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*Final Analysis*  
*Legislative Service Commission*

**Am. Sub. H.B. 135**  
125th General Assembly  
(As Passed by the General Assembly)

**Reps. Willamowski, Seitz, Latta, Beatty, Book, Harwood, Schlichter, Mason, Barrett, Buehrer, Collier, Daniels, DePiero, C. Evans, D. Evans, Flowers, Gilb, Grendell, Hagan, Hughes, Husted, Jolivet, Kearns, Koziura, McGregor, Niehaus, T. Patton, Perry, Reidelbach, Schmidt, Seaver, Setzer, J. Stewart, Widowfield, Woodard**

**Sens. Dann, Schuler**

**Effective date : July 20, 2004**

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**ACT SUMMARY**

- Makes comprehensive changes in the Condominium Law.

**Terminology**

- Replaces "common areas and facilities" and "limited common areas and facilities" with "common elements" and "limited common elements."
- Replaces "interest in common areas and facilities" and "percentage of interest in common areas and facilities" with "undivided interest in the common elements."
- Replaces "board of managers" of a unit owners association with "board of directors" of a unit owners association.
- Establishes definitions of the following new terms: "affiliate of a developer," "condominium," "convertible unit," and "exclusive use area."

**Units and common elements**

- Classifies units of condominium property as "residential unit," "commercial unit," and "water slip unit" and establishes and distinguishes ownership rights in each of those types of units.

- Prescribes procedures for the relocation of boundaries between adjoining units and appurtenant limited common elements, the reallocation of undivided interests in the common elements appurtenant to those units, and the reallocation of rights to the use of limited common elements between or among units.
- Permits a board of directors to delegate any common element to the use of a certain unit or units to the exclusion of other units if the declaration reserves that common element as an exclusive use area.
- Generally permits the conversion of all or any portion of a convertible unit into one or more units or common elements, including limited common elements, and establishes procedures for the conversion.
- Permits a board of directors to authorize the use of limited common elements for the construction of open, unenclosed patios, hedges, decks, fences, or similar improvements subject to certain conditions.
- Authorizes a unit owners association to purchase, hold title to, and sell real property that is not declared to be part of the condominium property.
- Provides for the computation of certain common expenses either on an equal per unit basis or on the basis of the undivided interest in the common elements allocated to each unit.

**Declaration and drawings**

- Modifies the contents of a declaration submitting property to the Condominium Law and requires additional information to be included in the declaration.
- Modifies the contents of a declaration for an expandable condominium property and requires additional information to be contained in the declaration, including a statement that a successor owner of the condominium property or additional property is not liable, under specified conditions, for harm caused by the developer.
- Authorizes a board of directors, without a vote of the unit owners, to amend the declaration for any of specified purposes, and permits a unit owner who is aggrieved by that amendment to bring a declaratory judgment action.

- Modifies the provisions relating to the recording of a declaration, and provides that the provisions for the filing and recording of a declaration do not prohibit a developer and purchaser from entering into an agreement for the sale of a condominium ownership interest prior to filing the documents.
- Modifies the provisions relating to the preparation and certification of drawings and requires drawings for commercial units that do not have wall surfaces to show the monumental perimeter boundaries of those units.
- Requires the owner of a convertible unit all or a portion of which is converted into one or more units and common elements to file and record drawings pertaining to the portion of the building or structure that constituted the former convertible unit.
- Requires that a record of deeds of a county recorder contain all amendments to a declaration and bylaws and that a record of plats contain amendments to drawings.

**Unit owners association, board of directors**

- Modifies a unit owners association's administration of condominium property to specify, among others, that generally all its meetings are open to the unit owners, that those present in person or by proxy when action is taken at a meeting constitute a sufficient quorum, and that meetings may be held by any method of communication, including electronic or telephonic communication, subject to certain conditions.
- Extends the time for the first meeting of a unit owners association to elect 1/3 of the members of the board of directors to 60 days after the developer has sold or conveyed condominium ownership interests appertaining to 25% of the undivided interests in the common elements.
- Precludes the extension of the authorization for developer control of a unit owners association more than five years after the association is established if the declaration includes expandable condominium property or more than three years otherwise.

- Modifies the required contents of bylaws governing condominium property and specifies that administrative rules may govern any aspect of that property not required to be governed by the bylaws.
- Generally requires a unit owners association to adopt and amend budgets and to collect assessments for common expenses from unit owners.
- Lists the general powers of a unit owners association for the management of the association and the condominium property, including the acquisition, encumbrance, and conveyance of units or other real property or personal property and the incorporation of the association as a not-for-profit corporation.
- Establishes procedures, including providing written notice and an opportunity for a hearing, prior to a board of directors imposing a charge on a unit owner for damages or an enforcement assessment for a violation of the declaration, bylaws, or rules.
- Requires a unit owner to provide specified information regarding home and business addresses to the unit owners association.
- Requires a declarant or developer to provide complete and correct copies of records, minutes, and condominium documents to the board of directors upon the board taking control of the unit owners association and permits members of the association to examine and copy the records and documents except certain information from them.
- Modifies the provisions granting lien rights to persons who do work or labor or furnish machinery, material, or fuel for the alteration or repair of any unit.
- Provides that upon an election not to repair or restore common elements that are damaged or destroyed, all of the condominium property is subject to an action for sale as upon partition at the suit of unit owners exercising a majority of the voting power of unit owners.
- Grants a unit owners association lien rights upon a unit owner's interest in the unit and appurtenant undivided interest in the common elements for enforcement assessments, interest and late fees, collection costs, and attorney's and paralegal fees incurred if authorized by the declaration, bylaws, or rules and if chargeable against the unit.

- Modifies the procedures for enforcing a lien in a foreclosure action by a unit owners association or the holder of a first mortgage or other lien on a unit.
- Generally authorizes a unit owners association to initiate eviction proceedings against a tenant for violation of the covenants and restrictions in a deed or in the declaration, bylaws, or rules of the association.
- Provides that service of process in any action relating to common elements or to any right or obligation of a unit owners association may be made upon the association's designated representative or the statutory agent if the association is incorporated.
- Imposes liability in damages on a declarant, developer, agent, unit owner, or any person entitled to occupy a unit for harm caused to the unit owners association by failure to comply with the condominium instruments.

#### Required disclosures

- Modifies and expands the provisions that are required to be included in the condominium instruments, including the conditions for a developer to withdraw a unit purchaser's deposit or down payment from trust or escrow to use in the actual construction and development of the condominium property, the retention of a developer's right to enter upon the condominium property to fulfill warranty obligations, the time periods after which a unit owners association or unit owner is not subject to contracts executed prior to the unit owners' assumption of control of the association, and the required option to purchase given to tenants in a conversion condominium development and notice of the option.
- Modifies the information in a condominium development disclosure statement required to be given to a prospective purchaser to include, among others, whether the developer is required to construct recreational facilities or other common elements, the two-year projection of annual expenditures to include the cost of any mandatory dues and membership in the unit owners association as a not-for-profit organization, the offering price of each unsold unit or type of unsold unit in a conversion condominium development, and the right of the developer to use escrowed deposits.

- Specifies that nonmaterial errors and omissions in the disclosure statements are not actionable in a civil action if the developer or agent attempted in good faith to comply with, and has substantially complied with, the disclosure requirements.
- Specifically precludes a contract for sale of a condominium property interest from being voidable after title is conveyed to the purchaser.

**Miscellaneous**

- Outright repeals the provisions pertaining to the renewal and rehabilitation of condominium property that the unit owners have determined to be obsolete and elected to have renewed or rehabilitated.
- Makes several structural, grammatical, gender neutralizing, and other nonsubstantive changes in the Condominium Law.

**Petroleum releases--record of deeds**

- Provides that the county recorder must record in a record of deeds any restrictions on the use of property contained in a deed or other instrument provided under the law regarding corrective actions for suspected and confirmed releases of petroleum.

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## CONTENT AND OPERATION

### Background

Condominium refers to a type of ownership that involves individual ownership of a unit in a condominium development and an undivided interest in the common areas by the owners of the individual units. The common areas may be for the general use of all the unit owners, such as recreational facilities. The common areas also may be limited to the use of a particular unit owner, such as a garage or parking space. Any type of structure may be held in the condominium form of ownership, including single family homes, townhouses, manufactured homes, and apartment complexes.

Condominium ownership is made possible by enabling legislation in each state. In Ohio, R.C. Chapter 5311. (Condominium Law) is the law that establishes the condominium form of ownership. R.C. Chapter 5311. applies only to property that is specifically submitted to its provisions by the execution and filing for record of a declaration by the property owner. In every instance, any property so submitted must be either a fee simple estate or a 99-year leasehold, renewable forever. Neither the submission of property to the provisions of the Condominium Law nor the conveyance or transfer of a condominium ownership interest constitutes a subdivision within the meaning of, or is subject to, R.C. Chapter 711. (Plat and Subdivision Law). (R.C. 5311.02.)

The declaration is essential in creating a condominium form of ownership. It must provide a precise legal description of each individual estate or unit and the common elements. The declaration also contains conditions, covenants, and restrictions that, upon its filing and recording, become part of the law that governs



the condominium property. Bylaws, which generally contain the rights and responsibilities of the unit owners and the requirements concerning meetings and officers, are an additional source of law governing condominium developments.

A condominium development is governed by a unit owners association and its board of managers (changed by the act to "board of directors") and officers. The association may collect fees for common expenses. The declaration and the Condominium Law provide for legal enforcement of unpaid fees and assessments and permits the association to place a lien on individual ownership interests for unpaid amounts.

Generally, the unit owners, by the affirmative vote of all unit owners, may elect to remove condominium property from the provisions of the Condominium Law. That Law provides for the effects of such an election.

### **Overview of the act**

The act makes comprehensive revisions in all aspects of the Condominium Law, primarily in the classification of types of units, relocation of unit boundaries and reallocation of undivided interests in the common elements, delegation of common elements as exclusive use areas, conversion of a convertible unit into one or more units or common elements, specific authorization for a unit owners association to purchase property that is not part of the condominium property, contents of a declaration, procedures for amending and recording a declaration, preparation and certification of drawings, contents of bylaws, duties and powers of a unit owners association, keeping and examination of records, lien rights, compliance with the condominium instruments, provisions required in condominium instruments, contents of the condominium development disclosure statement, and remedies of purchasers.

### **Definitions**

The act outright repeals R.C. 5311.01, which prescribes the definitions of terms used in the existing Condominium Law. It enacts new R.C. 5311.01, which retains the existing definitions of certain terms, changes the definitions of other terms, and adds new terms and definitions. Following are the terms in new R.C. 5311.01 and their definitions as used in the Condominium Law, except as otherwise provided. The statements in parentheses after each definition: (1) indicate whether the act's definition is the same or essentially the same as in the repealed provisions, (2) set forth the definition under the repealed provisions if the act substantially changes that definition, or (3) indicate whether the term and its definition are new (R.C. 5311.01, with division references at the beginning of each term):

(A) "Agent" means any person who represents a developer or who acts for or on behalf of a developer in selling or offering to sell any ownership interest in a condominium development. "Agent" does not include an attorney whose representation of a developer consists solely of rendering legal services. (Definition is essentially the same as in repealed R.C. 5311.01(U).)

(B) "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. ("Additional property" in repealed R.C. 5311.01(Q) meant land or improvements described in the original declaration that may be added in the future to an expandable condominium property.)

(C) "Affiliate of a developer" means any person who controls a developer or is controlled by a developer. For the purposes of this provision:

(1) A person "controls" a developer if any of the following applies:

(a) The person is a general partner, officer, member, manager, director, or employer of the developer.

(b) The person owns, controls, holds with power to vote, or holds proxies representing more than 20% of the voting interest in the developer, doing so either directly or indirectly, acting in concert with one or more other persons, or through one or more subsidiaries.

(c) The person controls, in any manner, the election of a majority of the developer's directors.

(d) The person has contributed more than 20% of the developer's capital.

(2) A person "is controlled by" a developer if any of the following applies:

(a) The developer is a general partner, member, manager, officer, director, or employer of the person.

(b) The developer owns, controls, holds with power to vote, or holds proxies representing more than 20% of the voting interest in the person, doing so either directly or indirectly, acting in concert with one or more other persons, or through one or more subsidiaries.

(c) The developer controls, in any manner, the election of a majority of the person's directors.

(d) The developer has contributed more than 20% of the person's capital.



(3) "Control" does not exist for purposes of the above provisions if a person or developer holds any power described in either (1) or (2), above, solely as security for an obligation and that power is not exercised.

(New terms and definitions.)

(D) "Body of water" means a stream, lake, pond, marsh, river, or other body of natural or artificial surface water. (Definition is the same as in repealed R.C. 5311.01(AA).)

(E) "Common assessments" means assessments that are charged proportionately against all units for common purposes. (Definition is the same as in repealed R.C. 5311.01(E).)

(F) "Common elements" means, unless otherwise provided in the declaration, the following parts of the condominium property:

- (1) The land described in the declaration;
- (2) All other areas, facilities, places, and structures that are not part of a unit, including, but not limited to, the following:
  - (a) Foundations, columns, girders, beams, supports, supporting walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of buildings;
  - (b) Basements, yards, gardens, parking areas, garages, and storage spaces;
  - (c) Premises for the lodging of janitors or persons in charge of the property;
  - (d) Installations of central services, including, but not limited to, power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;
  - (e) Elevators, tanks, pumps, motors, fans, compressors, ducts, and, in general, all apparatus and installations existing for common use;
  - (f) Community and commercial facilities *that are not listed in items (a) to (e), above*, but provided for in the declaration;
  - (g) All parts of the condominium property *that are not listed in items (a) to (f), above*, that are necessary or convenient to its existence, maintenance, and safety, that are normally in common use, or that have been designated as common elements in the declaration or drawings.



(The act uses the term "common elements" instead of "common areas and facilities" and defines "common elements" essentially in the same manner as "common areas and facilities" in repealed R.C. 5311.01(B).)<sup>1</sup>

(G) "Common expenses" means expenses designated as common expenses in the Condominium Law or in the declaration. (Definition is essentially the same as in repealed R.C. 5311.01(D).)

(H) "Common losses" means the amount by which the common expenses during any period of time exceeds the common assessments and common profits during that period. (Definition is the same as in repealed R.C. 5311.01(H).)

(I) "Common profits" means the amount by which the total income received from any of the following exceeds expenses allocable to the particular income, rental, fee, or charge:

- (1) Assessments charged for special benefits to specific units;
- (2) Rents received from the rental of equipment or space in common elements;
- (3) Any other fee, charge, or income other than common assessments.

(Definition is essentially the same as in repealed R.C. 5311.01(G).)

(J) "Common surplus" means the amount by which common assessments collected during any period exceed common expenses. (Definition is the same as in repealed R.C. 5311.01(F).)

(K) "Condominium" means a form of real property ownership in which a declaration has been filed submitting the property to the condominium form of ownership pursuant to the Condominium Law and 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. (New term and definition.)

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<sup>1</sup> *The act amends all of the relevant sections in the Condominium Law to refer to "common elements" or "limited common elements" instead of "common areas and facilities" or "limited common areas and facilities." It also amends the relevant sections in the Condominium Law to refer to "undivided interest in the common elements" instead of "interest in the common areas and facilities" or "percentage of interest in the common areas and facilities."*

(L) "Condominium development" means a condominium property in which two or more individual *residential* or water slip units, together with their undivided interests in the common elements of the property, are offered for sale pursuant to a common promotional plan. (Definition is essentially the same as in repealed R.C. 5311.01(S).)

(M) "Condominium instruments" means the declaration and accompanying drawings and plans, the bylaws of the unit owners association, *the condominium development disclosure statement described below in "Condominium development disclosure statement,"* any contracts pertaining to the management of the condominium property, and any other documents, contracts, or instruments establishing ownership of or exerting control over a condominium property or unit. (Definition is essentially the same as in repealed R.C. 5311.01(P) with the addition of the italicized phrase.)

(N) "Condominium ownership interest" means a fee simple estate or a 99-year leasehold estate, renewable forever, in a unit, together with an appurtenant undivided interest in the common elements. (Definition is essentially the same as in repealed R.C. 5311.01(M).)

(O) "Condominium property" means *all real* and personal property submitted to the provisions of the Condominium Law, including land, the buildings, improvements, and structures on that land, the land under a water slip, the buildings, improvements, and structures that form or that are utilized in connection with that water slip, and all easements, rights, and appurtenances belonging to the land or to the land under a water slip. (Definition is essentially the same as in repealed R.C. 5311.01(A) and specifies that all real property submitted to the provisions of the Condominium Law is condominium property.)

(P) "Conversion condominium development" means a condominium development that was operated as a rental property and occupied by tenants *immediately* prior to the submission of the property to the provisions of the Condominium Law. (Under repealed R.C. 5311.01(X), "conversion condominium development" meant a condominium development that was *originally* operated as a rental property occupied by tenants prior to the time that the condominium property is submitted to the provisions of the Condominium Law *and the units are offered for sale*.)

(Q) "Convertible unit" means a unit that may be converted into one or more units and common elements, including limited common elements. (New term and definition.)

(R) "Declaration" means the instrument by which property is submitted to the provisions of the Condominium Law. "Declaration" includes all amendments

to that declaration. (Definition is essentially the same as in repealed R.C. 5311.01(C).)

(S) "Developer" means any person who directly or indirectly sells or offers for sale condominium ownership interests in a condominium development. "Developer" includes the declarant of a condominium development and any successor to that declarant who stands in the same relation to the condominium development as the declarant. (Definition is essentially the same as in repealed R.C. 5311.01(T).)

(T) "Exclusive use area" means common elements that the declaration reserves for delegation by the board of directors to the use of a certain unit or units, to the exclusion of other units. (New term and definition.)

(U) "Expandable condominium property" means a condominium property in which the original declaration reserves the right to add additional property. (Definition is essentially the same as in repealed R.C. 5311.01(R).)

(V) "Leasehold condominium development" means a condominium development in which each unit owner owns a 99-year leasehold estate, renewable forever, in the owner's unit, in the land upon which that unit is situated, or in both, together with an undivided leasehold interest in the common elements, with all leasehold interests due to expire at the same time. (Definition is essentially the same as in repealed R.C. 5311.01(W).)

(W) "Limited common elements" means the common elements that the declaration designates as being reserved for use by a certain unit or units, to the exclusion of the other units. (Definition is essentially the same as in repealed R.C. 5311.01(K).)

(X) "Offer" includes any inducement or solicitation to encourage a person to acquire a condominium ownership interest in a condominium development. (Definition is the same as in repealed R.C. 5311.01(V).)

(Y) "Par value" means a number, expressed in dollars, points, *or as a percentage or fraction*, attached to a unit by the declaration. (Definition is essentially the same as in repealed R.C. 5311.01(Y) with the added italicized phrase.)

(Z) "Purchaser" means a person who purchases a condominium ownership interest for consideration pursuant to an agreement for the conveyance or transfer of that interest for consideration. (Repealed R.C. 5311.01(O) defined "purchaser" as including both an actual and a prospective purchaser of a condominium ownership interest.)

(AA) "Sale of a condominium ownership interest" means the execution by both parties of an agreement for the conveyance or transfer for consideration of a condominium ownership interest. "Sale of a condominium ownership interest" does not include a transfer of *one* or more units from the developer to another developer, a subsidiary of the developer, or a financial institution for the purpose of facilitating the sale or development of the remaining or unsold portion of the condominium property *or additional property*. (Definition is essentially the same as in repealed R.C. 5311.01(N), except that the repealed definition stated that "sale of a condominium interest" does not include a transfer of *two* or more units from the developer to another developer, a subsidiary of the developer, or a financial institution for the purpose of facilitating the sale of or the development of the remaining or unsold portion of the property.)

(BB) "Unit" means the part of the condominium property that is designated as a unit in the declaration, is delineated as a unit on the drawings prepared pursuant to R.C. 5311.07, and is one of the following:

(1) A residential unit, in which the designated part of the condominium property is devoted in whole or in part to use as a residential dwelling consisting of one or more rooms on one or more floors of a building. A "residential unit" may include exterior portions of the building, spaces in a carport, and parking spaces as described and designated in the declaration and drawings.

(2) A water slip unit, which consists of the land that is under the water in a water slip and the land that is under the piers or wharves that form the water slip, and that is used for the mooring of watercraft.

(3) A commercial unit in which the property is designated for separate ownership or occupancy solely for commercial purposes, industrial purposes, or other nonresidential or nonwater slip use.

(The act specifies that "unit" may be a "residential unit," a "water slip unit," or a "commercial unit." Under repealed R.C. 5311.01(I), "unit," except in the case of a water slip, meant a part of the condominium property consisting of one or more rooms on one or more floors of a building and designated as a unit in the declaration and delineated on the drawings provided for in R.C. 5311.07. "Unit," in the case of a water slip, meant a part of the condominium property consisting of the land under a portion of the water in a water slip and under a portion of the piers or wharves that form the water slip, which portion of water or portion of water, piers, and wharves is used for the mooring of watercraft, and designated as a unit in the declaration and delineated on the drawings provided for in R.C. 5311.07.)



(CC) "Unit owner" means a person who owns a condominium ownership interest in a unit. (Definition is the same as in repealed R.C. 5311.01(J).)

(DD) "Unit owners association" means the organization that administers the condominium property and that consists of all the owners of units in a condominium property. (Definition is essentially the same as in repealed R.C. 5311.01(L).)

(EE) "Watercraft" has the same meaning as in R.C. 1547.01(A). That division of that section defines "watercraft" as any of the following when used or capable of being used for transportation on the water: (1) a vessel operated by machinery either permanently or temporarily affixed, (2) a sailboat other than a sailboard, (3) an inflatable, manually propelled boat that is required by federal law to have a hull identification number meeting the requirements of the United States Coast Guard, or (4) a canoe or rowboat. "Watercraft" does not include ferries as referred to in R.C. Chapter 4583. (Definition is the same as in repealed R.C. 5311.01(Z).)

(FF) "Water slip" means a channel of water between piers or wharves. (Definition is the same as in repealed R.C. 5311.01(BB).)

### **Types, boundaries, access, and ownership of units**

#### **Prior law**

Prior law provided for two types of units of a condominium property-- "unit" and "water slip unit" (see "Definitions," above). Unless otherwise provided in the declaration or drawings, the boundaries of a unit that was not a water slip unit were the interior surfaces of its perimeter walls, floors, and ceilings. Windows and doors in the perimeter walls, floors, or ceilings of a unit were part of the unit. Supporting walls, fixtures, and other parts of the building that were within the boundaries of a unit but were necessary for the existence, support, maintenance, safety, or comfort of any other part of the condominium property were not part of the unit.

Each unit that was not a water slip unit was required to have a direct exit to a public street or highway or to a common area and facility leading to a public street or highway, *except that units in an expandable condominium property could have a direct exit to a permanent easement leading to a public street or highway across additional property identified in the declaration.*

Ownership of a unit that was not a water slip unit included the right to exclusive possession, use, and enjoyment of the interior surfaces of all its perimeter walls, floors, and ceilings and of all supporting walls, fixtures, and other



parts of the building within its boundaries, including the right to paint, tile, wax, paper, or otherwise finish, refinish, or decorate the unit. Ownership of a water slip unit included the exclusive right to moor a watercraft in the portion of water above the water slip unit and the right to exclusive possession, use, and enjoyment of the piers or wharves that were *a part* of the water slip unit. (R.C. 5311.03(C)(1), (D), and (E).)

### **Operation of the act**

The act provides for three types of units of a condominium property-- "residential unit," "commercial unit," and "water slip unit" (see "**Definitions**," above). Unless otherwise provided in the declaration or drawings: (1) the boundaries of residential and commercial units are the interior surfaces of the perimeter walls, floors, and ceilings, (2) windows and doors, *sashes, thresholds, frames, jambs, and hardware* in the perimeter walls, floors, or ceilings of the unit are part of the unit, and (3) supporting walls, fixtures, and other parts of the building that are within the boundaries of the unit but that are necessary for the existence, support, maintenance, safety, or comfort of any other part of the condominium property are not part of the unit.

Each *residential* and *commercial unit* must have a direct exit to a public street or highway, to a "common element" (see "**Definitions**," above) leading to a public street or highway, or to a permanent easement leading to a public street or highway.

Ownership of a *residential unit* includes the right to exclusive possession, use, and enjoyment of the interior surfaces of the perimeter walls, floors, and ceilings and of the supporting walls, fixtures, and other parts of the building within its boundaries, including the right to paint, tile, wax, paper, or otherwise finish, refinish, or decorate the unit. Ownership of a *water slip unit* includes the exclusive right to moor a watercraft in the portion of water above the water slip unit and the right to exclusive possession, use, and enjoyment of the piers or wharves that are *within the boundaries* of the water slip unit. *Ownership of a commercial unit includes the right to exclusive possession, use, and enjoyment of the unit within the unit's boundaries.* (R.C. 5311.03(C)(1), (D), and (E).)

### **Relocation of unit boundaries**

#### **Prior law**

Prior law provided for the division or combination of units. To the extent provided in a declaration and subject to conditions it imposes, a unit in a condominium property other than a condominium development could be divided into two or more units, or all or part of a unit could be combined with all or part of



one or more other units. Such a division or combination required an amendment to the declaration accompanied by drawings showing all particulars of the division or combination. The amendment was required to specify the percentage interest in the common areas and facilities, the proportionate share of common surplus and common expenses, and the voting power of the unit or units resulting from the division or combination, the total of which, in each case, was required to equal the interest, share, and power of the former unit or units divided or combined. (R.C. 5311.03(G).)

### **Operation of the act**

The act repeals the above provisions in prior law and provides for the relocation of boundaries between adjoining units. Except as otherwise provided in the declaration, the boundaries between adjoining units and appurtenant "limited common elements" (see **Definitions**," above) may be relocated and the undivided interests in the common elements appurtenant to those units may be reallocated by an amendment to the declaration pursuant to the following procedures (R.C. 5311.031(A)):

(1) The owners of the adjoining units must submit to the board of directors of the "unit owners association" (see **Definitions**," above) a written application for the relocation and reallocation. The application must be accompanied by the written consents of the holders of all liens on those units, except liens for real estate taxes and assessments not due and payable. In the application, the owners of the adjoining units may request a specific reallocation of their undivided interest in the common elements allocated to the adjoining units.

(2) Unless the board of directors finds any requested reallocation of the undivided interests in the common elements to be unreasonable, within 30 days after the board receives the application, the association must prepare, at the expense of the owners of the adjoining units, an amendment to the declaration that is executed by the owners of the affected units and that includes all of the following: (a) identification of the affected units, (b) words of conveyance between the owners of the units, and (c) a specification of the undivided interests in the common elements, the proportionate shares of "common surplus" and "common expenses" (see **Definitions**," above), and the voting powers of each unit resulting from the relocation and reallocation, the total of which must equal the interests, shares, and powers of the former adjoining units.

(3) At the expense of the owners of the affected units, the association must record the amendment to the declaration together with both of the following: (a) any drawing, plat, or plans necessary to show the altered boundaries of the affected units, and (b) the dimensions and identifying number of each unit that results from the relocation and reallocation.

Existing liens automatically attach to each unit that results from the relocation and reallocation (R.C. 5311.031(B)).

### **Reallocation of limited common elements**

The act provides that except as otherwise provided in the declaration, rights to the use of limited common elements may be reallocated between or among units by an amendment to the declaration pursuant to the following procedures (R.C. 5311.032(A)):

(1) The owners of the affected units must prepare and execute at their expense an amendment to the declaration that identifies the affected units and specifies the reallocated rights to the affected limited common elements.

(2) The owners of the affected units must submit to the board of directors of the unit owners association the amendment, accompanied by the written consents of the owners of all affected units and the holders of all liens on those units except liens for real estate taxes and assessments not due and payable.

(3) At the expense of the owners of the affected units, the unit owners association must record the submitted amendment to the declaration.

### **Delegation of common elements to exclusive use**

Under the act, if the declaration reserves any common element as an "exclusive use area" (see "Definitions," above), the board of directors may delegate that common element to the use of a certain unit or units, 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. Nothing in this provision affects a unit owner's right to exclusive use of any common element that the declaration designates as a limited common element appurtenant to the owner's unit. (R.C. 5311.032(B).)

### **Convertible unit**

The act provides that except as otherwise provided in the declaration, all or any portion of a "convertible unit" (see "Definitions," above) may be converted into one or more units or common elements, including limited common elements. To cause the conversion, the owner must prepare and execute an amendment to the declaration that describes the conversion and record the amendment together with the drawings described in the last paragraph in "Operation of the act" under "Preparation of drawings; certification," below. 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 resulting from the conversion, the total of which must equal the interest, share, and power 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 appropriate instruments are recorded in accordance with the second sentence, above, in this paragraph.

A convertible unit that, in whole or in part, is not converted in accordance with the above provisions must be treated as a single unit until it is so converted. (R.C. 5311.033.)

### **Common elements; use of limited common elements**

#### **Prior law**

Prior law provided that the *common areas and facilities* of a condominium property were owned by the unit owners as tenants in common and that the ownership remains undivided. The declaration was required to set forth the *interest* in the common areas and facilities appurtenant to each unit. For units in condominium properties other than expandable condominium properties, the interest in the common areas and facilities was required to be computed in the proportion that the fair market value of the unit bears to the aggregate fair market value of all units on the date that the declaration is originally filed for record, or was required to be based on the size or par value of the unit. The law provided for the assignment of a "par value" (see "Definitions," above) to any unit, the use of the common areas and facilities by each unit owner, and the computation and allocation of interests in the common areas and facilities appurtenant to units in expandable condominium properties. It further provided that except as provided in R.C. 5311.051 (filing and recording of additions and improvements), the *percentage of interest* in the common areas and facilities of each unit as expressed in the original declaration could not be altered except by an amendment to the declaration unanimously approved by all unit owners affected. (R.C. 5311.04.)

#### **Operation of the act**

The act replaces "common areas and facilities" with *common elements* and refers to the *undivided interest* (instead of "interest" or "percentage of interest") in the common elements appurtenant to each unit (R.C. 5311.04). For units in condominium properties other than "expandable condominium properties" (see "Definitions," above), the undivided interest in the common elements must be

computed in the proportion that the fair market value of the unit bears to the aggregate fair market value of all units on the date that the declaration is originally filed for record, must be based on the size or par value of the unit, *or must be computed on an equal basis*. Except as provided in R.C. 5311.051 (filing and recording of additions and improvements) or in the provisions described above in "Relocation of unit boundaries," "Reallocation of limited common elements," "Delegation of common elements to exclusive use," and "Convertible unit," the *undivided interest* in the common elements of each unit as expressed in the original declaration cannot be altered except by an amendment to the declaration unanimously approved by all unit owners affected. The act makes no substantive changes in the other provisions in prior law with respect to the common elements of a condominium property and the undivided interests in the common elements. (R.C. 5311.04(B)(1) and (E).)

The act provides that subject to rules the board of directors adopts, the board may authorize the use of limited common elements, as distinguished from the common elements and exclusive use areas, for the construction of open, unenclosed patios, hedges, decks, fences, or similar improvements provided that the improvements are maintained and insured by the owner of the unit to which the limited common area is appurtenant. The construction of an addition to or an expansion of a unit into limited common elements or common elements may not be authorized without the consent of all unit owners. (R.C. 5311.04(G).)

#### **Purchase of property that is not part of condominium property**

Subject to the bylaws and the declaration, the act authorizes the unit owners association to purchase, hold title to, and sell real property that is not declared to be part of the condominium property. Any such transaction that takes place prior to the date that the unit owners other than the "developer" (see "Definitions," above) assume control of the unit owners association requires the approval of the developer, the approval of 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 directors. If the transaction takes place after the unit owners assume control of the unit owners association, it 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 directors. Expenses incurred in connection with any transaction described in this paragraph are common expenses. (R.C. 5311.04(H).)

#### **Common expenses**

Under prior law, all costs of administration, maintenance, repair, and replacement of common areas and facilities were common expenses (R.C. 5311.04(F)).



Under the act, all costs of the administration, *operation*, maintenance, repair, and replacement of common elements are common expenses. The declaration, either as filed and recorded by the declarant or as amended by a vote of the unit owners exercising not less than 90% of the voting power of the unit owners association, may provide that, regardless of undivided interests, the following common expenses must be computed on an equal per unit basis: (1) expenses that arise out of the administration, operation, maintenance, repair, and replacement of security, telecommunications, rubbish removal, roads, entrances, recreation facilities, landscaping, and grounds care, and (2) legal, accounting, and management expenses. Expenses not included in (1) and (2), above, must be computed on the basis of the undivided interest in the common elements allocated to each unit. (R.C. 5311.041.)

### **Declaration and contents**

#### **Prior law**

A declaration submitting property to the provisions of the Condominium Law was required to be signed and acknowledged by the owner before a judge or clerk of a court of record, county auditor, county engineer, notary public, mayor, *or county court judge*, who was required to certify the acknowledgment and subscribe the certificate of acknowledgment (R.C. 5311.05(A)). That Law prescribed the contents of a declaration, among which were the following (R.C. 5311.05(B)(3), (5), (6), (8), and (9)) (the other contents were not substantively affected by the act):

(1) The purpose or purposes of the condominium property, the units and commercial facilities situated in the property, and the restrictions, if any, upon the use or uses of the property;

(2) The unit designation of each unit submitted to the provisions of the Condominium Law and a statement of its location, approximate area, *number of rooms*, and the immediate common area or limited common area to which it has access, and any other *data* necessary for its proper identification;

(3) Specified information about common areas and facilities and limited common areas and facilities and a requirement that the *percentages*, basis, and procedures were required to be in accordance with the existing provisions described above in "**Prior law**" under "**Common elements; use of limited common elements**";

(4) The name of a person to receive service of process for the unit owners association, together with the residence or place of business of the person, *which*



*residence or place of business was required to be in a county in which all or a part of the condominium property is situated.*

(5) The method by which the declaration could be amended, which, with certain exceptions specified in the Condominium Law, was required to require the affirmative vote of unit owners exercising not less than 75% of the voting power.

### **Operation of the act**

The act eliminates a county court judge from the list of officers before whom a declaration must be signed and acknowledged by the owner of the property and who must certify the acknowledgement and subscribe the certificate of acknowledgement (R.C. 5311.05(A)). It modifies the above described contents of a declaration and requires additional information as follows (R.C. 5311.05(B)(3), (5), (6), (8), (9), and (10)):

(1) The purpose of the condominium property, the units and *recreational and* commercial facilities situated in the property, and any restrictions upon the use of the condominium property;

(2) The unit designation of each unit submitted to the provisions of the Condominium Law and a statement of its location, approximate area, (the act eliminates *number of rooms*), and the immediate common element or limited common element to which it has access, and any other *information* necessary for its proper identification;

(3) Specified information about common elements and limited common elements and a requirement that the *undivided interests*, basis, and procedures must be in accordance with the act's provisions described above in "**Common elements; use of limited common elements,**" "**Relocation of unit boundaries,**" "**Reallocation of limited common elements,**" "**Delegation of common elements to exclusive use,**" and "**Convertible unit**";

(4) The name of a person to receive service of process for the unit owners association, together with the person's residence or place of business *located in this state* (instead of the requirement that *residence or place of business be in a county in which all or a part of the condominium property is situated*).

(5) The method by which the declaration may be amended, which, with the exceptions specified in the act,<sup>2</sup> requires the affirmative vote of unit owners exercising not less than 75% of the voting power;

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<sup>2</sup> *These exceptions are described in "**Amending the declaration without a vote,**" below; "**Operation of the act**" under "**Common elements; use of limited common elements,**"*

(6) *A statement of any membership requirement if the unit owners association or any unit owners are required to be members of a not-for-profit organization that provides facilities or recreation, education, or social services to owners of property other than the condominium property.*

**Declaration for expandable condominium property**

**Prior law**

The Condominium Law previously required all of the information required for a declaration submitting property to the provisions of that Law to be included in a declaration for an expandable condominium property and additional information that included the following, among others not substantively affected by the act (R.C. 5311.05(C)(3), (5), (6), and (9)):

(1) A time limit, not exceeding seven years from the date the declaration is filed for record, renewable for an additional seven-year period at the option of the developer, exercisable within six months prior to the expiration of the seven-year period and with the consent of the majority of the unit owners other than the developer upon which the option to expand the condominium property will expire, together with a statement of any circumstances that will terminate the option prior to the expiration of the time limit;

(2) A statement as to whether all, or a particular portion, of the additional property must be added to the condominium property, or whether, if any additional property is added, all or a particular portion of the additional property must be added, and, if not, a statement of any limitations as to the portions that may be added or a statement that there are no such limitations;

(3) A statement as to whether portions of the additional property may be added to the condominium property at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds of those portions, or regulating the order in which they may be added to the condominium property, or both;

(4) Except in cases where the previously submitted condominium property contains no units restricted exclusively to residential use, a statement of the maximum percentage of the aggregate land and floor area of all units not restricted

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*above; "**Common elements; use of limited common elements,**" above; "**Relocation of unit boundaries,**" above; "**Reallocation of limited common elements,**" above; "**Delegation of common elements to exclusive use,**" above; and "**Convertible unit,**" above.*



exclusively to residential use that may be created on any additional property or portions of additional property that may be added to the condominium property.

### **Operation of the act**

The act modifies or replaces the above described contents of a declaration for an expandable condominium property and requires additional information, as follows (R.C. 5311.05(C)(3), (5), (6), (9), and (15)):

(1) Instead of the information described in paragraph (1), above, the following information: (a) the time at which the option to expand the condominium development expires, which cannot exceed seven years from the date the declaration is filed for record, (b) a statement that the declarant may, during the six months prior to the time that the option expires, extend the option for an additional seven years with the consent of the holders of a majority of the voting power of the unit owners other than the declarant, and (c) a statement of any circumstances that will terminate the option to expand prior to the time established pursuant to the provisions in (a) or (b);

(2) Instead of the statement described in paragraph (2), above, a statement that specifies all of the following: (a) whether the addition of all or a particular portion of the "additional property" (see "**Definitions**," above) is mandatory, (b) if the addition of additional property is not mandatory, whether all or a particular portion of the additional property must be added if any other additional property is added, and (c) whether or not there are any limitations on portions of additional property that may be added;

(3) A statement of whether portions of the additional property may be added at different times and a statement that sets forth any limitations *on the addition of additional property at different times*, including the legal descriptions of the boundaries of portions *that may be added and specifications on the order in which those portions may be added to the condominium property or a statement that there are no limitations on the addition of additional property*;

(4) Except when the *original* condominium property contained no units restricted (the act deletes *exclusively*) to residential use, a statement of the maximum percentage of the aggregate land *area* and *the maximum percentage of aggregate* floor area *that may be devoted* to units not restricted (the act deletes *exclusively*) to residential use on any additional property added to the condominium property;

(5) *A statement that a successor owner of the condominium property or of additional property added to the condominium property who is not an "affiliate of the developer" and who is a bona fide "purchaser" (see "**Definitions**," above) 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.*

**Amending the declaration without a vote**

Under continuing law and the act, subject to specified exceptions, an affirmative vote of the unit owners exercising not less than 75% of the voting power is required to amend a declaration (prior R.C. 5311.05(B)(9), which is changed to R.C. 5311.05(B)(10) by the act). The act provides that without a vote of the unit owners, the board of directors may amend the declaration in any manner necessary for any of the following purposes (R.C. 5311.05(E)(1)):

- (1) To meet the requirements of institutional mortgagees, 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 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. If the association is incorporated in Ohio, this may be accomplished by filing with the Secretary of State an appropriate change of statutory agent designation.

The above provision for amending a declaration without a vote applies to condominium properties submitted to the Condominium Law prior to, on, or after the provision's effective date. Any unit owner who is aggrieved by an amendment to the declaration that the board of directors makes pursuant to the above provision may commence a declaratory judgment action to have the amendment declared invalid as violative of that provision. Any action so filed must be filed in the appropriate court of common pleas within one year from the date of the recordation of the amendment. (R.C. 5311.05(E)(2) and (3).)

The act also specifies that the execution and filing for record of an amendment submitting additional property to an expandable condominium property is an effective amendment of the declaration without a vote of the unit owners (R.C. 5311.051).

## **Recording the declaration**

### **Continuing law**

Continuing law requires a declaration of condominium property to be filed and recorded in the office of the recorder of the county or counties in which the land or water slips described in the declaration are situated. All original declarations, when filed, must *have attached* a set of drawings of the condominium property and a true copy of the bylaws of the unit owners association. Any amendment to the declaration that effects any change in the bylaws or drawings, when filed, must *have attached* a true copy of that change. A recorder cannot accept any of the above described documents until a copy has been filed with the county auditor who must *endorse* on the declaration that copies of the declaration or amendment and attached drawings have been filed with the auditor. Existing law, unchanged by the act, prevents any interest in a unit from being conveyed until the declaration, bylaws, and drawings, certified as described above, have been filed for record. (R.C. 5311.06(A), (B), and (C).)

Under continuing law, generally, a county recorder keeps six separate sets of records, one of which is a record of deeds, in which is recorded, among others, all declarations and bylaws as provided in the Condominium Law (R.C. 317.08(A)).

### **Operation of the act**

Under the act, all original declarations, when filed, must *be accompanied* by a set of drawings of the condominium property and a true copy of the bylaws of the unit owners association. Any amendment to the declaration that effects any change in the bylaws or drawings, when filed, must *be accompanied* by a true copy of that change. The declaration or amendment must contain the auditor's *certification* that a copy of the declaration or amendment and *any bylaws* and drawings have been filed with the auditor. (R.C. 5311.06(A) and (B).)

The act provides that continuing law, as described in the first paragraph, above, and as modified by the act, 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 that condominium ownership interest (R.C. 5311.06(D)).

Under the act, a county recorder's record of deeds additionally must include all amendments to declarations and bylaws as provided in the Condominium Law (R.C. 317.08(A)(1)).

## Preparation of drawings; certification

### Prior and continuing law

Under prior and continuing law, which the act restructures and modifies as described below, a set of drawings must be prepared for every condominium property that show graphically, *insofar as is possible, all the particulars of the land or water slips, buildings, and other improvements, including, but not limited to, the layout, location, designation, and dimensions of each unit, the layout, location, and dimensions of the common areas and facilities and limited common areas and facilities, the location and dimensions of all appurtenant easements or encroachments.* If the condominium property is not contiguous, the drawings must show the distances between any parcels of land or any water slips. The drawings must bear the certified statement of a *registered surveyor* and registered architect or registered *surveyor and licensed professional engineer* that the drawings accurately show the building or buildings, or water slips, as constructed.

If some, but not all, portions of the condominium property are to be held by unit owners in a leasehold estate, the drawings must show the locations and dimensions of each portion and must label the portion as leased land or as leased property. If there is more than one portion of leased land or leased property, the drawings must label each portion *with one or more letters or numbers, or both, different from those designating any other portions of the leased land or leased property, and different also from the identifying number of any unit.*

In the case of any improvements, the drawings must indicate which, if any, have been begun but have not been substantially completed by the use of the phrase "(NOT YET COMPLETED)." (R.C. 5311.07.)

Under continuing law, a county recorder must keep a record of plats, in which is recorded, among others, all drawings as provided in the Condominium Law (R.C. 317.08(D)).

### Operation of the act

The act restructures and modifies the law described above under "Prior and continuing law" as follows (R.C. 5311.07(A), (B), (C), and (D)):

(1)(a) A set of drawings must be prepared for every condominium property that graphically shows the *boundaries, location, designation, length, width, and height* of each unit; the *boundaries, location, designation, and dimensions* of the common elements and the limited common elements *and exclusive use areas*; and the location and dimensions of all appurtenant easements or encroachments.

(b) If the condominium property is not contiguous, the drawings must show the distances between parcels of land or water slips.

(c) *The drawings for commercial units that do not have wall surfaces must show the monumental perimeter boundaries of those units.*

(d) *The drawings need not show interior walls or partitions that are not load-bearing.*

(2) Each drawing must bear both of the following:

(a) The certified statement of a registered architect or registered professional engineer that the drawing accurately shows each building or water slip as *built or constructed*;

(b) *The certified statement of a registered professional surveyor that the drawing accurately reflects the location of improvements and recorded easements.*

(3) If some, but not all, portions of the condominium property are to be held by unit owners in a leasehold estate, the drawings must show the location and dimensions of each portion and must label the portion as leased land or as leased property. If there is more than one portion of leased land or leased property, the drawings must label each portion *in a manner that is* different from the labels designating any other portions of the leased land or leased property and different from the identifying number of any unit.

(4) If the condominium property contains any improvements *other than units*, the drawings *or amendments* must indicate which, if any, of the improvements have been begun but have not been substantially completed by the use of the phrase "(NOT YET COMPLETED)."

The act further provides that if any owner of a convertible unit converts all or any portion of a convertible unit into one or more units and common elements, including limited common elements, the owner must prepare, file, and record drawings as described in this paragraph, that pertain to the portion of the building, improvement, or structure that constituted the former convertible unit. The drawings must show the boundaries, location, designation, length, width, and height of each unit formed out of the former convertible unit; the boundaries, location, designation, and dimensions of the limited common elements appurtenant to each unit; and the boundaries, location, designation, and dimensions of any common element formed out of the former convertible unit. Each drawing must bear the certified statement of a registered architect or registered professional engineer that the drawing accurately shows the units,

common elements, and appurtenant limited common elements formed out of the former convertible unit. (R.C. 5311.07(E).)

Under the act, a county recorder's record of plats additionally must include amendments to drawings as provided in the Condominium Law (R.C. 317.08(A)(4)).

### **Unit owners association**

#### **Establishment; board of directors**

**Continuing and prior law.** Continuing law requires every condominium property to be administered by a unit owners association. The unit owners association must be established not later than the date the deed or other evidence of ownership is filed for record following the first sale of a condominium ownership interest in a condominium development. Membership in the unit owners association is limited to unit owners, and all unit owners must be members. Until the unit owners association is established, the developer must act in all instances in which action of the unit owners association or its officers is authorized or required by law or the declaration.

Under prior law, not later than the *time that* condominium ownership interests to which 25% of the undivided interests in the common areas and facilities appertain have been sold and conveyed by the developer in a condominium development, the unit owners association were required to meet, and the unit owners, other than the developer, were required to elect not less than 25% of the members of the *board of managers*. *Not later than the time that condominium ownership interests to which 50% of the undivided interests appertain had been sold and conveyed, the unit owners were required to elect not less than 33 1/3% of the members of the board of managers.* When computing *percentages of interest* in expandable condominium properties for purposes of the above provision, the percentage of interest in common areas and facilities was required to be computed by comparing the number of units sold and conveyed to the maximum number of units that could be created, as stated in the declaration for an expandable condominium property stating the maximum number of units that could be created on the additional property.

Except as stated in the previous paragraph, the declaration of a condominium development could authorize the developer or persons designated by the developer to appoint and remove members of the board of managers and other officers of the unit owners association and to exercise the powers and responsibilities otherwise assigned by law or the declaration to the unit owners association, the board of managers, or other officers. Such an authorization could extend from the date of the establishment of the unit owners association *until the*



earlier of: (1) five years, in the case of a condominium development the declaration of which includes expandable condominium property, or three years in the case of other condominium developments or (2) 30 days after the sale and conveyance of condominium ownership interests to which appertain 75% of the undivided interests in the common areas and facilities to purchasers in good faith for value. If there was a unit owner other than the developer, the declaration of a condominium development could not be amended to increase the scope or the period of control by the developer. Within 30 days of the expiration of any period during which the developer exercised powers under the above provision, the unit owners association was required to meet and elect all members of the board of managers and all other officers of the unit owners association. The persons so elected were required to take office *upon election*. (R.C. 5311.08(A), (C), and (D).)

**Operation of the act.** The act adds the following provisions pertaining to the administration of condominium property by a unit owners association (R.C. 5311.08(A)(1), (2), (3), and (4)):

(1) All power and authority of the unit owners association must be exercised by a *board of directors*, which 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 directors any principal, member of a limited liability company, partner, director, officer, or employee of that unit owner.

(2) The board of directors must elect a president, secretary, treasurer, and other officers that the board may desire.

(3) Unless otherwise provided in the declaration or the bylaws, all meetings of the unit owners association are open to the unit owners, and those present in person or by proxy when action is taken during a meeting of the unit owners association constitute a sufficient quorum.

(4) A meeting of the board of directors may be held 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. In lieu of conducting a meeting, the board of directors may take action with the unanimous written consent of the members of the board. Those written consents must be filed with the minutes of the meetings of the board.

Under the act, not later than *60 days after* the developer has sold and conveyed condominium ownership interests appertaining to 25% of the undivided interests in the common elements in a condominium development, the unit owners

association must meet, and the unit owners other than the developer must elect not less than  $1/3$  (instead of 25%) of the members of the board of directors. The act eliminates the provision in existing law pertaining to the election of not less than  $33\frac{1}{3}\%$  of the members of the board. When computing *undivided interests* in expandable condominium properties for purposes of the provisions described in this and the following paragraphs, the *undivided interests* in common elements must be computed by comparing the number of units sold and conveyed to the maximum number of units that may be created, as stated in the declaration for an expandable condominium property stating the maximum number of units that may be created on the additional property.

Except as described in the preceding paragraph, the declaration *or bylaws* of a condominium development may authorize the developer or persons the developer designates to appoint and remove members of the board of directors of the unit owners association and to exercise the powers and responsibilities otherwise assigned by law, the declaration, *or the bylaws* to the unit owners association or to the board of directors. The authorization *for developer control* may extend from the date the unit owners association is established until *60 days* after the sale and conveyance to purchasers in good faith for value of condominium ownership interests to which 75% of the undivided interests in the common elements appertain, *except that in no case may the authorization extend for more than five years after the unit owners association is established if the declaration includes expandable condominium property or more than three years after the unit owners association is established if the declaration does not include expandable condominium property.* If there is a unit owner other than the developer, the declaration of a condominium development cannot be amended to increase the scope or the period of the developer's control. Within *60 days* after the expiration of the period during which the developer has control, the unit owners association must meet and elect all members of the board of directors of the association. The persons elected must take office *at the end of the meeting during which they are elected and must, as soon as reasonably possible, appoint officers.*

The act permits the board of directors, or the developer while in control of the association, to take any measures necessary to incorporate the unit owners association as a not-for-profit corporation. (R.C. 5311.08(C), (D), and (E).)

### **Bylaws**

**Continuing and prior law.** The unit owners association is governed by bylaws. No modification of or amendment to the bylaws is valid unless it is set forth in an amendment to the declaration and the amendment is filed for record. Unless otherwise provided by the declaration, the bylaws were required to provide for the following (R.C. 5311.08(B)):



(1) The election from among the unit owners of a board of managers of the unit owners association that must exercise, unless otherwise provided in the Condominium Law, the declaration, or the bylaws, all power and authority of the unit owners association, the number of persons constituting the board and that the terms of not less than  $1/3$  of the members of the board expire annually, the powers and duties of the board, the compensation of its members and the method of their removal from office, and whether or not the services of a manager or managing agent may be engaged;

(2) The time and place for holding, the manner of and authority for calling, giving notice of, and conducting, and the requirement, in terms of percentage of interest in the common areas and facilities, of a quorum for meetings of the unit owners association;

(3) The election by the board of managers of a president, one or more vice presidents, secretary, treasurer, and such other officers as the board of managers may desire;

(4) By whom and the procedure by which maintenance, repair, and replacement of the common areas and facilities may be authorized;

(5) The common expenses for which assessments may be made and the manner of collecting from the unit owners their respective shares of the common expenses;

(6) The method of distributing the common profits;

(7) By whom and the procedure by which administrative rules governing the operation and use of the condominium property or any portion of the property may be adopted and amended.

**Operation of the act.** The act restructures and modifies the required contents of the bylaws described in paragraphs (1), (2), and (7), above, as follows (R.C. 5311.08(B)(1), (2), and (6)):

(1)(a) The election of the board of directors of the unit owners association, (b) the number of persons constituting the board, (c) the terms of the directors, with not less than  $1/5$  to expire annually, (d) the powers and duties of the board, (e) the compensation of the directors, (f) the method of removal of directors from office, (g) *the election of officers of the board* (instead of paragraph (3), above), and (h) whether or not the services of a manager or managing agent may be engaged.

(2) The time and place for holding meetings; the manner of and authority for calling, giving notice of, and conducting meetings; and the requirement, in

terms of *undivided interests in the common elements*, of a quorum for meetings of the unit owners association.

(3) By whom and the procedure by which administrative rules governing the operation and use of the condominium property or any portion of the property may be adopted and amended. *These rules may govern any aspect of the condominium property that is not required to be governed by bylaws and may include standards governing the type and nature of information and documents that are subject to examination and copying by unit owners, including the times and location at which items may be examined or copied and any required fee for copying the information or documents.*

### **Duties and powers**

The act provides that unless otherwise provided in the declaration or bylaws, the unit owners association, through the board of directors, *must* do both of the following (R.C. 5311.081(A)):

(1) Adopt and amend budgets for revenues, expenditures, and reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments, provided that the amount set aside annually for reserves must not be less than 10% of the budget for that year unless the reserve requirement is waived annually by the unit owners exercising not less than a majority of the voting power of the unit owners association;

(2) Collect assessments for common expenses from unit owners.

Unless otherwise provided in the declaration, the unit owners association, through the board of directors, *may* exercise all powers of the association, including the power to do the following (R.C. 5311.081(B)):

(1) Hire and fire managing agents, attorneys, accountants, and other independent contractors and employees that the board determines are necessary or desirable in the management of the condominium property and the association;

(2) Commence, defend, intervene in, settle, or compromise any civil, criminal, or administrative action or proceeding that is in the name of, or threatened against, the unit owners association, the board of directors, or the condominium property, or that involves two or more unit owners and relates to matters affecting the condominium property;

(3) Enter into contracts and incur liabilities relating to the operation of the condominium property;

(4) Regulate the use, maintenance, repair, replacement, modification, and appearance of the condominium property;

(5) Adopt rules that regulate the use or occupancy of units, the maintenance, repair, replacement, modification, and appearance of units, common elements, and limited common elements when the actions regulated by those rules affect common elements or other units;

(6) Cause additional improvements to be made as part of the common elements;

(7) Purchase, encumber, and convey units, and, subject to any restrictions in the declaration or bylaws and with the approvals required as described in "**Purchase of property that is not part of condominium property**," above, acquire an interest in other real property and encumber or convey that interest. All expenses incurred in connection with the acquisition, encumbrance, use, and operation of that interest are common expenses.

(8) Acquire, encumber, and convey or otherwise transfer personal property;

(9) Hold in the name of the unit owners association the real property and personal property acquired pursuant to (7) and (8), above;

(10) Grant easements, leases, licenses, and concessions through or over the common elements;

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

(12) Impose interest and late charges for the late payment of assessments; impose returned check charges; and, pursuant to the procedure described below in "**Procedure for imposing enforcement charges**," impose reasonable enforcement assessments for violations of the declaration, the bylaws, and the rules of the unit owners association, and reasonable charges for damage to the common elements or other property;

(13) Adopt and amend rules that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;

(14) Subject to applicable laws, adopt and amend rules that regulate the termination of utility or other service to a commercial unit if the unit owner is delinquent in the payment of an assessment that pays, in whole or in part, the cost of that service;



(15) Impose reasonable charges for preparing, recording, or copying amendments to the declaration, resale certificates, or statements of unpaid assessments;

(16) Enter a unit for bona fide purposes when conditions exist that involve an imminent risk of damage or harm to common elements, another unit, or to the health or safety of the occupants of that unit or another unit;

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

(18) 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;

(19) Purchase insurance and fidelity bonds the directors consider appropriate or necessary;

(20) Invest excess funds in investments that meet standards for fiduciary investments under Ohio law;

(21) Exercise powers that are:

(a) Conferred by the declaration or the bylaws of the unit owners association or the board of directors;

(b) Necessary to incorporate the unit owners association as a not-for-profit corporation;

(c) Permitted to be exercised in Ohio by a not-for-profit corporation;

(d) Necessary and proper for the government and operation of the unit owners association.

**Procedure for imposing enforcement charges**

Under the act, prior to imposing a charge for damages or an enforcement assessment for a violation of the declaration, bylaws, or rules of the unit owners association, the board of directors must give the unit owner a written notice that includes all of the following (R.C. 5311.081(C)(1)):

(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 board of directors to contest the proposed charge or assessment;

(4) A statement setting forth the procedures to request a hearing as described below;

(5) A reasonable date by which the unit owner must cure the violation to avoid the proposed charge or assessment.

To request a hearing, the owner must deliver a written notice to the board of directors not later than the tenth day after receiving the above notice. If the owner fails to make a timely request for a hearing, the right to that hearing is waived, and the board may immediately impose a charge for damages or an enforcement assessment. If a unit owner requests a hearing, at least seven days prior to the hearing the board of directors must provide the unit owner with a written notice that includes the date, time, and location of the hearing. The board of directors cannot levy a charge or assessment before holding any hearing requested by a unit owner.

The unit owners, through the board of directors, may allow a reasonable time to cure a violation before imposing a charge or assessment. Within 30 days following a hearing at which the board of directors imposes a charge or assessment, the unit owners association must deliver a written notice of the charge or assessment to the unit owner. Any written notice required by any of the above provisions must be delivered to the unit owner or any occupant of the unit by personal delivery, by certified mail, return receipt requested, or by regular mail. (R.C. 5311.081(C)(2), (3), (4), (5), and (6).)

### **Records kept**

**Continuing law.** Continuing law requires each unit owners association to keep the following: (1) correct and complete books and records of account, that specify the receipts and expenditures relating to the common areas and facilities and other common receipts and expenses, *together with* records showing the allocation, distribution, and collection of the common profits, losses, and expenses among and from the unit owners, (2) minutes of the *proceedings* of the unit owners and board of managers, and (3) records of the names and addresses of the unit owners and their respective percentages of interest in the common areas and facilities. Whenever elected members of a board of managers of a unit owners association take control of the association, the declarant or developer must deliver to *such officers correct and complete books and records of account, as required above*, and any damages resulting from the declarant's or developer's failure to do so may be recovered in a civil action. (R.C. 5311.09.)

**Operation of the act.** The act restructures the above provision regarding the records required to be kept by removing *together with* in (1), above, and listing a separate paragraph (2) regarding records showing the allocation, distribution, and collection of the common profits, losses, and expenses among and from the unit owners. The act replaces minutes of proceedings of unit owners and board of managers in (2), above, with minutes of *meetings* of the unit owners *association* and the board of directors. (R.C. 5311.09(A)(1).)

The act requires a unit owner, within 30 days after obtaining a condominium ownership interest, to provide the following information in writing to the unit owners association through the board of directors: (1) the home address, home and business mailing addresses, and the home and business telephone numbers of the unit owner and all occupants of the unit and (2) the name, business address, and business telephone number of any person who manages the owner's unit as an agent of that owner. Within 30 days after a change in any information that this provision requires, a unit owner must notify the association, through the board of directors, in writing of the change. When the board of directors requests, a unit owner must verify or update the information. (R.C. 5311.09(A)(2) and (3).)

Under the act, when elected members of a board of directors of a unit owners association take control of the association, the declarant or developer must deliver to the board correct and complete *copies* of all of the following (R.C. 5311.09(B)(1)):

- (1) The books, records, and minutes as described above;
- (2) The declaration, the bylaws, the drawings prepared, as recorded, and any articles of incorporation of the unit owners association, as recorded;
- (3) Except in the case of a conversion condominium, documents, information, and sources of information concerning the location of underground utility lines, and plans and specifications that are not proprietary or copyrighted, of the buildings, other improvements, and structures of the condominium property that are reasonably available to the developer, but only in connection with condominium developments declared on or after the amendment's effective date and condominium developments that are declared prior to that date but originally built or constructed on or after that date.

The board of directors may commence a civil action on behalf of the unit owners association in the court of common pleas of the county in which the condominium property is located to obtain injunctive relief or recover damages for harm resulting from the declarant's or developer's failure to comply with the above requirement regarding delivery of copies (R.C. 5311.09(B)(2)).

Except as otherwise prohibited as described in the following paragraph, any member of a unit owners association may examine and copy the books, records, and minutes, as described above, pursuant to reasonable standards set forth in the declaration, bylaws, or rules the board promulgates, which may include, but are not limited to, standards governing the type of documents that are subject to examination and copying, the times and locations at which those documents may be examined or copied, and the specification of a reasonable fee for copying the documents. (R.C. 5311.091(A).)

The unit owners association is not required to permit the examination and copying of any of the following from books, records, and minutes (R.C. 5311.091(B)):

- (1) Information that pertains to condominium property-related personnel matters;
- (2) Communications with legal counsel or attorney work product pertaining to pending litigation or other condominium property-related matters;
- (3) Information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;
- (4) Information that relates to the enforcement of the declaration, bylaws, or rules of the unit owners association against unit owners;
- (5) Information the disclosure of which is prohibited by state or federal law.

### **Description of units**

Under continuing law, in any deed, mortgage, lease, or other instrument of conveyance or encumbrance of, or by which a lien is created upon, any interest or estate in a unit *or units* of condominium property, it is sufficient to describe such unit *or units* by setting forth the name of the condominium property, the number or other designation of the unit *or units*, and the numbers of the volumes and initial pages of the records of the declaration and drawings of the condominium property.

The act deletes "or units" from the above provision regarding the description of a unit of condominium property. The act also states that the above provision does not require reference by volume and page to amendments to the declaration or the drawings of the condominium property that accompany an amendment, and the omission of any reference to amendments does not affect the



validity of any deed, mortgage, lease, or other instrument referred to in the provision. (R.C. 5311.10.)

### **Prohibition against conveyance of unit**

Continuing law, which is modified by the act as described below, prohibits an owner *or owners* of property submitted to the provisions of the Condominium Law from thereafter conveying any unit of the condominium property until all liens and encumbrances, except taxes and assessments of political subdivisions, affecting both the unit and any other part of the condominium property have been paid and satisfied or the unit being conveyed has been released from the operation of those liens or encumbrances (R.C. 5311.12).

The act prohibits any owner of property submitted to the provisions of the Condominium Law from conveying *fee title to* any unit of the condominium property until all liens and encumbrances, except taxes and assessments of political subdivisions *not then due and payable*, affecting both the unit and any other part of the condominium property are paid and satisfied, the unit is released from the operation of those liens and encumbrances, *or the purchaser of the unit assumes the lien* (R.C. 5311.12).

### **Liens and encumbrances**

#### **Continuing law**

Under continuing law, any person who does work or labor upon or furnishes machinery, material, or fuel for the alteration or repair of any unit without the consent or authorization of the owner, *part-owner* or lessee of any interest in the unit, or the owner's, part-owner's, or lessee's authorized agent, is nevertheless entitled to a lien to secure payment therefor on the estate or interest in the unit of the owner, pursuant to the Lien Law, if the alteration or repair has been duly authorized or directed by the board of managers of the unit owners association and has been necessary in the opinion of the board of managers for public safety or in order to prevent damage to or destruction of any other part of the condominium property. Any person who does work or labor upon or furnishes machinery, material, or fuel for the construction, alteration, repair, improvement, enhancement, or embellishment of any part of the common areas and facilities of any condominium property is entitled to a lien to secure payment therefor on the estates or interests of all owners in all units and their respective percentages of interest in the common areas and facilities, pursuant to the Lien Law, if the construction, alteration, repair, improvement, enhancement, or embellishment has been duly authorized or directed by the board of managers of the unit owners association.



When a lien exists under the Lien Law to secure payment for work or labor done or machinery, material, or fuel furnished for property, which thereafter becomes condominium property through the filing of a declaration, regardless of the condominium property to which the lien originally attached, after the declaration is filed for record, the lien is enforceable as to condominium property only against units and their appurtenant interests in the common areas and facilities owned by the declarant or conveyed by the *declarant* other than in regard to purchasers in good faith for value. Foreclosure of such a lien does not of itself terminate the condominium. This provision does not limit the right to enforce a lien arising under the Lien Law against property that does not become condominium property through the filing of a declaration. (R.C. 5311.13(B), (C), and (E).)

### **Operation of the act**

Under the act, any person who does work or labor upon or furnishes machinery, material, or fuel for the alteration or repair of any unit without the consent or authorization of any owner or lessee (the act deletes "part-owner") of any interest in the unit or the owner's or lessee's authorized agent nevertheless is entitled to a lien to secure payment for the work, labor, machinery, material, or fuel on the estate or interest in the unit of the owner, pursuant to the Lien Law, if the *work, labor*, alteration, or repair was duly authorized or directed by the board of directors of the unit owners association and necessary in the opinion of the board of directors for public safety or to prevent damage to or destruction of any other part of the condominium property. Any person who does work or labor upon or furnishes machinery, material, or fuel for the construction, alteration, repair, improvement, enhancement, or embellishment of any part of the common elements of any condominium property is entitled to a lien to secure payment for the work, labor, machinery, material, or fuel on the estates or interests of all owners in all units and their respective undivided interests in the common elements, pursuant to the Lien Law, if the *work, labor*, construction, alteration, repair, improvement, enhancement, or embellishment was duly authorized or directed by the board of directors of the unit owners association.

When a lien exists under the Lien Law to secure payment for work or labor done or machinery, material, or fuel furnished for property that subsequently becomes condominium property through the filing *and recording* of a declaration, regardless of the property to which the lien originally attached, after the declaration is filed for record, the lien is enforceable as to condominium property only against units and their appurtenant interests in the common elements that the *developer owned* or conveyed, other than in regard to purchasers in good faith for value. Foreclosure of that lien does not of itself terminate the condominium property. These provisions do not limit the right to enforce a lien arising under the

Lien Law against property that does not become condominium property through the filing *and recording* of a declaration. (R.C. 5311.13(B), (C), and (E).)

### **Damage to common elements**

Under continuing law, generally, in the event of damage to or destruction of all or any part of the common areas and facilities of a condominium property the unit owners, by the affirmative vote of those entitled to exercise not less than 75% of the voting power or such greater per cent as may be provided in the declaration, may elect not to repair or restore the same. Upon that election, all of the condominium property is subject to an action for sale as upon partition at the suit of *any unit owner*. *In the event of any such sale or a sale of the condominium property after such election by agreement of all unit owners*, the net proceeds of the sale, together with the net proceeds of insurance, if any, and any other indemnity arising because of the damage or destruction, are considered as one fund and must be distributed to all unit owners in proportion to their respective percentages of interest in the common areas and facilities. No unit owner is entitled to receive any portion of the unit owner's *share* of such proceeds until all liens and encumbrances on the owner's unit have been paid, released, or discharged. (R.C. 5311.14(A) and (B).)

Under the act, upon an election not to repair or restore as described in the preceding paragraph, all of the condominium property is subject to an action for sale as upon partition at the suit of *unit owners exercising a majority of the voting power of unit owners*. If the condominium property is sold under this provision, any net proceeds of the sale, the net proceeds of insurance, and any other indemnity arising because of the damage or destruction are considered as one fund for distribution to all unit owners in proportion to the undivided interests in the common elements appurtenant to their units. No unit owner is entitled to receive any portion of *those* proceeds (instead of the owner's *share* of the proceeds) until all liens and encumbrances on the unit, *except taxes and assessments of political subdivisions not then due and payable*, are paid, released, or discharged. (R.C. 5311.14(B)(2).)

### **Insurance**

Continuing law, which is modified by the act as described below, provides that unless otherwise provided by the declaration or bylaws, the board of managers must insure all unit owners, their tenants, and all persons lawfully in possession or control of any part of the condominium property for the amount that it determines against liability for personal injury or property damage arising from or relating to the common areas and facilities and must also obtain for the benefit of all unit owners fire and extended coverage insurance on all buildings and structures of the

condominium property in an amount not less than 80% of the *fair value* thereof. (R.C. 5311.16.)

Under the act, the fire and extended coverage insurance on all buildings and structures of the condominium property must be in an amount not less than 80% of the *fair market value* (R.C. 5311.16).

### **Removal of property from Condominium Law**

Under continuing law, unless otherwise provided by the declaration, the unit owners, by the affirmative vote of all unit owners, may elect to remove condominium property from the provisions of the Condominium Law. In the event of that election, all liens and encumbrances, except taxes and assessments not then due and payable, upon all or any part of the condominium property, must be paid, released, or discharged. A certificate setting forth that the election was made must be filed with the recorder of the county or counties in which the condominium property is situated and recorded by the recorder. The certificate must be signed by the president or other chief officer of the board of managers of the unit owners association, who must certify in the certificate under oath that all liens and encumbrances, except taxes and assessments not then due and payable, upon all or any part of the common areas and facilities have been paid, released, or discharged. The certificate also must be signed by the unit owners, each of whom must certify in the certificate under oath that all liens and encumbrances on the owner's unit or units have been paid, released, or discharged. (R.C. 5311.17(A).)

Under the act, unless otherwise provided by the declaration *or the provision described in "**Damage to common elements**,"* above, the unit owners, by the affirmative vote of all unit owners, may elect to remove condominium property from the provisions of the Condominium Law. In the event of that election, all liens and encumbrances, except taxes and assessments *of political subdivisions* not then due and payable, upon all or any part of the condominium property, must be paid, released, *modified*, or discharged. A certificate setting forth that the election was made must be filed with the recorder of the county or counties in which the condominium property is situated and recorded by each recorder. The certificate must be signed: (1) by the president or other chief officer of the unit owners association, who must certify in the certificate under oath that all liens and encumbrances, except taxes and assessments *of political subdivisions* not then due and payable, upon all or any part of the common elements have been paid, released, *modified*, or discharged and (2) by the unit owners, each of whom must certify in the certificate under oath that all liens and encumbrances on the owner's unit or units have been paid, released, *modified*, or discharged, *except taxes and assessments of political subdivisions not then due and payable*. (R.C. 5311.17(A).)

## *Lien rights of unit owners association*

### *Prior law*

Under prior existing law, unless otherwise provided by the declaration or bylaws, the unit owners association had a lien upon the estate or interest of the owner in any unit and the appurtenant percentage of interest in the common areas and facilities for the payment of the portion of the common expenses chargeable against the unit that remains unpaid for ten days after the portion has become due and payable. The lien was effective on the date a certificate of lien was filed for record in the office of the recorder of the county or counties in which the condominium property was situated pursuant to authorization given by the board of managers. The certificate was required to contain a description of the unit, the name of the record owner, and the amount of the unpaid portion of the common expenses and was required to be subscribed by the president or *other chief officer* of the unit owners association. (R.C. 5311.18(A).)

The lien described in the preceding paragraph was prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of first mortgages that have been filed for record, and was required to be foreclosed in the same manner as a mortgage on real property in an action brought on behalf of the unit owners association by its president or other chief officer pursuant to authority given by the board of managers. In the foreclosure action, the owner of the unit *affected* was required to pay a reasonable rental for the unit during the pendency of the action, and the *plaintiff* in the action was entitled to the appointment of a receiver to collect the rental. In the foreclosure action, the unit owners association, or its agent, duly authorized by action of its board of managers, was entitled, unless prohibited by the declaration or bylaws, to become a purchaser at the foreclosure sale. (R.C. 5311.18(B).)

### *Operation of the act*

The act provides that unless otherwise provided by the declaration or the bylaws, the unit owners 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 any of the following expenses that are chargeable against the unit and that remain unpaid for ten days after any portion has become due and payable (R.C. 5311.18(A)(1)):

- (1) The portion of the common expenses chargeable against the unit;
- (2) *Interest, administrative late fees, enforcement assessments, and collection costs, attorney's fees, and paralegal fees the association incurs if*

*authorized by the declaration, the bylaws, or the rules of the unit owners association and if chargeable against the unit.*

The act additionally provides that unless otherwise provided by the declaration, the bylaws, or the rules of the unit owners association, the association must credit payments made by a unit owner for the above expenses in the following order of priority (R.C. 5311.18(A)(2)):

- (1) First, to interest owed to the association;
- (2) Second, to administrative late fees owed to the association;
- (3) Third, to collection costs, attorney's fees, and paralegal fees incurred by the association;
- (4) Fourth, to the principal amounts the unit owner owes to the association for the common expenses or penalty assessments chargeable against the unit.

The lien is effective on the date that a certificate of lien in the form described below is filed for record in the office of the recorder of the county or counties in which the condominium property is situated pursuant to an authorization given by the board of directors of the unit owners association. The certificate must contain a description of the unit, the name of the record owner *of the unit*, and the amount of the unpaid portion of the common expenses and, *subject to subsequent adjustments, any unpaid interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, and paralegal fees.* The certificate must be subscribed by the president or other *designated representative* of the association. (R.C. 5311.18(A)(3).)

The lien is prior to any lien or encumbrance subsequently arising or created except liens for real estate taxes and assessments *of political subdivisions* and liens of first mortgages that have been filed for record and may be foreclosed in the same manner as a mortgage on real property in an action brought on behalf of the unit owners association by the president or other chief officer of the association pursuant to authority given to that individual by the board of directors.

In a foreclosure action a unit owners association commences pursuant to the preceding paragraph *or a foreclosure action the holder of a first mortgage or other lien on a unit commences*, the owner of the unit, *as the defendant in the action*, must be required to pay a reasonable rental for the unit during the pendency of the action. The unit owners association or the holder of the lien is entitled to the appointment of a receiver to collect the rental. *Each rental payment a receiver collects during the pendency of the foreclosure action must be applied*

*first to the payment of the portion of the common expenses chargeable to the unit during the foreclosure action.*

The act additionally provides that in a foreclosure action the holder of a lien on a unit commences, the holder of that lien must name the unit owners association as a defendant in the action.

Unless prohibited by the declaration or the bylaws, *following a foreclosure action a unit owners association commences or a foreclosure action the holder of a lien on a unit commences*, the association or its agent duly authorized by action of the board of directors, is entitled to become a purchaser at the foreclosure sale.

Under the act, a mortgage on a unit may contain a provision that secures the mortgagee's advances for the payment of the portion of the common expenses chargeable against the unit upon which the mortgagee holds the mortgage. 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. (R.C. 5311.18(B).)

### **Compliance with deed, declaration, bylaws, and rules**

#### **Prior law**

Under prior law, all unit owners, their tenants, and all persons lawfully in possession and control of any part of the condominium property must comply with all covenants, conditions, and restrictions set forth in a deed to which they are subject or in the declaration, bylaws of the unit owners association, or *administrative rules and regulations adopted pursuant to the provisions thereof, as any of the same may be lawfully amended from time to time*. Violations of those covenants, conditions, and restrictions are grounds for actions for damages or injunctive relief, or both, brought by the unit owners association, by a unit owner or unit owners, or by both. (R.C. 5311.19.)

#### **Operation of the act**

Under the act, all unit owners, their tenants, all persons lawfully in possession and control of any part of a condominium property, *and the unit owners association of a condominium property* must comply with all covenants, conditions, and restrictions set forth in a deed to which they are subject or in the declaration, the bylaws, or the rules of the unit owners association, as lawfully amended. Violations of those covenants, conditions, or restrictions are grounds for the unit owners association or any unit owner to commence a civil action for damages, injunctive relief, or both, *and an award of court costs and reasonable attorney's fees in both types of action*. (R.C. 5311.19(A).)



### **Right to evict**

The act provides that except as otherwise provided in the declaration or the bylaws, a unit owners association may initiate eviction proceedings, pursuant to the Landlord-Tenant Law and the Forcible Entry and Detainer Law, to evict a tenant for a violation described in the preceding paragraph. The action must be brought by the unit owners association, as the unit owner's agent, in the name of the unit owner. In addition to any procedures required by those Laws, 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, must be charged to the unit owner and must be the subject of a special assessment against the offending unit and made a lien against that unit. (R.C. 5311.19(B).)

### **Actions by or against unit owners association**

Under prior existing law, in any action relating to the common areas and facilities or to any right, duty, or obligation possessed or imposed upon the unit owners association, by statute or otherwise, the unit owners association could sue or be sued as a separate legal entity. In any such action, service of summons or other process had to be made upon the unit owners association by serving the same personally upon the president or *other chief officer* of the association or upon the person named in the declaration as the person to receive service of process, or by leaving the same at the residence or place of business of such person set forth in the declaration. (R.C. 5311.20.)

Under the act, in any action relating to the common elements or to any right, duty, or obligation possessed or imposed upon the unit owners association by statute or otherwise, the unit owners association may sue or be sued as a separate legal entity. In any action of that nature, service of summons or other process may be made upon the unit owners association by serving the process personally upon the president or other *designated representative of the unit owners association* named in the declaration to receive service of process, *or the person named as statutory agent of the association if it is an incorporated entity*, or by leaving the process at the residence or place of business of a person named in the declaration *or named as statutory agent*. (R.C. 5311.20.)

### **Distribution of common expenses and profits**

Prior law provided that the common profits of a condominium property had to be distributed among and the common expenses had to be charged to the unit owners according to the percentages of interest in the common areas and facilities appurtenant to their respective units (R.C. 5311.21).



Under the act, *unless retained by the board of directors as reserves*, the common profits of a condominium property must be distributed among, and, *except as described in "Common expenses,"* above, the common expenses must be charged to the unit owners according to the undivided interests in the common elements appurtenant to their respective units (R.C. 5311.21).

### **Voting privileges**

#### **Prior and continuing law**

Prior and continuing law provided that unless otherwise provided in the declaration, each unit owner of a condominium property could exercise that percentage of the total voting power of all unit owners on any question for which the vote of unit owners was permitted or required that is equivalent to the percentage of interest in the common areas and facilities appurtenant to the owner's unit.

Fiduciaries *and minors* who are owners of record of a unit or units could vote their respective interests as unit owners. If two or more persons, whether fiduciaries, tenants in common, or otherwise, own undivided interests in a unit, each could exercise the proportion of the voting power of all the owners of the unit that is equivalent to the person's proportionate interest in the unit. A fiduciary for a unit owner or of the estate of a unit owner may vote as though the fiduciary were the unit owner when the fiduciary has furnished to the unit owners association proof, satisfactory to it, of appointment and qualification as: (1) an executor under the last will of a deceased unit owner, (2) an administrator of the estate of a deceased unit owner, (3) a guardian, committee, or conservator of the estate of a *ward* or incompetent who is a unit owner, (4) a trustee in bankruptcy of a unit owner, (5) a statutory or judicial receiver or liquidator of the estate or affairs of a unit owner, or (6) an assignee for the benefit of creditors of a unit owner. (R.C. 5311.22(A), (B), and (C).)

#### **Operation of the act**

Under the act and continuing law modified by the act, unless otherwise provided in the declaration *or bylaws*, each unit owner may exercise that percentage of the total voting power of all unit owners on any question for which the vote of unit owners is permitted or required that is equivalent to the undivided interest in the common elements appurtenant to the owner's unit.

Fiduciaries (the act deletes "and minors") who are owners of record of a unit or units may vote their respective interests as unit owners. *Unless otherwise provided in the declaration or bylaws*, if two or more persons, whether fiduciaries, tenants in common, or otherwise, own undivided interests in a unit, each person

may exercise the proportion of the voting power of all of the owners of the unit that is equivalent to the person's proportionate *undivided* interest in the unit. A fiduciary for a unit owner or of the estate of a unit owner may vote as though the fiduciary were the unit owner when the fiduciary has furnished to the unit owners association proof, satisfactory to it, of the fiduciary's appointment and qualification as any of the types of persons listed above in items (1), (2), (4), (5), and (6) under "**Prior and continuing law**" or as a guardian, committee, or conservator of the estate of a *minor* (instead of "ward") or incompetent who is a unit owner. (R.C. 5311.22(A), (B), and (C).)

### **Liability for noncompliance with condominium instruments**

Under continuing law, as modified by the act in italics, a declarant, developer, agent, or unit owner or any person entitled to occupy a unit is liable in damages in a civil action for *harm* caused to any person *or to the unit owners association* by that individual's failure to comply with any lawful provision of the condominium instruments. Any interested person, *including a unit owners association*, may commence an action for a declaratory judgment to determine that person's legal relations under the condominium instruments or to obtain an injunction against a declarant, developer, agent, unit owner, or person entitled to occupy a unit who refuses to comply, or threatens to refuse to comply, with a provision of the condominium instruments. *In connection with either type of action described in this paragraph*, one or more unit owners may bring a class action on behalf of all unit owners. The lawful provisions of the condominium instruments, if necessary to carry out their purposes, may be enforced *in either type of action* against the condominium property or any person who owns or previously has owned any *estate or* interest in the condominium property. (R.C. 5311.23(A), (B), and (C).)

### **Excluded transactions**

Under continuing law, the provisions of the Condominium Law described below in "**Provisions required in condominium instruments**," "**Condominium development disclosure statement**," and "**Remedies**" do not apply to any of the following, unless the method of disposing of the condominium property is adopted for the purpose of evading those provisions (R.C. 5311.24):

- (1) The sale of a condominium ownership interest solely for commercial or industrial purposes or uses;
- (2) The sale of real estate under or pursuant to court order;

(3) The sale of real estate by the United States or any of its agencies or instrumentalities, or by this state or any political subdivision of this state, or any of their agencies or instrumentalities;

(4) The sale of condominium ownership interests in individual dwelling units or individual water slip units, and their appurtenant common areas and facilities for the own account of a person other than a declarant, developer, or agent when the sale is not conducted pursuant to the common promotional plan of the developer for sales in a condominium development.

The act provides that a sale or offer to sell a condominium ownership interest does not exist when a reservation agreement is entered into that does not legally require a prospective purchaser to purchase a condominium ownership interest and under which the prospective purchaser may relinquish all rights and receive a full refund of all deposits, without penalty, at any time prior to entering into a contract to purchase a condominium ownership interest (R.C. 5311.24(B)).

### **Provisions required in condominium instruments**

#### **Continuing and prior law**

Continuing and prior law prohibited any developer or agent from directly or indirectly selling or offering to sell a condominium ownership interest in a condominium development unless the condominium instruments pertaining to the development provided the following (R.C. 5311.25):

(1) Any deposit or down payment made in connection with the sale will be held in trust or escrow until delivered at settlement or returned to or otherwise credited to the purchaser, or forfeited to the developer, and that if a deposit or down payment of \$2,000 or more is held for more than 90 days, interest at the rate of *at least 4% per annum* for any period exceeding 90 days must be credited to the purchaser at settlement or upon return or other credit made to the purchaser, or added to any forfeiture to the developer.

(2) Except in the capacity as a unit owner of unsold condominium ownership interests, the developer or agent will not retain a property interest in any of the common areas and facilities after control of the condominium development is assumed by the unit owners association except that: (a) in the case of a leasehold condominium development, the developer or agent may retain the same interest in the common areas and facilities as the developer or agent retains in the entire condominium development, (b) the developer or agent may retain a property interest in recreational facilities furnished to unit owners or to unit owners and others under a contract entered into or renewed by the unit owners association after unit owners other than the developer have assumed control of the

association, and (c) in an expandable condominium property the developer may retain an interest consistent with the declaration and required to insure ingress and egress, from and to the common areas and facilities by the prospective unit owners in the additional property.

(3) The owners of condominium ownership interests that have been sold by the developer or agent will assume control of the common areas and facilities and of the unit owners association as prescribed in R.C. 5311.08(C) (see **Existing law**" under "**Establishment; board of directors**" in "**Unit owners association,**" above).

(4) Neither the unit owners association nor the unit owners will be subject to any management contract or agreement executed prior to the assumption of control required under paragraph (3), above, for more than one year subsequent to that assumption of control unless such a contract or agreement is renewed by a vote of the unit owners pursuant to the bylaws.

(5) Except as provided in paragraph (d), below, the developer has furnished, as a minimum, a two-year warranty covering the full cost of labor and materials for any repair or replacement of roof and structural components, and mechanical, electrical, plumbing, and common service elements serving the condominium property or additional property as a whole, occasioned or necessitated by a defect in material or workmanship and a one-year warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical, and other elements pertaining to each unit, occasioned or necessitated by a defect in material or workmanship commencing as follows:

(a) In the case of a condominium development other than an expandable condominium development, the two-year warranty commences on the date the deed or other evidence of ownership is filed for record following the sale of the first condominium ownership interest in the development to a purchaser in good faith for value.

(b) In the case of an expandable condominium development, the two-year warranty commences for property submitted by the original declaration on the date the deed or other evidence of ownership is filed for record following the sale of the first condominium ownership interest in the property, and for any additional property submitted by amendment to the declaration, on the date the deed or other evidence of ownership is filed for record following the sale of the first condominium ownership interest in the additional property; in either case to a purchaser in good faith for value.

(c) The one-year warranty commences on the date the deed or other evidence of ownership is filed for record following the first sale of a condominium ownership interest to a purchaser in good faith for value.

(d) In the case of ranges, refrigerators, washing machines, clothes dryers, hot water heaters, and other similar appliances installed and furnished as part of the unit by the developer, the valid assignment by the developer of the express and implied warranty of the manufacturer satisfies the developer's obligation under this provision with respect to those appliances, and the developer's warranty under this provision is limited to the installation of the appliances.

(e) All warranties made to the developer that exceed time periods specified in this provision with respect to any part of the units or common areas and facilities must be assigned to the purchaser.

(6) The developer will assume the rights and obligations of a unit owner in the capacity as owner of condominium ownership interests not yet sold, including, without limitation, the obligation to pay common expenses attaching to those interests, from the date the declaration is filed for record.

(7) In the case of a conversion condominium development, all tenants were offered an option, exercisable within not less than 90 days after notice, to purchase a condominium ownership interest in the development, and those tenants were given written notice of not less than 120 days prior to being required to vacate the premises to facilitate the conversion.

Deposits and down payments held in trust or escrow pursuant to paragraph (1), above, are not subject to attachment by creditors of the developer or a purchaser.

### **Operation of the act**

Except as described above in "**Excluded transactions**," the act prohibits any developer or agent from directly or indirectly selling or offering to sell a condominium ownership interest in a condominium development unless the condominium instruments include a statement that sets forth the requirements described in "**Provisions required in condominium instruments**," "**Condominium development disclosure statement**," and "**Remedies**." (R.C. 5311.25(H).) The act modifies the provisions described in paragraphs (1) to (7) in "**Continuing law**," above, as follows:

(1) *Except as described in the next paragraph*, any deposit or down payment made in connection with the sale of a condominium ownership interest must be held in trust or escrow until delivered at settlement, returned to or

otherwise credited to the purchaser, or forfeited to the developer. If a deposit or down payment of *more than \$2,000* is held for more than 90 days and *is not withdrawn pursuant to the next paragraph*, interest at a rate *equal to the prevailing rate payable by federally insured financial institutions in the county of the condominium property on daily interest accounts* for any period exceeding 90 days must be credited to the purchaser at settlement or upon return or other credit made to the purchaser or added to any forfeiture to the developer. *Interest is payable only on the amount of the deposit or down payment that exceeds \$2,000.*

Under the act, if a contract for the sale of a condominium ownership interest contains the legend described in the last sentence of this paragraph, 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 the 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 condominium property. The developer cannot use the moneys for advertising purposes or for the salaries, commissions, or expenses of agents. A contract that permits withdrawals of a deposit or down payment for the purposes described in this paragraph must include the following legend conspicuously printed or stamped in boldface type on the contract's first page and immediately above the signature of the purchaser: "Purchaser acknowledges that, pursuant to this contract, the developer may withdraw and then use for construction and development of the condominium property any deposit or down payment that the purchaser makes prior to closing."

The act additionally provides that deposits and down payments held in trust or escrow in accordance with the first paragraph in (1), above, are not subject to attachment, garnishment, or other legal process by creditors of the developer, agents, or the purchaser of the condominium ownership interest. (R.C. 5311.25(A).)

(2) Except in the capacity as a unit owner of unsold condominium ownership interests, the developer or agent cannot retain a property interest in any of the common elements after *unit owners other than the developer assume control* of the unit owners association except as follows (R.C. 5311.25(B)):

(a) In a leasehold condominium development, the developer or agent may retain the same interest in the common elements as the developer or agent retains in the entire condominium development.

(b) In an expandable condominium property, the developer may retain an interest consistent with the declaration and necessary to *ensure both of the following, whether or not the condominium property is expanded to include the additional property*: (i) ingress and egress over the common elements *for the*



*benefit of the additional property and (ii) the availability of utilities from and to the common elements for the benefit of the additional property.*

(c) *The developer may retain the right to enter upon the condominium property to fulfill any warranty obligations to the unit owners association or to unit owners.*

(3) The owners of condominium ownership interests that have been sold by the developer or an agent must assume control of the common elements and of the unit owners association as prescribed in "**Establishment; board of directors**" under "**Unit owners association**," above (R.C. 5311.25(C)).

(4) *Unless a contract or other agreement is renewed by a vote of the unit owners exercising a majority of the voting power of the unit owners association, neither the unit owners association nor the unit owners are subject to either of the following (R.C. 5311.25(D)):*

(a) *For more than 90 days subsequent to the date that the unit owners other than the developer assume control of the unit owners association, any management contract executed prior to that assumption of control;*

(b) *For more than one year subsequent to an assumption of control, any other contract executed prior to that assumption of control, except for contracts for necessary utility services.*

(5) The act restructures the provisions described in paragraphs (5)(a), (b), and (d) in "**Continuing and prior law**," above, and makes the following changes in paragraphs (5)(c) and (e) in "**Continuing and prior law**," above (R.C. 5311.25(E)(3) and (5)):

In paragraph (5)(c), the one-year warranty *for each unit* commences on the date the deed or other evidence of ownership is filed for record following the *developer's sale and conveyance* of the condominium ownership interest *in the unit* to a purchaser in good faith for value.

In paragraph (5)(e), all warranties made to the developer that exceed time periods specified in paragraph (5)(a) in "**Continuing law**," above, with respect to any part of *a unit must be assigned to the purchaser of that unit and warranties with respect to any part of the common elements must be assigned to the unit owners association.*

(6) The developer must assume the rights and obligations of a unit owner in the developer's capacity as owner of condominium ownership interests not yet sold, including the obligation to pay common expenses attaching to those interests, 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 complete (R.C. 5311.25(F)).*

(7) In a conversion condominium development, the developer must offer each tenant an option, exercisable within not less than 90 days after notice, to purchase a condominium ownership interest in the development *that the tenant occupies and at a price that is not greater than the price at which the unit will be offered to the general public for the subsequent 180-day period.* The developer must give each tenant written notice of not less than 120 days *prior to the conversion or intended 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 under the tenant's terms of tenancy.* The 90-day and 120-day notice periods 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.* (R.C. 5311.25(G).)

### **Condominium development disclosure statement**

#### **Continuing law**

Continuing law prohibits any developer or agent from directly or indirectly selling or offering to sell a condominium ownership interest in a condominium development unless the developer or agent discloses fully and accurately to each prospective purchaser of the interest all material circumstances or features affecting the development, by preparing and providing to each prospective purchaser a readable and understandable written statement of such circumstances or features. The statement must not intentionally omit any material fact or contain any untrue statement of a material fact and must contain specified information, among which are the following (R.C. 5311.26(A), (B), (C), (F), (G), (J), and (M)):

(1) The name and address of the condominium development, and the name, address, and telephone number of the developer and of the development manager or the development manager's agent;

(2) A general narrative description of the development stating the total number of units, a description of the types of units *and price of each type of unit*, the total number of units that may be included in the development by reason of future expansion or merger of the development, and a precise statement of the nature of the condominium ownership interest that is being offered;

(3) A general disclosure of the status of construction, zoning, site plan, or other approvals, and compliance or notice of failure to comply with any other federal, state, or local statutes or regulations affecting the development, and the



actual or scheduled dates of completion of buildings, recreation facilities, and other common areas and facilities;

(4) A two-year projection, revised and updated *at least every six months*, of annual expenditures necessary to operate and maintain the common areas and facilities of the condominium development, prepared by the developer and specifically stating the assumptions and bases of the projection, and a complete statement of estimated monthly cost per unit for such two-year period including:

- (a) The formula for determining each unit's share of common expenses;
- (b) The amount of *taxes and* insurance and a description of the basis or formula used in arriving at these amounts;
- (c) The dollar amount of operating and maintenance expenses;
- (d) The monthly cost of utilities;
- (e) Any other costs, fees, and assessments reasonably ascertainable by the developer.

(5) In the case of a conversion condominium development, a report by the developer stating the age, the condition and the developer's opinion of the remaining useful life of structural elements and mechanical and supporting systems, together with the developer's estimate of repair and replacement costs projected for five years from the date the property is submitted to the provisions of the Condominium Law;

(6) A statement in *20-point*, boldface type of the purchaser's right to review the condominium instruments, to void the contract, any conditions for the return of deposit, and a statement of the rights of purchasers described in "**Remedies**," below;

(7) A statement of the requirement for escrow of deposits.

**Operation of the act**

*Except as described in "**Excluded transactions**,"* below, the act prohibits any developer or agent from directly or indirectly selling or offering to sell a condominium ownership interest in *a residential or water slip* condominium development unless the developer or agent provides the prospective purchaser a condominium development disclosure statement that discloses fully and accurately all material circumstances or features affecting the development in a readable and understandable written statement. The statement must not intentionally omit any material fact or contain any untrue statement of a material fact and must contain

specified information under continuing law, including the items described above in "Continuing law," as modified by the act in the following manners (R.C. 5311.26(A), (B), (C), (F), (G), (J), and (M)):

(1) The name and address of the condominium development, and the name, address, and telephone number of the developer and of the development manager *if other than the developer*, or that manager's agent;

(2) A general narrative description of the development stating the total number of units, a description of the types of units (the act removes "and price of each type of unit"), the total number of units that may be included in the development by reason of future expansion or merger of the development, and a precise statement of the nature of the condominium ownership interest that is being offered;

(3) A general disclosure of the following:

(a) The status of construction, zoning, site plan, or other *governmental* approvals;

(b) Compliance or notice of failure to comply with any federal, state, or local statutes or regulations affecting the development;

(c) The actual or scheduled dates of completion of any buildings, recreation facilities, and other common elements;

(d) *Whether the developer is required to construct recreational facilities or other common elements.*

(4) A two-year projection, revised and updated *within the past year if changed, unless the developer no longer controls the association*, of annual expenditures necessary to operate and maintain the common elements of the condominium development *and the cost of any mandatory dues and membership in a not-for-profit organization described above in paragraph (6) in "Operation of the act" under "Declaration and contents."* The projection must be prepared by the developer, specifically state the assumptions and bases of the projection, and include a complete statement of the estimated monthly cost per unit for the two-year period, including all of the items described in paragraphs (4)(a), (c), (d), and (e) in "Continuing law," above, unchanged by the act, and in paragraph (4)(b) in "Continuing law," above, only the amount of insurance (the act removes "and taxes") and a description of the basis or formula used in arriving at that amount.

(5) For a conversion condominium development, *the offering price of each unsold unit or type of unsold unit and a report by the developer stating the age, the condition, and the developer's opinion of the remaining useful life of structural*

elements and mechanical and supporting systems, together with the developer's estimate of repair and replacement costs projected for five years from the date the property is submitted to the provisions of the Condominium Law;

(6) A statement in *conspicuous* (instead of *20-point*) boldface type of the purchaser's right to review the condominium instruments, the purchaser's right to void the contract, any conditions for the return of a deposit, and the rights of purchasers described in "**Remedies**," below;

(7) A statement of the requirement for escrow of deposits *and the right of the developer to use all or any part of these*.

### **Remedies**

#### **Continuing law**

Under continuing law, in addition to any other remedy available, a contract or agreement for the sale of a condominium ownership interest that is executed in violation of the provisions described above in "**Provisions required in condominium instruments**" and "**Condominium development disclosure statement**" is voidable by the purchaser for a period of 15 days after the *date of sale* of the condominium ownership interest or 15 days after the date upon which the purchaser executes a document evidencing receipt of the information required in the condominium development disclosure statement, whichever occurs later. Upon exercise of this right to void the contract or agreement, the developer or the developer's agent must refund fully and promptly to the purchaser any deposit or other prepaid fee or item and any amount paid on the purchase price, and shall pay all closing costs paid by the purchaser or for which the purchaser is liable in connection with the void sale. (R.C. 5311.27(A).)

Continuing law specifies the manner of determining the amount for which the developer or agent is liable to the purchaser. In no case can the recoverable amount be less than \$500 for each violation. If the Attorney General has reason to believe substantial numbers of persons are affected and substantial harm is occurring or is about to occur to those persons, or that the case is otherwise of substantial public interest, the Attorney General may bring a declaratory judgment action or a class action for damages. Existing law prescribes the procedures for these actions. (R.C. 5311.27(B) and (C).)

#### **Operation of the act**

Under the act, in addition to any other remedy available, a contract or agreement for the sale of a condominium ownership interest that is executed in violation of the provisions described above in "**Provisions required in**

condominium instruments" and "Condominium development disclosure statement" is voidable by the purchaser until the later of 15 days after the *contract is entered into* for sale of the condominium ownership interest or 15 days after the purchaser executes a document evidencing receipt of the information required in the condominium development disclosure statement, *except that in no case is the contract or agreement voidable after the title to the condominium ownership interest is conveyed to the purchaser.* (R.C. 5311.27(A)(1).) The act makes no other substantive changes to existing law, but adds the following provision:

Nonmaterial errors and omissions in the disclosure statements required as described above in "Provisions required in disclosure instruments" and "Condominium development disclosure statement" are not actionable in a civil action otherwise authorized by R.C. 5311.27 if the developer or agent has attempted in good faith to comply with the disclosure requirements and if the developer or agent has substantially complied with those requirements (R.C. 5311.27(D)).

### Other outright repeals

#### Rehabilitation of condominium

Under prior law, the unit owners association could, by the affirmative vote of unit owners entitled to exercise not less than 75% of the voting power or such greater per cent as may be provided in the declaration, decide that the condominium property was obsolete in whole or in part and elect to have the same renewed and rehabilitated. The board of managers were required to proceed with that renewal and rehabilitation and their cost was a common expense. The declaration could provide that any unit owner who did not vote for that renewal and rehabilitation could elect, in a writing served by the unit owner on the president or other chief officer of the unit owners association within five days after receiving notice of the vote, to receive the fair market value of the owner's unit, less the amount of any liens and encumbrances on the unit as of the date the vote is taken, in return for a conveyance of the unit, subject to the liens and encumbrances on the unit, to the president or other chief officer as trustee for all other unit owners. In the event of that election, the conveyance and payment of the consideration for the conveyance, which was a common expense to the unit owners who did not so elect, had to be made within ten days thereafter, and, if that owner and a majority of the board of managers could not agree upon the fair market value of the unit, the determination had to be made by the majority vote of a board of three appraisers. One of those appraisers had to be appointed by the owner, one appointed by the board of managers, and the third appointed by the first two. (R.C. 5311.15.)

The act outright repeals this provision in prior law. (See "*Damage to common elements*," above.)

***Applicability of Act to property submitted to Condominium Law by declaration or amendment of declaration after Act's effective date***

Prior law provided that Am. Sub. H.B. 404 of the 112th General Assembly (disclosure and consumer protection measures, creation of expandable and conversion condominium properties) applied to condominium property submitted to R.C. Chapter 5311. by the filing of a declaration on or after October 1, 1978. R.C. 5311.23, 5311.24, 5311.25(A), (E), and (F) and final paragraph, 5311.26(A), (B), (C), (D), (E), (F), (H), (I), (J), (K), (L), (M), (N), and (O), and 5311.27, as enacted by that Act, apply to condominium ownership interests added to condominium property through the filing of an amendment to a declaration on or after October 1, 1978, even though the original declaration, the condominium property, or the condominium ownership interests added do not, on the date of the filing of the amendment or thereafter, comply in every respect with the definitions and requirements of "expandable condominium property" and "additional property" contained in the Act.

A declarant, developer, or unit owners association could apply any provision of the Act to condominium property under the control of any of them if vested rights were not impaired, or if vested rights were or could be impaired, but consent to the action was obtained from the person whose rights were or could be impaired. (R.C. 5311.241.)

The act outright repeals the above provisions in existing law.

***Miscellaneous***

The act also makes numerous structural, grammatical, gender neutralizing, conforming, and nonsubstantive changes in the sections discussed above in this analysis and in R.C. 5311.052 (action to contest change in undivided interests in common elements) and R.C. 5311.11 (each unit a separate parcel for taxation and assessment purposes). In addition, the act makes conforming changes in other sections (R.C. 317.09, 5301.25, 5301.255, and 5721.35).

***Releases of petroleum--record of deeds***

Continuing law provides that in the record of deeds that the county recorder must keep, certain specified information must be recorded, including all deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements, and hereditaments; all articles dedicating archaeological preserves accepted by the Director of the Ohio Historical Society; and all articles

dedicating nature preserves accepted by the Director of Natural Resources. The act requires that any restrictions on the use of property contained in a deed or other instrument under the law regarding corrective actions for suspected and confirmed releases of petroleum be recorded within the record of deeds. (R.C. 317.08(A)(1).)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-19-03	pp. 262-263
Reported, H. Civil & Commercial Law	05-14-03	p. 478
Passed House (97-0)	06-11-03	pp. 592-593
Reported, S. Civil Justice	02-10-04	pp. 1520-1521
Passed Senate (29-3)	03-17-04	pp. 1634-1635

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