

As Introduced

**127th General Assembly
Regular Session
2007-2008**

H. B. No. 220

Representative Beatty

Cosponsors: Representatives Harwood, Yuko, Skindell, Brown, Otterman

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A B I L L

To enact sections 5312.01 to 5312.16 of the Revised 1
Code to establish the Ohio Planned Community Law. 2

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5312.01, 5312.02, 5312.03, 5312.04, 3
5312.05, 5312.06, 5312.07, 5312.08, 5312.09, 5312.10, 5312.11, 4
5312.12, 5312.13, 5312.14, 5312.15, and 5312.16 of the Revised 5
Code be enacted to read as follows: 6

Sec. 5312.01. As used in this chapter: 7

(A) "Assessment" means the liability for an expense that is 8
allocated to a lot in a planned community. 9

(B) "Common element" means any property in a planned 10
community that the owners association holds in fee or has use of 11
pursuant to a lease or easement. 12

(C) "Common expense" means any expense or financial liability 13
of the owners association, including allocations the association 14
designates for reserves. 15

(D) "Declarant" means the owner of property who executes and 16
records a declaration that the property is a planned community. 17

(E) "Declarant control" means the period of time in which the 18

declarant controls the owners association by appointing or 19
electing the members of the association's board of directors. 20

(F) "Declaration" means an instrument a property owner 21
executes and records to declare that the property is a planned 22
community subject to the provisions of this chapter. 23

(G) "Dwelling unit" means a detached building or the portion 24
of a building that is designed and intended for use and occupancy 25
for single-family residential purposes. 26

(H) "Limited common element" means a common element that a 27
declaration designates as reserved for use by a certain lot or 28
lots, to the exclusion of other lots. 29

(I) "Lot" means parcel or tract of land that is formed when a 30
larger parcel of land is subdivided pursuant to Chapter 711. of 31
the Revised Code, and as a result has a separate parcel number 32
assigned by the county auditor, and is occupied or intended to be 33
occupied by a dwelling unit. 34

(J) "Owner" means a person who owns a lot in a planned 35
community. Owner does not include any person that has an interest 36
in a lot solely as security for an obligation. 37

(K) "Owners association" means an organization that is 38
comprised of owners of lots in a planned community and that is 39
responsible for the administrative governance, maintenance, and 40
upkeep of the planned community. 41

(L) "Planned community" means a community comprised of 42
individual lots for which a deed, common plan, or declaration 43
requires any of the following: 44

(1) That owners become members of an owners association that 45
governs the community; 46

(2) That owners hold or lease property or facilities in 47
common with other owners; 48

(3) That owners support by membership or fees, property or facilities for all owners to use. 49
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A condominium property as defined in section 5311.01 of the Revised Code is not a planned community. 51
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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. 53
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(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: 58
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(1) The election of the board of directors of the owners association; 62
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(2) The number of persons constituting the board; 64

(3) The terms of the directors, with not less than one-fifth to expire annually; 65
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(4) The powers and duties of the board; 67

(5) The method of removal of directors from office; 68

(6) Whether the services of a manager or managing agent may be engaged; 69
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(7) The method of amending the declaration and bylaws; 71

(8) The time and place for holding meetings and the manner of and authority for calling, giving notice of, and conducting meetings; 72
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(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; 75
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(10) Any other matters the original declarant or the owners 78
association deem necessary and appropriate. 79

(C)(1) Any planned community for which a declaration was 80
recorded prior to the original effective date of this chapter is 81
subject to this chapter with respect to events and circumstances 82
that take place on or after the original effective date of this 83
chapter, except that division (B) of section 5312.03 of the 84
Revised Code does not apply to a planned community for which the 85
declaration was recorded before the original effective date of 86
this chapter. 87

(2) Nothing in this chapter invalidates any provision of a 88
document that governs a planned community if that provision was in 89
the document at the time the declaration was recorded and the 90
declaration was recorded before the original effective date of 91
this chapter. 92

Sec. 5312.03. (A)(1) An owners association shall administer a 93
planned community. A board of directors the owners elect from 94
among the owners and their spouses shall exercise all power and 95
authority of the owners association. If an owner is not an 96
individual, any principal, member of a limited liability company, 97
partner, director, officer, trustee, or employee of the owner may 98
be elected to the board. 99

(2) Unless otherwise provided, any action this chapter 100
requires or allows an owners association to take may be carried 101
out by its board of directors, subject to any vote required of the 102
owners. 103

(B) The declarant shall establish an owners association not 104
later than the date upon which the first lot in the planned 105
community is conveyed to a bona fide purchaser for value. The 106
owners association shall be organized as a nonprofit corporation 107
pursuant to Chapter 1702. of the Revised Code. 108

(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. 109
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(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 specifies. 116
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Sec. 5312.04. (A) A board of directors of an owners association shall elect officers from its membership, to include a president, secretary, treasurer, and other officers as the board designates. 119
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(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. The board may not act on behalf of the association to elect members of the board or to amend the declaration in any way that would terminate the declaration's applicability to the planned community. 123
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(C) Except during a period of declarant control, the board shall call a meeting of the owners association at least once each year. The president, a majority of the board, or owners representing fifty per cent of the voting power in the organization, or any lower share of the voting power as the declaration or bylaws specify may call special meetings. 131
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(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 137
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time and participate and respond to every other member of the 140
board. 141

(E) In lieu of conducting a meeting, the board may take an 142
action with the unanimous written consent of the members of the 143
board. Any written consent shall be filed with the minutes of the 144
meetings of the board. 145

(F) No owner other than a director may attend or participate 146
in any discussion or deliberation of a meeting of the board of 147
directors unless the board expressly authorizes that owner to 148
attend or participate. 149

Sec. 5312.05. (A) Unless otherwise specified in the 150
declaration or bylaws, the owners may amend the declaration and 151
bylaws by the consent of seventy-five per cent of the owners, 152
either in writing or in a meeting called for such purpose. No 153
amendment to the declaration or bylaws is effective until filed in 154
the office of the county recorder. 155

(B) A vote to terminate the applicability of the declaration 156
and to dissolve the planned community requires the unanimous 157
consent of owners. 158

Sec. 5312.06. (A) Unless otherwise provided in the 159
declaration or bylaws, the owners association, through its board 160
of directors, shall do both of the following: 161

(1) Annually adopt and amend an estimated budget for revenues 162
and expenditures. Any budget shall include reserves in an amount 163
adequate to repair and replace major capital items in the normal 164
course of operations without the necessity of special assessments, 165
unless the owners, exercising not less than a majority of the 166
voting power of the owners association, waives the reserve 167
requirement annually. 168

(2) Collect assessments for common expenses from owners. 169

(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, to the extent reasonably available and applicable: 170
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(1) Property insurance on the common elements; 174

(2) Liability insurance pertaining to the common elements; 175

(3) Directors and officers liability insurance. 176

(C) The owners association shall keep all of the following: 177

(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; 178
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(2) Records showing the collection of the common expenses from the owners; 181
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(3) Minutes of the meetings of the association and the board of directors; 183
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(4) Records of the names and addresses of the owners. 185

(D) An owners association, through its board of directors, may do any of the following: 186
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(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; 188
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(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; 192
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(3) Enter into contracts and incur liabilities relating to the operation of the property; 197
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<u>(4) Regulate the use, maintenance, repair, replacement,</u>	199
<u>modification, and appearance of the property;</u>	200
<u>(5) Adopt and enforce rules that regulate the use or</u>	201
<u>occupancy of lots and dwelling units and the maintenance, repair,</u>	202
<u>replacement, modification, and appearance of lots and dwelling</u>	203
<u>units, common elements, and limited common elements when the</u>	204
<u>actions regulated by those rules affect common elements or other</u>	205
<u>lots;</u>	206
<u>(6) Cause additional improvements to be made as part of the</u>	207
<u>common elements;</u>	208
<u>(7) Acquire, encumber, and convey or otherwise transfer real</u>	209
<u>and personal property, subject to section 5312.10 of the Revised</u>	210
<u>Code;</u>	211
<u>(8) Hold in the name of the owners association the real</u>	212
<u>property and personal property;</u>	213
<u>(9) Grant easements, leases, licenses, and concessions</u>	214
<u>through or over the common elements;</u>	215
<u>(10) Impose and collect fees or other charges for the use,</u>	216
<u>rental, or operation of the common elements or for services</u>	217
<u>provided to owners;</u>	218
<u>(11) Pursuant to section 5312.13 of the Revised Code, the</u>	219
<u>owners association may impose the following charges and</u>	220
<u>assessments:</u>	221
<u>(a) Interest and charges for the late payment of assessments;</u>	222
<u>(b) Returned check charges;</u>	223
<u>(c) Enforcement assessments for violations of the</u>	224
<u>declaration, the bylaws, and the rules of the owners association;</u>	225
<u>(d) Charges for damage to the common elements or other</u>	226
<u>property;</u>	227

<u>(12) Adopt and amend rules that regulate the collection of</u>	228
<u>delinquent assessments and the application of payments of</u>	229
<u>delinquent assessments;</u>	230
<u>(13) Impose reasonable charges for preparing, recording, or</u>	231
<u>copying the declaration, bylaws, amendments to the declaration and</u>	232
<u>bylaws, resale certificates, or statements of unpaid assessments;</u>	233
<u>(14) Authorize entry to any portion of the planned community</u>	234
<u>by designated individuals when conditions exist that involve an</u>	235
<u>imminent risk of damage or harm to common elements, another</u>	236
<u>dwelling unit, or to the health or safety of the occupants of that</u>	237
<u>dwelling unit or another dwelling unit;</u>	238
<u>(15) If expressly permitted by the declaration or bylaws,</u>	239
<u>assign the right to common assessments or other future income to a</u>	240
<u>lender as security for a loan to the owners association;</u>	241
<u>(16) Suspend the voting privileges and use of recreational</u>	242
<u>facilities of an owner who is delinquent in the payment of</u>	243
<u>assessments for more than thirty days;</u>	244
<u>(17) Purchase insurance and fidelity bonds the directors</u>	245
<u>consider appropriate and necessary;</u>	246
<u>(18) Invest excess funds in investments that meet standards</u>	247
<u>for fiduciary investments under the laws of this state;</u>	248
<u>(19) Exercise powers that are any of the following:</u>	249
<u>(a) Conferred by the declaration or bylaws;</u>	250
<u>(b) Necessary to incorporate the owners association as a</u>	251
<u>nonprofit corporation;</u>	252
<u>(c) Permitted to be exercised in Ohio by a nonprofit</u>	253
<u>corporation;</u>	254
<u>(d) Necessary and proper for the government and operation of</u>	255
<u>the owners association.</u>	256

Sec. 5312.07. (A) Within thirty days after an owner obtains 257
an ownership interest in a lot, the owner shall provide the 258
following information in writing to the owners association through 259
its board of directors: 260

(1) The home and business mailing addresses and telephone 261
numbers of the owner and all occupants of the lot; 262

(2) The name, business address, and business telephone number 263
of any person who manages the owner's lot as an agent. 264

(B) Within thirty days after a change in any information this 265
section requires, an owner shall notify the association, through 266
its board of directors, in writing of the change. An owner shall 267
verify or update the information at any time the board requests. 268

Sec. 5312.08. (A) Unless otherwise prohibited by this 269
section, any owner may examine and copy the books, records, and 270
minutes of the owners association, described in division (C) of 271
section 5312.06 of the Revised Code, pursuant to reasonable 272
standards set forth in the declaration, bylaws, or rules the board 273
promulgates. The standards may include, but are not limited to, 274
standards governing the type of documents that are subject to 275
examination and copying, the times and locations at which those 276
documents may be examined or copied, and the specification of a 277
reasonable fee for copying the documents. 278

(B) Unless approved by the board of directors, an owner may 279
not examine or copy any of the following from books, records, and 280
minutes: 281

(1) Information that pertains to property-related personnel 282
matters; 283

(2) Communications with legal counsel or attorney work 284
product pertaining to potential, threatened or pending litigation, 285
or other property-related matters; 286

(3) Information that pertains to contracts or transactions 287
currently under negotiation, or information that is contained in a 288
contract or other agreement containing confidentiality 289
requirements and that is subject to those requirements; 290

(4) Information that relates to the enforcement of the 291
declaration, bylaws, or rules of the owners association against 292
owners; 293

(5) Information, the disclosure of which is prohibited by 294
state or federal law. 295

Sec. 5312.09. (A) Unless otherwise provided by the 296
declaration, the owners association is responsible for reasonable 297
maintenance, repair, and replacement of the common elements, and 298
each owner is responsible for maintenance, repair, and replacement 299
of the owners lot and dwelling and the utility lines serving a 300
single home. 301

(B) An owner shall permit agents or employees of the owners 302
association and other owners access through the owner's lot and 303
dwelling for the purpose of fulfilling the association's duties 304
and obligations. Any damage to the common elements, lot, or 305
dwelling due to that access is the responsibility of the owner 306
that caused the damage or the owners association if it is 307
responsible for the damage. That owner, or the owners association, 308
is liable for the prompt repair of any damage and, if not 309
repairable, for the value of the damaged property or item as it 310
existed immediately prior to that damage. 311

Sec. 5312.10. (A)(1) The owners association may not convey 312
any fee interest or any security interest in any portion of the 313
common elements unless the declaration specifically provides for 314
such a conveyance or seventy-five per cent of the voting power of 315
the owners association, or any larger percentage the declaration 316

specifies, approves the conveyance. 317

(2) The owners association may not convey any fee interest in a limited common element or subject limited common element to a security interest without the approval of all 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. 318
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(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. 324
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Sec. 5312.11. (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. 332
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(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. 338
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(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. 343
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(B) The board shall charge interest on any past due 346

assessment or installment at the rate the board establishes, not 347
to exceed any maximum rate permitted by law. 348

Sec. 5312.12. (A) An owners association may assess an 349
individual lot for any of the following: 350

(1) Enforcement assessments and individual assessments for 351
utility service that are imposed or levied in accordance with the 352
declaration, as well as expenses the board incurs in collecting 353
those assessments; 354

(2) Costs of maintenance, repair, or replacement incurred due 355
to the willful or negligent act of an owner or occupant of a lot 356
or their family, tenants, guests, or invitees, including, but not 357
limited to, attorney fees, court costs, and other expenses; 358

(3) Costs associated with the enforcement of the declaration 359
or the rules and regulations of the owners association, including, 360
but not limited to, attorney fees, court costs, and other 361
expenses; 362

(4) Costs or charges the declaration or bylaws permit, to be 363
charged or assessed against an individual lot. 364

(B) Unless otherwise provided by the declaration, bylaws, or 365
rules, the owners association shall credit any amount it receives 366
from a lot owner pursuant to this section in the following order: 367

(1) To interest owed to the owners association; 368

(2) To administrative late fees or enforcement assessments 369
owed to the owners association; 370

(3) To collection costs, attorney's fees, and paralegal fees 371
the owners association incurred in collecting the assessment; 372

(4) To the oldest principal amounts the owner owes to the 373
owners association for the common expenses chargeable against the 374
dwelling unit or lot. 375

(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: 376
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(1) A description of the property damage or violation; 380

(2) The amount of the proposed charge or assessment; 381

(3) A statement that the owner has a right to a hearing before the board to contest the proposed charge or assessment; 382
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(4) A statement setting forth the procedures to request a hearing; 384
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(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. 386
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(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. 389
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(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. 395
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(3) The board shall not levy a charge or assessment before holding any hearing requested pursuant to this section. 398
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(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. 400
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(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 403
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by regular mail to the address that the owner provided in 406
accordance with section 5312.07 of the Revised Code. 407

Sec. 5312.13. (A) The owners association has a lien upon the 408
estate or interest in any lot for the payment of any assessment or 409
charge levied in accordance with section 5312.12 of the Revised 410
Code, as well as any related interest, administrative late fees, 411
enforcement assessments, collection costs, attorney's fees, and 412
paralegal fees, that are chargeable against the lot and that 413
remain unpaid ten days after any portion has become due and 414
payable. 415

(B) All of the following apply to a lien charged against a 416
property pursuant to this section: 417

(1) The lien is effective on the date that a certificate of 418
lien is filed for record in the office of the recorder of the 419
county or counties in which the lot is situated, pursuant to 420
authorization by the board of directors of the owners association. 421
The certificate shall contain a description of the lot, the name 422
of the record owner of the lot, and the amount of the unpaid 423
portion of the common expenses, and be subscribed to by the 424
president of the board or other designated representative of the 425
owners association. 426

(2) The lien is a continuing lien upon the lot against which 427
each assessment is made, subject to automatic subsequent 428
adjustments reflecting any additional unpaid interest, 429
administrative late fees, enforcement assessments, collection 430
costs, attorney's fees, paralegal fees, and court costs. 431

(3) The lien is valid for a period of five years from the 432
date of filing, unless it is sooner released or satisfied in the 433
same manner provided by law for the release and satisfaction of 434
mortgages on real property or unless it is discharged by the final 435
judgment or order of a court in an action brought to discharge the 436

lien as provided in this section. 437

(4) The lien is prior to any lien or encumbrance subsequently 438
arising or created, except liens for real estate taxes and 439
assessments of political subdivisions and liens of first mortgages 440
that have been filed for record prior to the recording of the 441
lien, and may be foreclosed in the same manner as a mortgage on 442
real property in an action brought by the owners association. 443

(C)(1) In any foreclosure action that the holder of a lien 444
commences, the holder shall name the owners association as a 445
defendant in the action. The owners association or the holder of 446
the lien is entitled to the appointment of a receiver to collect 447
rental payments due on the property. Any rental payment a receiver 448
collects during the pendency of the foreclosure action shall be 449
applied first to the payment of the portion of the common expenses 450
chargeable to the lot during the foreclosure action. 451

(2) Unless prohibited by the declaration or the bylaws, 452
following any foreclosure action, the owners association or an 453
agent the board authorizes is entitled to become a purchaser at 454
the foreclosure sale. 455

(3) A mortgage on a lot may contain a provision that secures 456
the mortgagee's advances for the payment of the portion of the 457
common expenses chargeable against the lot upon which the 458
mortgagee holds the mortgage. 459

(4) In any foreclosure action, it is not a defense, set off, 460
counterclaim, or crossclaim that the owners association has failed 461
to provide the owner with any service, goods, work, or material, 462
or failed in any other duty. 463

(D) An owner may commence an action for the discharge of the 464
lien in the court of common pleas of the county in which all or a 465
part of the property is situated if the owner believes that the 466
common expense liability for which the owners association filed a 467

certificate of lien was improperly charged. In the action, if it 468
is finally determined that the portion of the common expense 469
liability was improperly charged to the owner or the lot, the 470
court shall enter an order that it determines to be just, which 471
may provide for a discharge of record of all or a portion of the 472
lien. 473

Sec. 5312.14. (A) All owners, residents, tenants, and other 474
persons lawfully in possession and control of any part of an 475
ownership interest shall comply with any covenant, condition, and 476
restriction set forth in any recorded document to which they are 477
subject, and with the bylaws and the rules of the owners 478
association, as lawfully amended. Any violation is grounds for the 479
owners association or any owner to commence a civil action for 480
damages, injunctive relief, or both, and an award of court costs 481
and reasonable attorney's fees in both types of action. 482

(B) Except as otherwise provided in the declaration or the 483
bylaws, an owners association may initiate eviction proceedings, 484
pursuant to Chapters 5321. and 1923. of the Revised Code, to evict 485
a tenant for a violation of division (A) of this section. The 486
action shall be brought by the owners association, as the owner's 487
agent, in the name of the owner. 488

(C) In addition to any procedures required by Chapters 5321. 489
and 1923. of the Revised Code, the owners association shall give 490
the owner at least ten days' written notice of the intended 491
eviction action. 492

(D) The costs of any eviction action brought pursuant to this 493
section, including reasonable attorney's fees, shall be charged to 494
the owner and shall be the subject of a special assessment against 495
the owner and made a lien against the owner's lot. 496

Sec. 5312.15. In any action relating to the common elements 497

or to any right, duty, or obligation possessed or imposed upon the 498
owners association by statute or otherwise, the owners association 499
may sue or be sued as a separate legal entity. Service of summons 500
or other process may be made upon the owners association by 501
serving the process personally upon the president of the board of 502
directors or the person named as statutory agent of the 503
association if it is an incorporated entity. Any action brought by 504
or on behalf of the owners association shall be pursuant to 505
authority granted by the board of directors. 506

Sec. 5312.16. This chapter shall be construed to establish a 507
uniform framework for the operation and management of planned 508
communities in Ohio and to supplement any planned community 509
governing document that is in existence on the effective date of 510
this act. In the event of a specific conflict between this chapter 511
and express requirements or restrictions in such a governing 512
document, the governing document shall control. This chapter shall 513
control if any governing document is silent with respect to any 514
provision of this chapter. 515