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### (128th General Assembly) (Amended Substitute Senate Bill Number 187)

## AN ACT

**To enact sections 5312.01 to 5312.15 of the Revised Code to establish the Ohio Planned Community Law.**

***Be it enacted by the General Assembly of the State of Ohio:***

**SECTION 1.** That sections 5312.01, 5312.02, 5312.03, 5312.04, 5312.05, 5312.06, 5312.07, 5312.08, 5312.09, 5312.10, 5312.11, 5312.12, 5312.13, 5312.14, and 5312.15 of the Revised Code be enacted to read as follows:

**Sec. 5312.01.** As used in this chapter:

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

(B) "Bylaws" means an instrument filed with the declaration that provides for the operation of the owners association. "Bylaws" also is referred to as "regulations" pursuant to Chapter 1702. of the Revised Code.

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

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

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

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

(G) "Declaration" means an instrument a property owner executes and records to declare that the property is a planned community subject to the provisions of this chapter.

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

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

(J) "Lot" means a parcel or tract of land that is formed when a larger parcel of land is subdivided pursuant to Chapter 711. of the Revised Code, has a separate parcel number assigned by the county auditor, and is occupied or intended to be occupied by a dwelling unit.

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

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

(M) "Planned community" means a community comprised of individual lots for which a deed, common plan, or declaration requires any of the following:

(1) That owners become members of an owners association that governs the community;

(2) That owners or the owners association holds or leases property or facilities for the benefit of the owners;

(3) That owners support by membership or fees, property or facilities for all owners to use.

A condominium property as defined in section 5311.01 of the Revised Code is not a "planned community."

**Sec. 5312.02.** (A) Any planned community in this state is subject to this chapter. No person shall establish a planned community unless that person files and records a declaration and bylaws for that planned community in the office of the recorder of the county or counties in which the planned community is located.

(B) Any declaration for a planned community shall be accompanied by bylaws that provide for the operation of the planned community. The declaration and bylaws shall provide for all of the following:

(1) The election of the board of directors of the owners association;

(2) The number of persons constituting the board;

(3) The terms of the directors, with not less than one-fifth to expire annually;

(4) The powers and duties of the board;

(5) The method of removal of directors from office;

(6) Whether the services of a manager or managing agent may be engaged;

(7) The method of amending the declaration and bylaws;

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

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

(10) Any other matters the original declarant or the owners association deem necessary and appropriate.

(C) Nothing in this chapter invalidates any provision of a document that governs a planned community if that provision was in the document at the time the document was recorded and the document was recorded prior to the original effective date of this chapter.

(D)(1) The board of directors of the owners association of any planned community that is in existence on the original effective date of this chapter shall file and record the bylaws of that planned community that are in effect on that effective date in the office of the recorder of the county or counties in which the planned community is located within one hundred eighty days after that effective date.

(2) The board of directors of the owners association of any planned community that is in existence on the original effective date of this chapter shall file and record the bylaws that are adopted by the owners association on or after that effective date in the office of the recorder of the county or counties in which the planned community is located within ninety days after the date of adoption of the bylaws.

(3) The board of directors of the owners association of any planned community that adopts an amendment to the bylaws of that planned community shall file and record the amendment in the office of the recorder of the county or counties in which the planned community is located within sixty days after the date of adoption of the amendment.

(4) Nothing in division (D)(1) or (2) of this section shall require the board of directors or owners association of any planned community that is in existence on the original effective date of this chapter to adopt bylaws of that planned community.

(5) No board of directors of the owners association of a planned community that is in existence on the original effective date of this chapter shall pursue any civil action against any person based upon any provision of the bylaws of that planned community or upon any amendments to the bylaws until the bylaws or amendments are filed and recorded under division (D)(1), (2), or (3) of this section.

**Sec. 5312.03.** (A)(1) An owners association shall administer a planned community, and a board of directors the owners elect from among the owners and their spouses shall exercise all power and authority of the owners association. If an owner is not an individual, any principal, member of a limited liability company, partner, director, officer, trustee, or employee of the owner may be elected to the board.

(2) Unless otherwise provided, a board of directors may carry out any action this chapter requires or allows an owners association to take, subject to any vote required of the owners.

(B) A declarant shall establish an owners association not later than the date upon which the first lot in the planned community is conveyed to a bona fide purchaser for value. The owners association shall be organized as a nonprofit corporation pursuant to Chapter 1702. of the Revised Code.

(C)(1) If provided in the declaration, a declarant may control the owners association for the period of time the declaration specifies. During the time of declarant control, the declarant or the declarant's designee may appoint and remove the members of the board. The period of declarant control shall terminate not later than the time at which all of the lots have been transferred to owners.

(2) Not later than the termination of any period of declarant control, the owners shall elect a board of directors comprised of the number of members the declaration or bylaws specify.

**Sec. 5312.04.** (A) A board of directors of an owners association shall elect officers from the members of the board, to include a president, secretary, treasurer, and other officers as the board designates.

(B) A board may act in all instances on behalf of an association unless otherwise provided in this chapter, the declaration, or bylaws. The board may appoint persons to fill vacancies in its membership for the unexpired portion of any term.

(C) Except during a period of declarant control, the board shall call a meeting of the owners association at least once each year. Special meetings may be called by the president, a majority of the board, owners representing fifty per cent of the voting power in the owners association, or any lower share of the voting power as the declaration or bylaws specify.

(D) The board may hold a meeting by any method of communication, including electronic or telephonic communication, provided that each member of the board can hear or read in real time and participate and respond to every other member of the board.

(E) In lieu of conducting a meeting, the board may take an action with the unanimous written consent of the members of the board. Any written consent shall be filed with the minutes of the meetings of the board.

(F) No owner other than a director may attend or participate in any discussion or deliberation of a meeting of the board of directors unless the board expressly authorizes that owner to attend or participate.

(G) The board of directors of an owners association shall comply with all applicable state and federal laws concerning prohibitions against discrimination on the basis of race, color, religion, sex, military status, national origin, disability, age, or ancestry, including, but not limited to, Chapter 4112. of the Revised Code. No private right of action additional to those conferred by the applicable state and federal anti-discrimination laws is conferred on any aggrieved individual by the preceding sentence.

**Sec. 5312.05.** (A) Unless otherwise specified in the declaration or bylaws, the owners may amend the declaration and bylaws by the consent of seventy-five per cent of the owners, either in writing or in a meeting called for that purpose. No amendment to the declaration or bylaws is effective until filed in the office of the county recorder.

(B) A vote to terminate the applicability of the declaration and to dissolve the planned community requires the unanimous consent of owners.

**Sec. 5312.06.** (A) Unless otherwise provided in the declaration or bylaws, the owners association, through its board of directors, shall do both of the following:

(1) Annually adopt and amend an estimated budget for revenues and expenditures. Any budget shall include reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments, unless the owners, exercising not less than a majority of the voting power of the owners association, waive the reserve requirement annually.

(2) Collect assessments for common expenses from owners in accordance with section 5312.10 of the Revised Code.

(B) Commencing not later than the time of the first conveyance of a lot to a person other than a declarant, the owners association shall maintain all of the following to the extent reasonably available and applicable:

(1) Property insurance on the common elements;

(2) Liability insurance pertaining to the common elements;

(3) Directors and officers liability insurance.

(C) The owners association shall keep all of the following:

(1) Correct and complete books and records of account that specify the receipts and expenditures relating to the common elements and other common receipts and expenses;

(2) Records showing the collection of the common expenses from the owners;

(3) Minutes of the meetings of the association and the board of directors;

(4) Records of the names and addresses of the owners.

(D) An owners association, through its board of directors, may do any of the following:

(1) Hire and fire managing agents, attorneys, accountants, and other independent professionals and employees that the board determines are necessary or desirable in the management of the 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 association, the board of directors, or the property, or that involves two or more owners and relates to matters affecting the property;

- (3) Enter into contracts and incur liabilities relating to the operation of the property;
  - (4) Enforce all provisions of the declaration, bylaws, covenants, conditions, restrictions, and articles of incorporation governing the lots, common elements, and limited common elements;
  - (5) Adopt and enforce rules that regulate the maintenance, repair, replacement, modification, and appearance of common elements, and any other rules as the declaration provides;
  - (6) Acquire, encumber, and convey or otherwise transfer real and personal property, subject to section 5312.10 of the Revised Code;
  - (7) Hold in the name of the owners association the real property and personal property;
  - (8) Grant easements, leases, licenses, and concessions through or over the common elements;
  - (9) Levy and collect fees or other charges for the use, rental, or operation of the common elements or for services provided to owners;
  - (10) Pursuant to section 5312.11 of the Revised Code, levy the following charges and assessments:
    - (a) Interest and charges for the late payment of assessments;
    - (b) Returned check charges;
    - (c) Enforcement assessments for violations of the declaration, the bylaws, and the rules of the owners association;
    - (d) Charges for damage to the common elements or other property.
  - (11) Adopt and amend rules that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;
  - (12) Impose reasonable charges for preparing, recording, or copying the declaration, bylaws, amendments to the declaration and bylaws, resale certificates, or statements of unpaid assessments;
  - (13) Authorize entry to any portion of the planned community by designated individuals when conditions exist that involve an imminent risk of damage or harm to common elements, another dwelling unit, or to the health or safety of the occupants of that dwelling unit or another dwelling unit;
  - (14) Subject to division (A)(1) of section 5312.09 of the Revised Code, borrow money and assign the right to common assessments or other future income to a lender as security for a loan to the owners association;
  - (15) Suspend the voting privileges and use of recreational facilities of an owner who is delinquent in the payment of assessments for more than thirty days;
  - (16) Purchase insurance and fidelity bonds the directors consider appropriate and necessary;
  - (17) Invest excess funds in investments that meet standards for fiduciary investments under the laws of this state;
  - (18) Exercise powers that are any of the following:
    - (a) Conferred by the declaration or bylaws;
    - (b) Necessary to incorporate the owners association as a nonprofit corporation;
    - (c) Permitted to be exercised in this state by a nonprofit corporation;
    - (d) Necessary and proper for the government and operation of the owners association.
- Sec. 5312.07.** (A) Unless otherwise prohibited by this section, any owner may examine and copy the books, records, and minutes of the owners association that division (C) of section 5312.06 of the Revised Code describes, pursuant to reasonable standards set forth in the declaration, bylaws, or rules the board promulgates. The standards 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.
- (B) Unless approved by the board of directors, an owner may not examine or copy any of the following from books, records, and minutes:
- (1) Information that pertains to property-related personnel matters;
  - (2) Communications with legal counsel or attorney work product pertaining to potential, threatened or pending litigation, or other 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 owners association against other owners;

(5) Information, the disclosure of which is prohibited by state or federal law.

**Sec. 5312.08.** (A) Unless otherwise provided by the declaration, the owners association is responsible for reasonable maintenance, repair, and replacement of the common elements, and each owner is responsible for maintenance, repair, and replacement of the owner's lot and improvements to that lot, including the dwelling unit and the utility lines serving that dwelling unit.

(B) An owner shall permit agents or employees of the owners association and other owners access through the owner's lot and dwelling unit for the purpose of fulfilling the association's duties and obligations. Any damage to the common elements, lot, or dwelling unit due to that access is the responsibility of the owner that caused the damage or the owners association if it is responsible for the damage. That owner, or the owners association, is liable for the prompt repair of any damage and, if not repairable, for the value of the damaged property or item as it existed immediately prior to that damage.

**Sec. 5312.09.** (A)(1) The owners association may not assign the right to common assessments, or the future income from those assessments, or convey any fee interest or any security interest in any portion of the common elements unless the declaration specifically provides for such a conveyance or seventy-five per cent of the voting power of the owners association, or any larger percentage the declaration specifies, approves the conveyance.

(2) The owners association may not convey any fee interest in a limited common element or subject a limited common element to a security interest without the approval of all of the owners of the lots to which the limited common element is allocated. Any proceeds of the conveyance of a limited common element are an asset of the owners association.

(B) No contract to convey or subject a common element or a limited common element to a security interest is enforceable against the owners association unless it complies with division (A) of this section. The board of directors, on behalf of the owners association, has all powers necessary and appropriate to effect a conveyance or encumbrance that division (A) of this section permits, including the power to execute a deed or other instrument.

**Sec. 5312.10.** (A)(1) In accordance with its declaration, all costs the owners association incurs in the administration, governance, and maintenance of a planned community are common expenses. Unless otherwise provided in the declaration, all costs of the administration, operation, maintenance, repair, and replacement of the common elements are common expenses.

(2) The common expense liability of each lot shall be allocated in accordance with the allocation set forth in the declaration. If the declaration does not establish any allocation, the common expense liability shall be allocated equally among all the lots.

(3) The board of directors shall assess the common expense liability for each lot at least annually, based on a budget the board adopts at least annually.

(B) The board shall charge interest on any past due assessment or installment at the rate the board establishes, not to exceed any maximum rate permitted by law.

(C)(1) The board may not charge assessments for common expenses unless the declaration provides for or contemplates the charging of such assessments.

(2) The board may not increase any assessment for common expenses when the declaration limits the amount of such assessments unless the owners amend the declaration as provided in division (A) of section 5312.05 of the Revised Code to allow the increased amount.

**Sec. 5312.11.** (A) An owners association may assess an individual lot for any of the following:

(1) Enforcement assessments and individual assessments for utility service that are imposed or levied in accordance with the declaration, as well as expenses the board incurs in collecting those assessments;

(2) Costs of maintenance, repair, or replacement incurred due to the willful or negligent act of an owner or occupant of a lot or their family, tenants, guests, or invitees, including, but not limited to, attorney's fees, court costs, and other expenses;

(3) Costs associated with the enforcement of the declaration or the rules and regulations of the owners association, including, but not limited to, attorney's fees, court costs, and other expenses;

(4) Costs or charges the declaration or bylaws permit.

(B) Unless otherwise provided by the declaration, bylaws, or rules, the owners association shall credit any amount it receives from a lot owner pursuant to this section in the following order:

(1) To interest owed to the owners association;

(2) To administrative late fees or enforcement assessments owed to the owners association;

(3) To collection costs, attorney's fees, and paralegal fees the owners association incurred in collecting the assessment;

(4) To the oldest principal amounts the owner owes to the owners association for the common expenses chargeable against the dwelling unit or lot.

(C) Prior to imposing a charge for damages or an enforcement assessment pursuant to this section, the board of directors shall give the owner a written notice that includes all of the following:

(1) A description of the property damage or violation;

(2) The amount of the proposed charge or assessment;

(3) A statement that the owner has a right to a hearing before the board to contest the proposed charge or assessment;

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

(5) A reasonable date by which the owner must cure a continuing violation to avoid the proposed charge or assessment, if such an opportunity to cure is applicable.

(D)(1) To request a hearing, the owner shall deliver a written notice to the board not later than the tenth day after receiving the notice this division requires. If the owner fails to make a timely request for a hearing, the right to that hearing is waived, and the board immediately may impose a charge for damages or an enforcement assessment pursuant to this section.

(2) If an owner requests a hearing, at least seven days prior to the hearing the board shall provide the owner with a written notice that includes the date, time, and location of the hearing.

(3) The board shall not levy a charge or assessment before holding any hearing requested pursuant to this section.

(4) Within thirty days following a hearing at which the board imposes a charge or assessment, the owners association shall deliver a written notice of the charge or assessment to the owner.

(5) Any written notice that this section requires shall be delivered to the owner or any occupant of the dwelling unit by personal delivery, by certified mail, return receipt requested, or by regular mail.

**Sec. 5312.12.** (A) The owners association has a lien upon the estate or interest in any lot for the payment of any assessment or charge levied in accordance with section 5312.11 of the Revised Code, as well as any related interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, and paralegal fees, that are chargeable against the lot and that remain unpaid ten days after any portion has become due and payable.

(B) All of the following apply to a lien charged against a property pursuant to this section:

(1) The lien is effective on the date that a certificate of lien is filed for record in the office of the recorder of the county or counties in which the lot is situated, pursuant to authorization by the board of directors of the owners association. The certificate shall contain a description of the lot, the name of the record owner of the lot, and the amount of the unpaid assessment or charge. It shall be subscribed to by the president of the board or other designated representative of the owners association.

(2) The lien is a continuing lien upon the lot against which each assessment or charge is made, subject to automatic subsequent adjustments reflecting any additional unpaid interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, paralegal fees, and court costs.

(3) The lien is valid for a period of five years from the date of filing, unless it is sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or unless it is discharged by the final judgment or order of a court in an action brought to discharge the lien as provided in this section.

(4) 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 prior to the recording of the lien, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the owners association.

(C)(1) In any foreclosure action that the holder of a lien commences, the holder shall name the owners association as a defendant in the action. The owners association or the holder of the lien is entitled to the appointment of a receiver to collect rental payments due on the property. Any rental payment a receiver collects during the pendency of the foreclosure action shall be applied first to the payment of the portion of the common expenses chargeable to the lot during the foreclosure action.

(2) Unless prohibited by the declaration or the bylaws, following any foreclosure action, the owners association or an agent the board authorizes is entitled to become a purchaser at the foreclosure sale.

(3) A mortgage on a lot may contain a provision that secures the mortgagee's advances for the payment of the portion of the common expenses chargeable against the lot upon which the mortgagee holds the mortgage.

(D) An owner may commence an action for the discharge of the lien in the court of common pleas of the county in which all or a part of the property is situated if the owner believes that the liability for the unpaid assessment or charge for which the owners association filed a certificate of lien was improperly charged. In the action, if it is finally determined that the unpaid amount of the assessment or charge was improperly charged to the owner or the lot,

the court shall enter an order that it determines to be just, which may provide for a discharge of record of all or a portion of the lien and an award of attorney's fees to the owner.

**Sec. 5312.13.** The owners association and all owners, residents, tenants, and other persons lawfully in possession and control of any part of an ownership interest shall comply with any covenant, condition, and restriction set forth in any recorded document to which they are subject, and with the bylaws and the rules of the owners association, as lawfully amended. Any violation is grounds for the owners association or any 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.

**Sec. 5312.14.** In any action relating to the common elements or to any right, duty, or obligation possessed or imposed upon the owners association by statute or otherwise, the owners association may sue or be sued as a separate legal entity. Service of summons or other process may be made upon the owners association by serving the process personally upon the president of the board of directors or the person named as statutory agent of the association if it is an incorporated entity. Any action brought by or on behalf of the owners association shall be pursuant to authority granted by the board of directors.

**Sec. 5312.15.** This chapter shall be construed to establish a uniform framework for the operation and management of planned communities in this state and to supplement any planned community governing document that is in existence on the effective date of this chapter. In the event of a specific conflict between this chapter and express requirements or restrictions in such a governing document, the governing document shall control. This chapter shall control if any governing document is silent with respect to any provision of this chapter.

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