

**THE IMPACT OF H.B. 135 ON ASSOCIATION OPERATIONS**

Over recent years, it has become clear that Ohio’s condominium statute is outdated and in need of substantial revision. The current statute, enacted in 1963 and amended in 1978, basically states what developers can and cannot do. This statute was fine when condominiums in Ohio were predominately in the development stage. Unfortunately, the current statute fails to address a wide variety of issues facing boards of condominium associations. The revisions to the statute, as passed and effective on July 20, 2004, expands upon a board’s authority and clarifies numerous association operation issues.

The following summary outlines many of the changes.

5311.01 Adds numerous definitions to the statute that are currently missing. Switches common and limited common areas to common and limited common elements.

5311.031 Simplifies the procedure for combining two units by letting the board approve the application and provides detail as to information to be recorded reflecting the combination. The change clarifies that a vote of the ownership is no longer necessary.

5311.032 Permits the altering of limited common element boundaries among owners.

5311.04(G) Authorizes the board to permit unenclosed, open-air patios and decks on limited common areas and mandates that 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.

5311.04(H) Permits the association to purchase property with the approval of seventy-five percent (75%) of the voting power instead of the current unanimous consent. As an example, if the association desires to purchase land for parking or for a playground, seventy-five percent (75) approval is all that is needed.

5311.041(B-1) Permits the association to implement a two-tiered annual assessment with some costs split evenly so long as approved by ninety percent (90%) of the voting power. Costs that may be split evenly include expenses that arise out of the administration, operation, maintenance, repair, and replacement of security, telecommunications, rubbish removal, roads, entrances, recreation facilities, landscaping, grounds care, legal, accounting, and management expenses.

5311.05(B-9) Requires the developer to disclose any membership that the owners must pay for other than membership in the association. Memberships that provide recreational facilities, education or social services to owners must be disclosed.

5311.05(E-1) Permits the board, without the vote of the owners, to amend the declaration to meet requirements of lending institutions such as FHA, FNMA, VA or insurance underwriters. This section also permits the board to amend without a vote of the owners “to bring the declaration into compliance with this chapter.” Caution: many of the new provisions indicate “unless otherwise provided by the Declaration,” therefore, current language is in compliance. The board may also amend to correct typographical or obvious factual errors.

5311.08(A-1) Permits the spouse of a unit owner to serve on the board.

5311.08(3) Stipulates that unless otherwise provided in the declaration or bylaws, the owners present in person or by proxy at a meeting shall constitute a quorum.

5311.08(5-A) Indicates that 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.

5311.081(1) Specifies that the board must 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 shall not be less than ten percent (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.

5311.081(2-B1) Details an extensive list of powers and authority bestowed upon the board, including the power to make rules and to impose late charges and enforcement assessments.

5311.081(C-1) Establishes the procedure for the board to levy enforcement assessments and the right of an owner to request a hearing to dispute the enforcement assessment.

5311.09(2) Mandates that within thirty (30) days of ownership, the owner must notify the association of 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 the name, business address, and business telephone number of any person who manages the owner’s unit as an agent of that owner.

5311.09(B) Specifies exactly what documents the developer must give the association at turnover.

5311.09(B-C) Requires the developer to provide information about the location of underground utilities for new construction.

5311.091(A) Permits the owners to examine certain association records, but gives the association the ability to specify the time and cost of such inspection.

5311.091(B) Identifies the records that owners are NOT permitted to inspect including:

Information that pertains to condominium property-related personnel matters; and

Communications with legal counsel or attorney work product pertaining to pending litigation or other condominium property- related matters; and

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; and

Information that relates to the enforcement of the declaration, bylaws, or rules of the unit owners association against unit owners.

5311.18(A-1-a) Permits a condominium lien to be filed not only for past due maintenance fees and assessments but also for outstanding interest, late fees, enforcement assessments, collections costs, and attorney fees.

5311.18(A-2) Indicates that the association shall credit payments made by a unit owner in the following order of priority:

First, to interest owed to the association.

Second, to administrative late fees owed to the association.

Third, to collection costs, attorney’s fees, and paralegal fees incurred by the association.

Fourth, to the principal amounts the unit owner owes to the association for the common expenses or penalty assessments chargeable against the unit.

5311.18(B-2) Permits the association, not just the plaintiff in a foreclosure, to seek the appointment of a receiver during a foreclosure. In addition, each 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 unit during the foreclosure action.

5311.18(B-6) Stipulates that in any foreclosure action, it is not a defense, set off, counterclaim, or crossclaim that the unit owners association has failed to provide the unit owner with any service, goods, work, or material, or failed in any other duty.

5311.19(A) Permits an award of legal fees for violation of the governing documents or restrictions.

5311.19(B-1) Authorizes the association to evict tenants who are in violation of the governing documents or restrictions, so long as the unit owner is provided with at least ten days (10) written notice of the intended eviction action. The costs of eviction, including reasonable attorney fees, shall be chargeable to the unit owner and shall constitute a special assessment against the unit owner.

5311.21 Permits the association to retain common profits at year end and apply them toward reserves.

5311.25(D) Stipulates that after the developer turns over control, the association may not be bound for more than ninety (90) days to a management contract or more than one year for other contracts, except necessary utilities.

5311.25(F) Mandates that the developer must pay maintenance fees for a unit from the date it is declared regardless of the status of construction of the unit.

While no legislation is perfect, H.B. 135 certainly fulfills the objective of addressing a wide variety of issues facing condominium boards and clarifies numerous association operation issues.