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S.B. 289*
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Bill Analysis

Version: As Reported by Senate General Government and Agency Review

Primary Sponsor: Sen. Blessing

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SUMMARY

- Prohibits a majority of the board of directors for a condominium unit owners association (UOA) and planned community home owners association (HOA) from consisting of owners or representatives from the same unit (condominiums) or owners or representatives from the same lot (planned communities).
- Requires UOA boards of directors and HOA boards of directors adopt to budgets annually.
- Eliminates the general requirement that the reserves included in a UOA budget not be less than 10% of the annual budget.
- Requires, for both condominiums and planned communities, that any waiver of the reserve requirement be done annually in writing.
- Permits a condominium declaration or bylaws to limit the ability of the UOA board to increase assessments for common expenses without a vote of the unit owners.
- 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 not less than 80% of the property's fair market value to at least 90% of the property's replacement cost.

* This analysis was prepared before the report of the Senate General Government and Agency Review Committee appeared in the Senate Journal. Not that the legislative history may be incomplete.

- 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 or adjacent 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 via 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.

DETAILED ANALYSIS

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.

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 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 **declaration** is the instrument that subjects the property to the Condominium Law or Planned Community Law, as applicable.

The owner of a condominium unit is called a **unit owner**. A person who owns a lot in a planned community is simply called an **owner**.

The **unit owners association (UOA)** is the organization that administers the condominium property and that consists of all the owners of units in the condominium property.

The **home owners association (HOA)** is the 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.

For both, the association's authority is exercised by a board of directors. For purposes of this analysis, the board of directors for a condominium unit owners association will be called a **condominium board of directors** or **condominium board**; the board of directors for a planned community home owners association will be called an **HOA board of directors** or **HOA board**.¹

Composition of board of directors

For both condominium UOAs and planned community HOAs, the owners elect the board of directors from among the owners or their spouses. The bill limits who may be on the board:

- For condominiums, a majority of the condominium board may not consist of unit owners or representatives from the same unit;
- For planned communities, a majority of the HOA board may not consist of owners or representatives from the same lot.²

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 the ability of the declaration or the bylaws to provide otherwise. In addition, the bill clarifies that the budget adopted is an estimated budget and requires that it be adopted annually, making it parallel to the Planned Community Law.

The bill continues to require that the budget 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 unless this requirement is waived for the year by majority vote of the unit owners exercising not less than a majority of the voting power of the UOA.

The bill eliminates the general requirement that the reserves be at least 10% of the annual budget and requires that the waiver of the adequacy requirement be in writing. In addition, the bill permits the declaration or bylaws to include language limiting the board's ability to increase assessments for common expenses without a vote of the unit owners.³

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

² R.C. 5311.08(A)(1) and 5312.03(A)(1).

³ R.C. 5311.081(A)(1).

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 the ability of the declaration or bylaws to provide otherwise.

Continuing law permits 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.⁴

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 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.

A person who controls or disburses association funds is an individual with authority or access to sign checks, conduct electronic transfers, or otherwise withdraw funds from any association account or deposit, including: (1) a management company’s principals and

⁴ R.C. 5312.06(A).

employees, (2) a bookkeeper, and (3) the president, secretary, treasurer, any other board member, or employee of the association.⁵

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.⁶

Legal actions

Unless otherwise provided in the declaration, the condominium board may 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. It also allows the board to take part in an action that relates to matters affecting adjacent property.⁷

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 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;

⁵ R.C. 5311.16(C) and 5312.06(B)(4).

⁶ R.C. 5311.16(B).

⁷ R.C. 5311.081(B)(2) and 5312.06(D).

4. Information that relates to enforcement of the association rules against other owners;
5. Information the disclosure of which is prohibited by law.⁸

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.⁹

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, as 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.¹⁰

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.¹¹

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.¹²

⁸ R.C. 5311.091 and 5312.07.

⁹ R.C. 5311.091 and 5312.07.

¹⁰ R.C. 5311.05(E)(1)(f).

¹¹ R.C. 5312.02(B)(8).

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

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 to "as authorized by the board" from the president or other chief officer of the association pursuant to authority given to that individual by the board.¹³

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.¹⁴

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.¹⁵

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;

¹³ 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.

¹⁴ R.C. 5311.081(B)(11).

¹⁵ R.C. 5311.192.

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.¹⁶

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 notice, which may be in the form of email to an email address previously provided by the owner in writing that includes 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. A statement setting forth the procedures to request a hearing;
5. A reasonable date by which the unit owner must cure the violation to avoid the proposed charge or assessment.¹⁷

¹⁶ R.C. 5311.192 and R.C. 5311.03(D)(1), not in the bill.

¹⁷ R.C. 5312.16.

HISTORY

Action	Date
Introduced	03-03-20
Reported, S. General Government and Agency Review	---
