Suzanne Lindamood *Legislative Service Commission*

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(As Introduced)

Reps. Salerno, Hollister, Britton

BILL SUMMARY

- Prohibits local codes and ordinances from excluding the condominium form of ownership.
- Distinguishes commercial, residential, and water slip condominium units.
- Expands and specifies the procedures under which the boundaries of existing condominium units may be changed.
- Establishes procedures for reallocating the use of limited common elements.
- Permits the conversion of a convertible unit into two or more units or common elements, including limited common elements.
- Permits specified types of improvements to be located on limited common elements.
- Permits a unit owners association to purchase real property that is not part of the common elements.
- Specifies that common expenses include all costs of administration, maintenance, repair, and replacement of common elements and specifies situations when those expenses may be calculated on an equal basis.
- Requires additional information in the declaration, including whether an owner is required to be a member of a not-for-profit organization.
- Requires that the declaration of an expandable condominium property include additional information, including the time at which the option is to expire and conditions for extending that option.

- Limits the liability of a successor purchaser in an expandable condominium property under specified conditions.

- Permits the board of trustees to amend the declaration for specified purposes without a vote of the unit owners.

- Permits a developer to enter into an agreement for the sale of an ownership interest before the declaration is filed, provided the actual conveyance does not take place prior to recording the declaration and attached documents.

- Provides additional requirements for drawings attached to a declaration, including that drawings for commercial units that do not have wall surfaces show monumental boundaries, that for all units, non load bearing walls need not be included in the drawings, and that drawings bear the certified statement of a registered architect, engineer, or professional surveyor, as applicable.

- Amends the law governing the unit owners association to require open meetings, to permit the board of trustees to adjourn to executive session for specified business, and to designate who may vote when the unit owner is not a person.

- Establishes that those present in proxy or in person at a meeting of the unit owners association constitutes a quorum unless otherwise provided in the declaration or bylaws.

- Permits meetings of the board of trustees to be held by any method of communication, including electronic or telephone, provided each member may hear and be heard, and permits a meeting to be held with written consents in lieu of an actual meeting.

- Establishes that the term of not less than one-fifth of the members of a board of trustees expires annually.

- Extends the time for the first meeting of the unit owners association to 60 days after 25% of the common interests have been sold, and permits the election of the board of trustees to be made at that time.

- Limits the time during which the developer can appoint and remove the members of the board of trustees.

- Specifies additional actions that a unit owners association may take through its board of trustees and specifies additional duties of the unit owners association.

- Permits the board of trustees to incorporate the unit owners association as a not-for-profit corporation.

- Provides authority and procedures for imposing a reasonable charge for damage to the common elements or other association property, or for a violation of the declaration, the bylaws, or association rules.

- Requires that specific due process procedures be followed in imposing charges or penalties.

- Requires that specified records of the association be open to members and that members have a right to examine and copy those books, records, and minutes.

- Specifies additional documents that the developer must deliver to the board of trustees when the board takes over the association, and establishes actions for injunctive relief or damages for harm resulting from failure to provide those documents.

- Requires a unit owner to provide specified information in writing to the unit owners association, including the names of occupants and phone numbers.

- Permits an action for sale of the property, following a vote not to repair damage or replace common elements, only if supported by a vote of a majority of the unit owners.

- Specifies the time frame during which a unit owners association may place a lien against a property for unpaid chargeable expenses, specifies which expenses are chargeable, and states the priority in which any payments must be credited.

- Permits collection of rent during a foreclosure action by the unit owners, the holder of a first mortgage, or the holder of a lien, and specifies the expenses that will be paid by that rent.

- Requires that in a foreclosure action by a lien holder, the unit owners association be joined in the action.

- Permits the awarding of court costs and reasonable attorney's fees when damages or injunctive relief are granted to the association for a unit owner's violation of the declaration, bylaws, or rules.

- Permits a unit owners association to evict a tenant living in an owner's unit pursuant to established Ohio eviction procedures and provisions in the bill.

- Limits the payment of interest on a deposit or down payment by a developer to interest on amounts that exceed $2,000 and specifies that the amount of interest be the prevailing rate payable by federally insured financial institutions in the county.

- Allows the developer to use a deposit or down payment for the actual construction and development of the condominium property but prohibits the use of that money for advertising or other specified expenses.

- Eliminates a developer's right in a leasehold condominium property to maintain an ownership interest in recreational facilities.

- Permits the developer of an expandable condominium property to retain an interest in that property to permit ingress and egress over common elements for the benefit of the additional property, and to ensure availability of utilities.

- Permits the developer a right to enter onto condominium property to fulfill warranty obligations.

- Stipulates a limit on the amount that may be charged for the sale of a unit to a tenant in a conversion property, allows the notices that must be provided to tenants to run concurrently, and requires that those notices be given to all affected tenants.

- Requires in the declaration, disclosure of whether a developer is required to construct recreational facilities or other common element facilities.

- Requires disclosure of the price of a unit only in the declaration of a conversion condominium development.

- Specifies conditions related to sales of condominium units and provides remedies for violations of conditions, but limits the time under which a contract is voidable, and limits actions if the developer has attempted to

comply in good faith and has complied substantially with the new requirements.

- Enacts new definitions including definitions for affiliate of a developer, convertible unit, exclusive use area, common elements, commercial unit, residential unit, and additional property.

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CONTENT AND OPERATION

The bill revises the Ohio Condominium Law, Chapter 5311. of the Revised Code. The revision is proposed principally through the amendment of several sections of Chapter 5311. and the repeal and reenactment of the definition section. Corresponding amendments are made to other sections of the Revised Code. The "**COMMENT**" section of this analysis contains an overview of the condominium form of ownership.

Definitions and terms

Types of condominium units

Current law provides for only two types of condominium units--"units" and "water slip units." The bill maintains the definition of "water slip unit" but eliminates the current definition of "units" and provides distinct definitions for "commercial units" and "residential units." Under the bill, a residential unit is a unit that is devoted in whole or in part to use as a residential dwelling and a commercial unit is a unit in which the property is designated for separate ownership or occupancy solely for commercial purposes, industrial purposes, or other nonresidential or non-water slip use. (Sec. 5311.01(AA).)

Common elements

Current law defines the areas that are owned in common as "common areas and facilities." Under the bill, those areas are defined as "common elements." The definition of "common elements" is essentially the same as the definition of "common areas and facilities" under current law. (Sec. 5311.01(F).)

Additional property

"Additional property" means land, including surface and air rights, or improvements to land that are described in an original declaration and that may be added in the future to an expandable condominium property. (Sec. 5311.01(B).)

Affiliate of a developer

"Affiliate of a developer" means any person who controls a developer, is controlled by a developer, or is under common control of a developer. The bill provides an explanation of when control occurs. (Sec. 5311.01(C).)

Convertible unit

A "convertible unit" is a unit that may be converted into one or more units and common elements, including limited common elements. (Sec. 5311.01(P).)

Exclusive use area

"Exclusive use area" means common elements that the declaration reserves for delegation by the board of trustees to the use of a certain unit or units and to the exclusion of other units. (Sec. 5311.01(S).)

Board of trustees

Under current law, the unit owners association is governed by a "board of managers." The bill renames the governing body the "board of trustees." (Sec. 5311.08.)

Ownership rights of types of units

Current law provides different ownership rights for "units" and "water slip units." The bill continues the ownership rights of water slip units as in existing law, gives ownership rights of units under current law to residential units, and provides new ownership rights for commercial units. Under the bill, ownership of a commercial unit includes the right to exclusive possession, use, and enjoyment of the unit within the unit's boundaries. (Sec. 5311.03(E)(3).)

Condominium form of ownership not basis for exclusion

Current law does not address the issue of exclusion of the condominium form of ownership in local property law. Under the bill, no local real property use code, ordinance, or regulation may prohibit the condominium form of ownership or impose any requirement on a condominium property that is not imposed on a physically identical property that is under a different form of ownership. Except for this prohibition, the bill states that the provision does not invalidate, modify, or otherwise affect any provision of a local real property use code, ordinance, or regulation. (Sec. 5311.02(B).)

Changing boundaries between existing units

Continuing law provides that, subject to the declaration, a unit may be divided into two or more units by amending the declaration and specifying the new shares in the common elements, the new voting powers, and the new shares in the common surplus and expenses. The bill establishes procedures that govern the initiation of the change in boundaries, the expense of changing the boundaries, and the decisions that must be made regarding a change in boundaries.

Under the bill, the owners of adjoining units must submit a written application for the relocation of boundaries and reallocation of common elements to the board of trustees. Unless the board of trustees finds the requested reallocation of the interests to be unreasonable, the association prepares, at the expense of the owners, an amendment to the declaration that does the following:

(1) Identifies the units;

(2) Contains words of conveyance between the owners;

(3) Specifies undivided interests, the shares of common surplus and expenses, and the voting powers in the resulting units, which must equal the totals of the former adjoining units. At the expense of the owners, the association records the amendment with any drawing, plat, or plans necessary to show the altered boundaries and the dimensions and identifying number of each new unit. The bill provides that existing liens automatically attach to each resulting unit. (Sec. 5311.031.)

Reallocation of limited common elements

Subject to any limitations in the declaration, the bill provides that the rights to the use of limited common elements may be reallocated between or among units by an amendment to the declaration. The bill defines limited common elements as common elements that the declaration designates as being reserved for use of a certain unit or units to the exclusion of the other units. (Sec. 5311.01(V).)

Under the bill, to effect a reallocation of limited common elements, the owners of the affected units must prepare and execute, at their expense, an amendment to the declaration that identifies the affected unit and specifies the reallocated rights to the use of the affected limited common elements. The owners of the affected units must submit the amendment to the unit owners association, accompanied by the written consents of the owners of all units affected by the change and all holders of liens, except for real estate taxes and assessments not due and payable. At the expense of the owners of the affected units, the unit owners association records the submitted amendment. (Sec. 5311.032(A).)

Delegation of common elements to exclusive use

Under the bill, if the declaration reserves any common element as an exclusive use area, the board of trustees may delegate that common element to the use of a certain unit to the exclusion of other units. The delegation of a common element may be subject to criteria that the unit owners association establishes, including the payment of an additional fee that is part of each benefited unit's common expenses and that is only to be used for the delegated common element. The bill clarifies that the right to delegate the use of a common element does not affect an owner's right to exclusive use of common elements that the declaration designates as being limited common elements appurtenant to the owner's unit. (Sec. 5311.032(B).)

Convertible unit

The bill allows the conversion of all or any portion of a convertible unit into one or more units or common elements, including limited common elements, subject to any limitations in the declaration. The bill defines convertible unit as a

unit that may be converted into one or more units and common elements, including limited common elements. (Sec. 5311.01(P).)

Under the bill, to cause the conversion, an owner must prepare and execute an amendment to the declaration that describes the conversion and must record that amendment together with requisite drawings. The amendment must specify the undivided interests in the common elements, proportionate shares of common surplus and common expenses, and the voting powers of each unit that results from the conversion, which must equal the interests of the unit that was converted. The amendment to the declaration must assign an identifying number to each unit formed, allocate to each unit a portion of the undivided interest in the common elements appurtenant to the convertible unit, describe or delineate the limited common elements formed out of the convertible unit, and show or designate each unit to which those limited common elements are reserved.

The conversion of a convertible unit is deemed to occur at the time that all instruments are recorded as required by the bill. The bill clarifies that a convertible unit is treated as a single unit until the time that a conversion takes place. (Sec. 5311.033.)

Improvements placed on limited common elements

Subject to rules the board of trustees adopts, the board may authorize the use of limited common elements, as distinguished from common elements and exclusive use areas, for the construction of unenclosed open-air patios, hedges, decks, fences, and similar improvements. The construction of an addition to, or an expansion of, a unit into limited or common elements must have the consent of all unit owners. (Sec. 5311.04(G).)

Purchase of property that is not part of common elements

Subject to the bylaws and the declaration, the unit owners association may purchase, hold title to, and sell real property that is not declared to be part of the common elements of the condominium property. Any purchase of this type that takes place prior to the date that the unit owners, other than the developer, assume control of the unit owners association requires the approval of the developer, the unit owners, other than the developer, who exercise not less than 75% of the voting power of the unit owners association, and the authorization of the board of trustees. Any purchase of this type that takes place after the unit owners assume control of the unit owners association requires the approval of the unit owners who exercise not less than 75% of the voting power of the unit owners association and the authorization of the board of trustees. Expenses incurred in these purchases are common expenses. (Sec. 5311.04(H).)

Common expenses

The bill provides that all costs of the administration, maintenance, repair, and replacement of common elements are common expenses (sec. 5311.041(A)). The bill permits that specified common expenses may be computed on an equal, per unit basis regardless of the undivided interests. The equal computation is permitted if the declaration, either as filed and recorded, or as amended by a vote of the unit owners exercising not less than 90% of the voting power of the unit owners association, so provides. Any other expenses must be computed on the basis of the undivided interest in the common elements allocated to each unit (sec. 5311.041(B)).

Information in declaration

Continuing law specifies the information that must be included in the declaration that is filed to create the condominium property. The bill requires that specified additional information must be in the declaration, including a statement that sets forth any membership requirement if the unit owners association or any unit owner is required to be a member of a not-for-profit organization that provides facilities or recreation, education, or social services to owners of property other than the condominium property. (Sec. 5311.05(B)(9).)

Expandable condominium requirements

Continuing law specifies the information that must be included in the declaration for expandable condominium property. The bill requires that the declaration for an expandable condominium must also indicate the following:

(1) The time at which the option to expand the condominium development will expire, which must not exceed seven years from the date the declaration is filed for record;

(2) A statement that the developer may, during the six months prior to the time that the option to expand is to expire, extend the option for an additional seven years with the consent of a majority of the unit owners other than the developer;

(3) A statement of any circumstances that will terminate the option to expand prior to the time limit. (Sec. 5311.05(C)(3).)

The bill requires that the declaration for an expandable condominium property include a statement that a successor owner of the condominium property, or of any additional property added to the condominium property, who is not an affiliate of the developer and who is a bona fide purchaser of the property for value, or a purchaser who acquires the property at a sheriff's sale or by deed in lieu

of a foreclosure, is not liable in damages for harm caused by an action or omission of the developer or a breach of an obligation by the developer. (Sec. 5311.05(C)(15).)

Amending the declaration without vote of owners

In general, under continuing law, an affirmative vote of 75% of the unit owners is needed to change the declaration. Notwithstanding that requirement, the bill provides that without a vote of the unit owners, the board of trustees may amend the declaration in any manner necessary for any of the following purposes:

(1) To meet the requirements of institutional mortgages, guarantors, and insurers of first mortgage loans, the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, and similar institutions;

(2) To meet the requirements of insurance underwriters;

(3) To bring the declaration into compliance with the Ohio Condominium Law;

(4) To correct clerical or typographical errors or obvious factual errors in the declaration or an exhibit to the declaration;

(5) To designate a successor to the person named to receive service of process for the unit owners association. The new authority applies to any condominium property submitted to the Ohio Condominium Law prior to, on, or after the effective date of the bill.

The bill provides procedures for any unit owner who is aggrieved by an amendment to the declaration that the board makes pursuant to this new provision to commence a declaratory judgment action to have the amendment declared invalid as violative of the new provision. (Sec. 5311.05(E).)

Recording the declaration

Under continuing law, the declaration and attached drawings must be filed with the county auditor prior to the presentation of the declaration, bylaws, and drawings to the county recorder for recordation. No interest in a condominium development may be conveyed until all documents have been filed as required. (Sec. 5311.06.)

The bill provides that the requirement on the timing of a sale does not prohibit a developer and a purchaser from entering into an agreement for the sale

of a condominium ownership interest prior to filing the documents that create the ownership interest. (Sec. 5311.06(D).)

Drawings attached to declaration

Continuing law requires that drawings of the condominium property be prepared and filed with the declaration. The bill adds provisions governing the drawings for commercial units, specifying that the drawings for commercial units that do not have wall surfaces must show the monumental perimeter boundaries of the units (sec 5311.07(B)(3)). The bill also specifies that drawings for any type of unit need not show interior walls or partitions that are not load bearing (sec. 5311.07(B)(4)). All drawings must, under the bill, contain the certified statement of a registered professional surveyor that the drawing accurately reflects the location of all improvements and recorded easements.

Drawings for convertible unit

The bill adds the requirement that if the owner of a convertible unit converts any or all of the unit into one or more units and common elements, the owner must prepare, file, and record drawings that pertain to the portion of the building, improvement, or structure that constituted the former convertible unit. The bill includes specifications for those drawings, and also requires that each must bear the certified statement of a registered architect or registered engineer that the drawing accurately shows the units, common elements, and appurtenant limited common elements formed out of the former convertible unit. (Sec. 5311.07(E).)

Unit owners association

Continuing law requires that the condominium be governed by a unit owners association, comprised of all unit owners. The bill provides requirements and procedures for the unit owners association beyond those included in continuing law. (Sec. 5311.08.)

Board of trustees

The bill specifies that all power and authority of the unit owners association must be exercised by a board of trustees whom the unit owners must elect from among the unit owners or the spouses of unit owners. If a unit owner is not an individual, that unit owner may nominate for the board of trustees any principal, member of a limited liability company, partner, trustee, officer, or employee of the unit owner. The bill requires the board of trustees to elect a president, secretary, treasurer, and other officers that the board desires. (Sec. 5311.08(A)(1) and (2).)

Open meetings

Except for executive sessions as provided by the bill, the bill requires that all meetings of the unit owners association and the board of trustees be open to the unit owners. Unless otherwise provided in the declaration or the bylaws, those present in person or by proxy when action is taken during a meeting of the unit owners association shall be sufficient quorum. (Sec. 5311.08(A)(3).)

Executive session

The bill permits a board of trustees to adjourn any of its meetings to reconvene in a closed executive session for any reason to which the board agrees. During the open meeting prior to adjourning to an executive session, the board must announce the general nature of the business to be considered in the executive session. (Sec. 5311.08(A)(4).)

Form of board of trustees meetings

The bill permits the board of trustees to hold meetings by any method of communication, including electronic or telephonic communication, provided that each member of the board can hear, participate, and respond to every other member of the board, and the board complies with the requirements for adjourning into executive sessions. Instead of conducting a meeting, the board of trustees may take action with the unanimous written consent of the members of the board. Those consents must be filed with the board's minutes. (Sec. 5311.08(A)(5).)

Bylaws

Under continuing law, the unit owners association is governed by bylaws. The bill modifies requirements concerning the bylaws as described below.

Terms of board members

Under current law, the bylaws of the unit owners association must require that not less than one-third of the board members terms expired annually. The bill requires that the bylaws specify that not less than one-fifth of the terms are to expire annually. (Sec. 5311.08(B)(1)(c).)

Open records

The bill requires that the bylaws include reasonable standards governing the type and nature of information and documents that are subject to the bill's open records requirement, including the times and location at which those documents may be examined or copied and any required fee for copying. (Sec. 5311.08(B)(7).)

First meeting of unit owners

The bill changes the time of the first meeting of the unit owners association to be not later than 60 days after the condominium ownership interests appertaining to 25% of the undivided interests in the common elements have been sold. Previously, the time for the first meeting was the time at which those interests were sold. Under the bill, the unit owners, other than the developer, elect not less than one-third of the board of trustees at the time of the first meeting, instead of not less than 25%, as under current law. (Sec. 5311.08(C)(2).)

Appointment of trustees by developer

Continuing law permits a developer to appoint and remove members of the board of trustees within a limited time frame. The bill extends the time period of this right to 60 days after the sale of 75% of the undivided interests instead of 30 days, as under existing law. (Sec. 5311.08(D)(1).)

The bill extends the time frame for the unit owners to elect the board of trustees after they assume control of the association. Under current law, the unit owners association must elect the board within 30 days after the time the developer's powers turn over to the unit owners association. The bill extends that time to 60 days. (Sec. 5311.08(D)(3).)

Authority to incorporate

The bill gives the board of trustees, or the developer while in control of the unit owners association, authority to take any measures necessary to incorporate the unit owners association as a not-for-profit corporation. (Sec. 5311.08(E).)

Unit owners required duties

The bill delineates the duties of the unit owners association that are to be carried out through the board of trustees. Unless otherwise provided in the declaration or bylaws, the unit owners must adopt and amend budgets pursuant to guidelines provided in the bill, and collect assessments for common expenses from unit owners. (Sec. 5311.081(A).)

Unit owners permissive powers

The bill permits that unless otherwise provided in the declaration, the unit owners association, through its board of trustees, may exercise all powers of the association, including the power to do any of the following (sec. 5311.081(B)):

- Hire and fire employees;

- Commence, defend, intervene in, settle, or compromise legal actions as specified in the bill;

- Enter into contracts and incur liabilities relating to the operation of the property;

- Regulate the use, maintenance, repair, replacement, modification, and appearance of the property;

- Adopt rules to regulate the use or occupancy of units, the maintenance, repair, replacement, modification, and appearance of units, common elements, and limited common elements;

- Make improvements to the property as part of the common elements;

- Acquire an interest in real property and encumber or convey that interest, as provided in the bill;

- Acquire, encumber, and convey personal property;

- Hold real and personal property in the name of the unit owners association;

- Grant easements, leases, licenses, and concessions through or over the common elements;

- Impose and collect fees or other charges for the use, rental, or operation of the common elements, or for services provided to unit owners;

- Impose interest and late charges for the late payment of assessments, impose returned check charges and reasonable enforcement assessments as permitted by the bill for violations of the declaration, the bylaws, and the rules of the unit owners association, and impose reasonable charges for damage to the common elements or other property;

- Adopt and amend rules that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;

- Adopt and amend rules that regulate the termination of a utility or other service to a commercial unit, pursuant to law and the requirements of the bill;

- Impose reasonable charges for preparing, recording, or copying specified documents;

- Enter a unit for bona fide purposes when conditions of damage, harm, health, or safety exist;

- To the extent provided in the declaration or bylaws, assign the unit owners association's rights to common assessments or future income to a lender as security for a loan to the unit owners association;

- Suspend the voting privileges and use of recreational facilities of a unit owner who is delinquent in the payment of assessments for more than 30 days;

- Purchase insurance and fidelity bonds considered appropriate or necessary;

- Invest excess funds in investments meeting standards for fiduciary investments under Ohio law;

- Exercise powers conferred by the declaration or bylaws, powers necessary to incorporate the association as a not-for-profit corporation, powers that may be exercised in this state by a not-for-profit corporation, and powers that are necessary and proper for the government and operation of the unit owners association.

Impose charges and assessments

The bill provides authority and procedures for the unit owners association to impose a reasonable charge on a unit owner for damages to common elements or enforcement of an assessment for a violation of the declaration, bylaws, or rules. The procedures include a written notice as specified by the bill and an opportunity for a hearing or for the resident to correct the violation. (Sec. 5311.081(C).)

Books and records must include resident information

Continuing law requires the unit owners association to keep correct and complete books and records. The bill requires a unit owner to provide information to the association for inclusion in its records. Within 30 days after obtaining an ownership interest, the unit owner must provide the board of trustees with information on the owner, all occupants, and any manager or agent, including home address, home and business mailing addresses, and home and business telephone numbers. The unit owner must keep the information up to date. (Sec. 5311.09(A)(2).)

Information from developer

Under continuing law, the developer must turn over books and records to the board when the unit owners association assumes control of the condominium. The bill expands on that requirement by specifying the types of books and records that must be turned over, as well as specifying additional books, records, and accounts that must be turned over. The bill gives the board of trustees authority to commence a civil action for harm resulting from the developer's failure to provide the documents. (Sec. 5311.09(B).)

Open records

Existing law does not provide any right to unit owners to inspect the documents of the association. The bill gives owners the right to inspect and copy books, records, and minutes pursuant to reasonable standards specified in the bill. The bill provides the following exceptions to this open records requirement: (1) documents that relate to personnel matters, executive sessions, and actions against unit owners, (2) legal communications, and (3) information that is protected by confidentiality agreements or the disclosure of which is prohibited by state or federal law. (Sec. 5311.091.)

Action for sale

Under continuing law, if common elements are damaged or destroyed, the home owners may elect not to repair or restore the damaged or destroyed areas. In that case, under existing law, any unit owner could initiate an action for sale, or the property could be sold by an agreement of all unit owners. Under the bill, an action for sale is possible only with a majority vote of the unit owners. (Sec. 5311.14(B).)

Lien rights of unit owners association

Continuing law grants the unit owners association a lien against a unit for unpaid expenses. The bill specifies the expenses that are chargeable against the unit if unpaid for ten days after they are due and payable. These expenses are the unit's common expenses, administrative late fees, penalty assessments, collection costs, attorney's fees, and paralegal fees that the association incurs. Unless otherwise provided by the declaration, bylaws, or rules, the association must credit payments by a unit owner in the following order:

(1) To interest owed to the association;

(2) To administrative late fees owed;

(3) To collection costs, attorney's fees, and paralegal fees;

(4) To the principal amounts owed by the unit owner to the association for common expenses or penalty assessments. (Sec. 5311.18(A).)

Rent payment during foreclosure

Existing law provides that in any foreclosure action, the unit owner must pay a reasonable rental for the unit. The bill limits that requirement to actions commenced by the unit owners association, the holder of a first mortgage, or the holder of another lien on the unit. As in existing law, the unit owners association or the holder of the first mortgage or of a lien is entitled to appoint a receiver to collect the rent. The bill provides that the rent received must be applied first to the payment of the portion of the common expenses chargeable to the unit during the foreclosure action. (Sec. 5311.18(B)(2).)

Unit owners as defendant in foreclosure

Other additions that the bill makes to the Ohio Condominium Law include the requirement that in a foreclosure action commenced by the holder of a lien on a unit, the lien holder must name the unit owners association as a defendant in the action. As in existing law, unless prohibited by the declaration or bylaws, following a foreclosure action, the association is authorized by action of the board to become a purchaser at the foreclosure sale. The mortgage on a unit may contain a provision that secures advances to be made by the unit owner for the payment of the portion of the common expenses chargeable against the owner's unit. The bill also stipulates that in any foreclosure action, it is not a defense, set off, counterclaim, or crossclaim that the unit owners association has failed to provide the unit owner with any service, goods, work, or material, or failed in any other duty. (Secs. 5311.18(B)(3), (4), (5), and (6).)

Attorneys fees

Continuing law provides that a violation of the declaration, bylaws, or the rules of the unit owners association is grounds for an action for damages, injunctive relief, or both. The bill provides that court costs and reasonable attorney's fees may be awarded in both types of action. (Sec. 5311.19(A).)

Right to evict

Under existing law, although unit owners and their tenants are required to abide by the declaration, bylaws, and rules, the unit owners association is limited in the actions it can take for a tenant's violations.

The bill provides that unless otherwise provided in the declaration or the bylaws, a unit owners association may initiate eviction proceedings, pursuant to established eviction procedures in Ohio law, to evict a tenant for a violation of the

declaration, bylaws, or rules. The unit owners association is authorized to bring the eviction action in the name of the unit owner as the unit owner's agent. In addition to the eviction procedures required by Chapters 5321. (the Ohio Landlord and Tenants Law) and 1923. (the Forcible Entry and Detainer Law) the unit owners association must give the unit owner at least ten days written notice of the intended eviction action. The costs of any eviction action, including reasonable attorney's fees, are to be charged to the unit owner as the subject of a special assessment against the offending unit and made a lien against that unit. (Sec. 5311.19(B).)

Deposits and down payments

Existing law specifies receipt and distribution requirements for deposits and down payments. Under existing law, a deposit or down payment of more than $2,000 held for more than 90 days must pay interest at a rate of at least 4% per annum.

The bill changes the rate of interest to a rate equal to the prevailing rate payable by federally insured financial institutions in the county of the condominium property on a daily interest account. The bill also stipulates that the interest is payable only on the amount of the deposit or down payment that exceeds $2,000. Additionally, the bill stipulates that deposits and down payments held in trust or escrow pursuant to the bill's requirements are not subject to attachment, garnishment, or other legal process by the creditors of the developer, of agents, or of the purchaser of the condominium ownership interest. (Sec. 5311.25(A)(1) and (3).)

Use of deposit money

Under current law, deposit and down payment money must be held in trust or escrow until surrendered at settlement. The bill permits a developer to use the money for specified purposes as the contract of sale permits. If a contract for the sale of a condominium ownership interest contains a required legend, a developer may, in accordance with the contractual provisions, withdraw a deposit or down payment from trust or escrow upon the commencement of construction of a building, improvement, or other structure of the condominium property in which the purchaser's unit will be located, and use the moneys in the actual construction and development of the property. The developer may not use the moneys for advertising purposes or for the salaries, commissions, or expenses of agents. (Sec. 5311.25(A)(2).)

Developer's continuing property interest

Under existing law, in a leasehold condominium, a developer may retain a property interest in recreational facilities furnished to unit owners, or to unit owners and others, under a contract after the unit owners have assumed control of the association. The bill eliminates the right to maintain an ownership interest in recreational facilities.

Under continuing law, a developer in an expandable condominium property may maintain any interest necessary to insure ingress and egress over common elements for the benefit of the additional property. The bill continues this right, and states that it exists whether or not the condominium property is expanded to include the additional property. The bill also enables the developer to retain an interest to insure the availability of utilities from and to the common elements for the benefit of the additional property. (Sec. 5311.25(B)(2).)

The bill also permits the developer to retain the right to enter upon the condominium property to fulfill any warranty obligations to the unit owners association or to the unit owners. (Sec. 5311.25(B)(3).)

Management contracts

Existing law provides that unit owners are not responsible for any management contract executed prior to their assumption of control, for more than one year subsequent to their assumption of control, unless the contract is renewed by a vote of the unit owners pursuant to the bylaws. Under the bill, unless a contract or other agreement is renewed by a majority vote of the unit owners, a management contract executed prior to the assumption of control is effective for no more than 90 days following that assumption of control and any other contract executed prior to the assumption of control, is effective for no more than one year following that assumption of control. This provision does not apply to contracts for necessary utility services. (Sec. 5311.25(D).)

Assignment of warranties

The bill clarifies that all warranties that exceed the time period specified in the bill shall be assigned, as provided, to a purchaser of a unit or to the unit owners association. (Sec. 5311.25(E)(5).)

Developer's obligations for units not sold

Existing law provides that the developer assumes the rights and obligations of a unit owner for interests not yet sold, including the obligation to pay common expenses. The bill clarifies that the developer must pay those expenses from the date the declaration is filed for record even if the construction of the units and the

appurtenant common elements subject to the condominium ownership interests has not started or is not completed. (Sec. 5311.25(F).)

Requirements for conversion condominium units

The bill defines a conversion condominium development as a condominium development that was operated as a rental property and occupied by tenants immediately prior to the submission of the property to the Ohio Condominium Law. Existing law requires that the developer offer tenants a 90-day option to purchase an ownership interest in the developments.

The bill expands the requirements for a conversion condominium property by requiring that the tenant be given a 90-day option to purchase the unit that the tenant occupies at a price that is no greater than the price at which the unit will be offered to the general public for the subsequent 180-day period. The bill also requires the developer to give each tenant a written notice, not less than 120 days prior to the conversion, during which time the tenant may not be evicted to accommodate or facilitate the sale of any unit if the tenant is not in default of any terms of tenancy.

The 90-day notice period for an option to purchase, and 120-day notice period for the conversion to condominiums may run concurrently and may be waived in writing by a tenant. If two or more tenants occupy a unit in a conversion condominium development, the option to purchase must be given jointly to those tenants. (Sec. 5311.25(G).)

The bill requires that no developer may sell or offer to sell a condominium ownership interest unless the instruments include a statement that sets forth the requirements of specified provisions of the Ohio Condominium Law. (Sec. 5311.25(H).)

Required disclosures

Continuing law requires a developer to disclose specified information to prospective purchasers. The bill also requires disclosure of the following: (1) whether the developer is required to construct recreational facilities or other common elements, (2) the cost of any mandatory dues and membership in a not-for-profit organization described in the bill, and (3) for a conversion condominium development, the offering price of each unsold unit or type of unsold unit. (Sec. 5311.26.)

Remedies for violations of sale requirements

Existing law provides for remedies if provisions related to sales conditions are violated. The bill stipulates that the period of time during which a contract

executed in violation is voidable by the purchase is the earlier of (1) the conveyance of the title to the purchaser or (2) the later of 15 days after the contract was entered into or 15 days after the purchaser executes a document evidencing receipt of specified information.

The bill specifies that if the developer or agent attempts to comply in good faith with the requirements regarding sale conditions, and if the developer or agent has complied substantially with the requirements, and if the alleged failure to fully comply relates to errors or omissions, those errors or omissions are not actionable in a civil action under the law. (Sec. 5311.27.)

Additional changes

Detail in documents

Existing law requires that specified legal documents contain sufficient detail for identification. The bill specifies that it is not necessary to include references by volume and page to amendments to the declaration or the drawings of the condominium property, and the omission of references does not affect the validity of any deed, mortgage, lease, or other instrument. (Sec. 5311.10.)

Sections repealed

5311.01

The bill repeals section 5311.01, which contains definitions, but enacts a new section of definitions.

5311.15

The bill repeals section 5311.15, which provides for the unit owners association to renew and rehabilitate the condominium development. That section specifies that the declaration may provide for owners who wish not to participate in the renewal to convey that unit to the unit owners association for fair market value pursuant to that section.

5311.241

The bill repeals section 5311.241. The repealed section extended H.B. 404 of the 112th General Assembly, which substantially amended the Ohio Condominium Law, to declarations filed on or after October 1, 1978, and extended certain aspects of that act to properties that existed at that time, but that did not comply with the act.

COMMENT

Background on the condominium form of ownership

Condominium refers to a type of ownership, not a type of housing structure. Any type of structure may be held in the condominium form of ownership, including single family homes, townhouses, manufactured homes, and high rise apartments. Condominium ownership involves individual ownership of the dwelling unit and an undivided ownership interest in the common areas by the owners of the individual estates.

Condominium ownership is made possible by enabling legislation in each state (Chapter 5311. of the Revised Code in Ohio). The law permits a single, fee simple estate to be divided into specified individual dwelling unit estates, with the remaining property becoming a common estate. The owners of the individual estates have an undivided joint ownership in the common estate. Common estate property may be for the general use of all homeowners (such as recreation facilities) or may be restricted common property, for use only by residents of a particular unit (such as a garage or parking space).

The declaration

The declaration is essential in creating a condominium estate. It is prepared by the developer, who, prior to the filing of the declaration, owns the property as a single deed estate. When the declaration is recorded, the property converts to a number of single deed condominium estates and a common estate. Without a filed declaration, a property cannot become a condominium. When the declaration is filed, the condominium development becomes subject to the state condominium statutes and remains subject to those laws as long as the property is held in condominium ownership.

The declaration must provide a precise legal description of each individual estate and the common elements. Without such a description, there is no basis on which title can be conveyed and no basis on which the common areas may be governed. The declaration also contains conditions, covenants, and restrictions which, when recorded on the property, become part of the law governing the condominium.

Bylaws, recorded as an attachment to the declaration, are an additional source of law governing condominium developments. The bylaws contain the rules for governing the condominium development and include the rights and responsibilities of the owners and requirements concerning meetings and officers. The bylaws generally can be amended by a smaller majority vote than that required for amending the declaration.

Unit owners association

A condominium development is governed by a unit owners association and its board of managers (changed to "board of trustees" under the bill). The association has the right to collect fees for common expenses. The declaration provides for legal enforcement of unpaid fees and assessments and permits the association to place a lien on individual estates for unpaid amounts.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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