions:

"Assessment" means the liability for an expense that is allocated to a lot in a planned community.

"Common element" means any property in a planned community that the owners association holds in fee or has use of pursuant to a lease or easement.

"Common expense" means any expense or financial liability of the owners association, including allocations the association designates for reserves.

"Declarant" means the owner of property who executes and records a declaration that the property is a planned community.

"Declarant control" means the period of time in which the declarant controls the owners association by appointing or electing the members of the association's board of directors.

"Declaration" means an instrument a property owner executes and records to declare that the property is a planned community subject to the provisions of the bill.

"Dwelling unit" means a detached building or the portion of a building that is designed and intended for use and occupancy for single-family residential purposes.

"Limited common element" means a common element that a declaration designates as reserved for use by a certain lot or lots, to the exclusion of other lots.

"Lot" means parcel or tract of land that is formed when a larger parcel of land is subdivided pursuant to the Platting Law, and as a result has a separate parcel number assigned by the county auditor, and is occupied or intended to be occupied by a dwelling unit.

"Owner" means a person who owns a lot in a planned community. "Owner" does not include any person that has an interest in a lot solely as security for an obligation.

"Owners association" means an organization that is comprised of owners of lots in a planned community and that is responsible for the administrative governance, maintenance, and upkeep of the planned community.

HISTORY

ACTION	DATE
Introduced	10-15-09
Reported, S. State & Local Gov't & Veterans Affairs	---

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