

As Introduced

**128th General Assembly
Regular Session
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S. B. No. 187

Senator Seitz

Cosponsor: Senator Sawyer

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A B I L L

To enact sections 5312.01 to 5312.15 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, and 5312.15 of the Revised Code be 5
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) "Bylaws" means an instrument filed with the declaration 10
that provides for the operation of the owners association. 11
"Bylaws" also is referred to as "regulations" pursuant to Chapter 12
1702. of the Revised Code. 13

(C) "Common element" means any property in a planned 14
community that the owners association holds in fee or has use of 15
pursuant to a lease or easement. 16

(D) "Common expense" means any expense or financial liability 17
of the owners association, including allocations the association 18

designates for reserves. 19

(E) "Declarant" means the owner of property who executes and records a declaration that the property is a planned community. 20
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(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. 22
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(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. 25
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(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. 28
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(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. 31
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(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. 34
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(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. 39
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(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. 42
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(M) "Planned community" means a community comprised of individual lots for which a deed, common plan, or declaration requires any of the following: 46
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<u>(1) That owners become members of an owners association that governs the community;</u>	49 50
<u>(2) That owners or the owners association holds or leases property or facilities for the benefit of the owners;</u>	51 52
<u>(3) That owners support by membership or fees, property or facilities for all owners to use.</u>	53 54
<u>A condominium property as defined in section 5311.01 of the Revised Code is not a "planned community."</u>	55 56
<u>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.</u>	57 58 59 60 61
<u>(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:</u>	62 63 64 65
<u>(1) The election of the board of directors of the owners association;</u>	66 67
<u>(2) The number of persons constituting the board;</u>	68
<u>(3) The terms of the directors, with not less than one-fifth to expire annually;</u>	69 70
<u>(4) The powers and duties of the board;</u>	71
<u>(5) The method of removal of directors from office;</u>	72
<u>(6) Whether the services of a manager or managing agent may be engaged;</u>	73 74
<u>(7) The method of amending the declaration and bylaws;</u>	75
<u>(8) The time and place for holding meetings and the manner of</u>	76

and authority for calling, giving notice of, and conducting 77
meetings; 78

(9) The common expenses for which assessments may be made and 79
the manner of collecting from the owners their respective shares 80
of the common expenses; 81

(10) Any other matters the original declarant or the owners 82
association deem necessary and appropriate. 83

(C) Nothing in this chapter invalidates any provision of a 84
document that governs a planned community if that provision was in 85
the document at the time the document was recorded and the 86
document was recorded prior to the original effective date of this 87
chapter. 88

Sec. 5312.03. (A)(1) An owners association shall administer a 89
planned community, and a board of directors the owners elect from 90
among the owners and their spouses shall exercise all power and 91
authority of the owners association. If an owner is not an 92
individual, any principal, member of a limited liability company, 93
partner, director, officer, trustee, or employee of the owner may 94
be elected to the board. 95

(2) Unless otherwise provided, a board of directors may carry 96
out any action this chapter requires or allows an owners 97
association to take, subject to any vote required of the owners. 98

(B) A declarant shall establish an owners association not 99
later than the date upon which the first lot in the planned 100
community is conveyed to a bona fide purchaser for value. The 101
owners association shall be organized as a nonprofit corporation 102
pursuant to Chapter 1702. of the Revised Code. 103

(C)(1) If provided in the declaration, a declarant may 104
control the owners association for the period of time the 105
declaration specifies. During the time of declarant control, the 106

declarant or the declarant's designee may appoint and remove the 107
members of the board. The period of declarant control shall 108
terminate not later than the time at which all of the lots have 109
been transferred to owners. 110

(2) Not later than the termination of any period of declarant 111
control, the owners shall elect a board of directors comprised of 112
the number of members the declaration or bylaws specify. 113

Sec. 5312.04. (A) A board of directors of an owners 114
association shall elect officers from the members of the board, to 115
include a president, secretary, treasurer, and other officers as 116
the board designates. 117

(B) A board may act in all instances on behalf of an 118
association unless otherwise provided in this chapter, the 119
declaration, or bylaws. The board may appoint persons to fill 120
vacancies in its membership for the unexpired portion of any term. 121

(C) Except during a period of declarant control, the board 122
shall call a meeting of the owners association at least once each 123
year. Special meetings may be called by the president, a majority 124
of the board, owners representing fifty per cent of the voting 125
power in the organization, or any lower share of the voting power 126
as the declaration or bylaws specify. 127

(D) The board may hold a meeting by any method of 128
communication, including electronic or telephonic communication, 129
provided that each member of the board can hear or read in real 130
time and participate and respond to every other member of the 131
board. 132

(E) In lieu of conducting a meeting, the board may take an 133
action with the unanimous written consent of the members of the 134
board. Any written consent shall be filed with the minutes of the 135
meetings of the board. 136

(F) No owner other than a director may attend or participate 137
in any discussion or deliberation of a meeting of the board of 138
directors unless the board expressly authorizes that owner to 139
attend or participate. 140

Sec. 5312.05. (A) Unless otherwise specified in the 141
declaration or bylaws, the owners may amend the declaration and 142
bylaws by the consent of seventy-five per cent of the owners, 143
either in writing or in a meeting called for that purpose. No 144
amendment to the declaration or bylaws is effective until filed in 145
the office of the county recorder. 146

(B) A vote to terminate the applicability of the declaration 147
and to dissolve the planned community requires the unanimous 148
consent of owners. 149

Sec. 5312.06. (A) Unless otherwise provided in the 150
declaration or bylaws, the owners association, through its board 151
of directors, shall do both of the following: 152

(1) Annually adopt and amend an estimated budget for revenues 153
and expenditures. Any budget shall include reserves in an amount 154
adequate to repair and replace major capital items in the normal 155
course of operations without the necessity of special assessments, 156
unless the owners, exercising not less than a majority of the 157
voting power of the owners association, waive the reserve 158
requirement annually. 159

(2) Collect assessments for common expenses from owners in 160
accordance with section 5312.10 of the Revised Code. 161

(B) Commencing not later than the time of the first 162
conveyance of a lot to a person other than a declarant, the owners 163
association shall maintain all of the following to the extent 164
reasonably available and applicable: 165

(1) Property insurance on the common elements; 166

<u>(2) Liability insurance pertaining to the common elements;</u>	167
<u>(3) Directors and officers liability insurance.</u>	168
<u>(C) The owners association shall keep all of the following:</u>	169
<u>(1) Correct and complete books and records of account that</u>	170
<u>specify the receipts and expenditures relating to the common</u>	171
<u>elements and other common receipts and expenses;</u>	172
<u>(2) Records showing the collection of the common expenses</u>	173
<u>from the owners;</u>	174
<u>(3) Minutes of the meetings of the association and the board</u>	175
<u>of directors;</u>	176
<u>(4) Records of the names and addresses of the owners.</u>	177
<u>(D) An owners association, through its board of directors,</u>	178
<u>may do any of the following:</u>	179
<u>(1) Hire and fire managing agents, attorneys, accountants,</u>	180
<u>and other independent professionals and employees that the board</u>	181
<u>determines are necessary or desirable in the management of the</u>	182
<u>property and the association;</u>	183
<u>(2) Commence, defend, intervene in, settle, or compromise any</u>	184
<u>civil, criminal, or administrative action or proceeding that is in</u>	185
<u>the name of, or threatened against, the association, the board of</u>	186
<u>directors, or the property, or that involves two or more owners</u>	187
<u>and relates to matters affecting the property;</u>	188
<u>(3) Enter into contracts and incur liabilities relating to</u>	189
<u>the operation of the property;</u>	190
<u>(4) Enforce all provisions of the declaration, bylaws,</u>	191
<u>covenants, conditions, restrictions, and articles of incorporation</u>	192
<u>governing the lots, common elements, and limited common elements;</u>	193
<u>(5) Adopt and enforce rules that regulate the maintenance,</u>	194
<u>repair, replacement, modification, and appearance of common</u>	195

<u>elements, and any other rules as the declaration provides;</u>	196
<u>(6) Acquire, encumber, and convey or otherwise transfer real</u>	197
<u>and personal property, subject to section 5312.10 of the Revised</u>	198
<u>Code;</u>	199
<u>(7) Hold in the name of the owners association the real</u>	200
<u>property and personal property;</u>	201
<u>(8) Grant easements, leases, licenses, and concessions</u>	202
<u>through or over the common elements;</u>	203
<u>(9) Levy and collect fees or other charges for the use,</u>	204
<u>rental, or operation of the common elements or for services</u>	205
<u>provided to owners;</u>	206
<u>(10) Pursuant to section 5312.11 of the Revised Code, levy</u>	207
<u>the following charges and assessments:</u>	208
<u>(a) Interest and charges for the late payment of assessments;</u>	209
<u>(b) Returned check charges;</u>	210
<u>(c) Enforcement assessments for violations of the</u>	211
<u>declaration, the bylaws, and the rules of the owners association;</u>	212
<u>(d) Charges for damage to the common elements or other</u>	213
<u>property.</u>	214
<u>(11) Adopt and amend rules that regulate the collection of</u>	215
<u>delinquent assessments and the application of payments of</u>	216
<u>delinquent assessments;</u>	217
<u>(12) Impose reasonable charges for preparing, recording, or</u>	218
<u>copying the declaration, bylaws, amendments to the declaration and</u>	219
<u>bylaws, resale certificates, or statements of unpaid assessments;</u>	220
<u>(13) Authorize entry to any portion of the planned community</u>	221
<u>by designated individuals when conditions exist that involve an</u>	222
<u>imminent risk of damage or harm to common elements, another</u>	223
<u>dwelling unit, or to the health or safety of the occupants of that</u>	224

<u>dwelling unit or another dwelling unit;</u>	225
<u>(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;</u>	226 227 228 229
<u>(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;</u>	230 231 232
<u>(16) Purchase insurance and fidelity bonds the directors consider appropriate and necessary;</u>	233 234
<u>(17) Invest excess funds in investments that meet standards for fiduciary investments under the laws of this state;</u>	235 236
<u>(18) Exercise powers that are any of the following:</u>	237
<u>(a) Conferred by the declaration or bylaws;</u>	238
<u>(b) Necessary to incorporate the owners association as a nonprofit corporation;</u>	239 240
<u>(c) Permitted to be exercised in this state by a nonprofit corporation;</u>	241 242
<u>(d) Necessary and proper for the government and operation of the owners association.</u>	243 244
<u>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</u>	245 246 247 248 249 250 251 252 253

reasonable fee for copying the documents. 254

(B) Unless approved by the board of directors, an owner may 255
not examine or copy any of the following from books, records, and 256
minutes: 257

(1) Information that pertains to property-related personnel 258
matters; 259

(2) Communications with legal counsel or attorney work 260
product pertaining to potential, threatened or pending litigation, 261
or other property-related matters; 262

(3) Information that pertains to contracts or transactions 263
currently under negotiation, or information that is contained in a 264
contract or other agreement containing confidentiality 265
requirements and that is subject to those requirements; 266

(4) Information that relates to the enforcement of the 267
declaration, bylaws, or rules of the owners association against 268
other owners; 269

(5) Information, the disclosure of which is prohibited by 270
state or federal law. 271

Sec. 5312.08. (A) Unless otherwise provided by the 272
declaration, the owners association is responsible for reasonable 273
maintenance, repair, and replacement of the common elements, and 274
each owner is responsible for maintenance, repair, and replacement 275
of the owner's lot and improvements to that lot, including the 276
dwelling unit and the utility lines serving that dwelling unit. 277

(B) An owner shall permit agents or employees of the owners 278
association and other owners access through the owner's lot and 279
dwelling unit for the purpose of fulfilling the association's 280
duties and obligations. Any damage to the common elements, lot, or 281
dwelling unit due to that access is the responsibility of the 282
owner that caused the damage or the owners association if it is 283

responsible for the damage. That owner, or the owners association, 284
is liable for the prompt repair of any damage and, if not 285
repairable, for the value of the damaged property or item as it 286
existed immediately prior to that damage. 287

Sec. 5312.09. (A)(1) The owners association may not assign 288
the right to common assessments, or the future income from those 289
assessments, or convey any fee interest or any security interest 290
in any portion of the common elements unless the declaration 291
specifically provides for such a conveyance or seventy-five per 292
cent of the voting power of the owners association, or any larger 293
percentage the declaration specifies, approves the conveyance. 294

(2) The owners association may not convey any fee interest in 295
a limited common element or subject a limited common element to a 296
security interest without the approval of all of the owners of the 297
lots to which the limited common element is allocated. Any 298
proceeds of the conveyance of a limited common element are an 299
asset of the owners association. 300

(B) No contract to convey or subject a common element or a 301
limited common element to a security interest is enforceable 302
against the owners association unless it complies with division 303
(A) of this section. The board of directors, on behalf of the 304
owners association, has all powers necessary and appropriate to 305
effect a conveyance or encumbrance that division (A) of this 306
section permits, including the power to execute a deed or other 307
instrument. 308

Sec. 5312.10. (A)(1) In accordance with its declaration, all 309
costs the owners association incurs in the administration, 310
governance, and maintenance of a planned community are common 311
expenses. Unless otherwise provided in the declaration, all costs 312
of the administration, operation, maintenance, repair, and 313

replacement of the common elements are common expenses. 314

(2) The common expense liability of each lot shall be 315
allocated in accordance with the allocation set forth in the 316
declaration. If the declaration does not establish any allocation, 317
the common expense liability shall be allocated equally among all 318
the lots. 319

(3) The board of directors shall assess the common expense 320
liability for each lot at least annually, based on a budget the 321
board adopts at least annually. 322

(B) The board shall charge interest on any past due 323
assessment or installment at the rate the board establishes, not 324
to exceed any maximum rate permitted by law. 325

(C)(1) The board may not charge assessments for common 326
expenses unless the declaration provides for or contemplates the 327
charging of such assessments. 328

(2) The board may not increase any assessment for common 329
expenses when the declaration limits the amount of such 330
assessments unless the owners amend the declaration as provided in 331
division (A) of section 5312.05 of the Revised Code to allow the 332
increased amount. 333

Sec. 5312.11. (A) An owners association may assess an 334
individual lot for any of the following: 335

(1) Enforcement assessments and individual assessments for 336
utility service that are imposed or levied in accordance with the 337
declaration, as well as expenses the board incurs in collecting 338
those assessments; 339

(2) Costs of maintenance, repair, or replacement incurred due 340
to the willful or negligent act of an owner or occupant of a lot 341
or their family, tenants, guests, or invitees, including, but not 342
limited to, attorney's fees, court costs, and other expenses; 343

(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; 344
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(4) Costs or charges the declaration or bylaws permit. 348

(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: 349
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(1) To interest owed to the owners association; 352

(2) To administrative late fees or enforcement assessments owed to the owners association; 353
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(3) To collection costs, attorney's fees, and paralegal fees the owners association incurred in collecting the assessment; 355
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(4) To the oldest principal amounts the owner owes to the owners association for the common expenses chargeable against the dwelling unit or lot. 357
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(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: 360
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(1) A description of the property damage or violation; 364

(2) The amount of the proposed charge or assessment; 365

(3) A statement that the owner has a right to a hearing before the board to contest the proposed charge or assessment; 366
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(4) A statement setting forth the procedures to request a hearing; 368
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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. 370
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(D)(1) To request a hearing, the owner shall deliver a 373
written notice to the board not later than the tenth day after 374
receiving the notice this division requires. If the owner fails to 375
make a timely request for a hearing, the right to that hearing is 376
waived, and the board immediately may impose a charge for damages 377
or an enforcement assessment pursuant to this section. 378

(2) If an owner requests a hearing, at least seven days prior 379
to the hearing the board shall provide the owner with a written 380
notice that includes the date, time, and location of the hearing. 381

(3) The board shall not levy a charge or assessment before 382
holding any hearing requested pursuant to this section. 383

(4) Within thirty days following a hearing at which the board 384
imposes a charge or assessment, the owners association shall 385
deliver a written notice of the charge or assessment to the owner. 386

(5) Any written notice that this section requires shall be 387
delivered to the owner or any occupant of the dwelling unit by 388
personal delivery, by certified mail, return receipt requested, or 389
by regular mail. 390

Sec. 5312.12. (A) The owners association has a lien upon the 391
estate or interest in any lot for the payment of any assessment or 392
charge levied in accordance with section 5312.11 of the Revised 393
Code, as well as any related interest, administrative late fees, 394
enforcement assessments, collection costs, attorney's fees, and 395
paralegal fees, that are chargeable against the lot and that 396
remain unpaid ten days after any portion has become due and 397
payable. 398

(B) All of the following apply to a lien charged against a 399
property pursuant to this section: 400

(1) The lien is effective on the date that a certificate of 401
lien is filed for record in the office of the recorder of the 402

county or counties in which the lot is situated, pursuant to 403
authorization by the board of directors of the owners association. 404
The certificate shall contain a description of the lot, the name 405
of the record owner of the lot, and the amount of the unpaid 406
portion of the common expenses. It shall be subscribed to by the 407
president of the board or other designated representative of the 408
owners association. 409

(2) The lien is a continuing lien upon the lot against which 410
each assessment is made, subject to automatic subsequent 411
adjustments reflecting any additional unpaid interest, 412
administrative late fees, enforcement assessments, collection 413
costs, attorney's fees, paralegal fees, and court costs. 414

(3) The lien is valid for a period of five years from the 415
date of filing, unless it is sooner released or satisfied in the 416
same manner provided by law for the release and satisfaction of 417
mortgages on real property or unless it is discharged by the final 418
judgment or order of a court in an action brought to discharge the 419
lien as provided in this section. 420

(4) The lien is prior to any lien or encumbrance subsequently 421
arising or created, except liens for real estate taxes and 422
assessments of political subdivisions and liens of first mortgages 423
that have been filed for record prior to the recording of the 424
lien, and may be foreclosed in the same manner as a mortgage on 425
real property in an action brought by the owners association. 426

(C)(1) In any foreclosure action that the holder of a lien 427
commences, the holder shall name the owners association as a 428
defendant in the action. The owners association or the holder of 429
the lien is entitled to the appointment of a receiver to collect 430
rental payments due on the property. Any rental payment a receiver 431
collects during the pendency of the foreclosure action shall be 432
applied first to the payment of the portion of the common expenses 433
chargeable to the lot during the foreclosure action. 434

(2) Unless prohibited by the declaration or the bylaws, 435
following any foreclosure action, the owners association or an 436
agent the board authorizes is entitled to become a purchaser at 437
the foreclosure sale. 438

(3) A mortgage on a lot may contain a provision that secures 439
the mortgagee's advances for the payment of the portion of the 440
common expenses chargeable against the lot upon which the 441
mortgagee holds the mortgage. 442

(4) In any foreclosure action, it is not a defense, set off, 443
counterclaim, or crossclaim that the owners association has failed 444
to provide the owner with any service, goods, work, or material, 445
or failed in any other duty. 446

(D) An owner may commence an action for the discharge of the 447
lien in the court of common pleas of the county in which all or a 448
part of the property is situated if the owner believes that the 449
common expense liability for which the owners association filed a 450
certificate of lien was improperly charged. In the action, if it 451
is finally determined that the portion of the common expense 452
liability was improperly charged to the owner or the lot, the 453
court shall enter an order that it determines to be just, which 454
may provide for a discharge of record of all or a portion of the 455
lien. 456

Sec. 5312.13. All owners, residents, tenants, and other 457
persons lawfully in possession and control of any part of an 458
ownership interest shall comply with any covenant, condition, and 459
restriction set forth in any recorded document to which they are 460
subject, and with the bylaws and the rules of the owners 461
association, as lawfully amended. Any violation is grounds for the 462
owners association or any owner to commence a civil action for 463
damages, injunctive relief, or both, and an award of court costs 464
and reasonable attorney's fees in both types of action. 465

Sec. 5312.14. In any action relating to the common elements 466
or to any right, duty, or obligation possessed or imposed upon the 467
owners association by statute or otherwise, the owners association 468
may sue or be sued as a separate legal entity. Service of summons 469
or other process may be made upon the owners association by 470
serving the process personally upon the president of the board of 471
directors or the person named as statutory agent of the 472
association if it is an incorporated entity. Any action brought by 473
or on behalf of the owners association shall be pursuant to 474
authority granted by the board of directors. 475

Sec. 5312.15. This chapter shall be construed to establish a 476
uniform framework for the operation and management of planned 477
communities in this state and to supplement any planned community 478
governing document that is in existence on the effective date of 479
this chapter. In the event of a specific conflict between this 480
chapter and express requirements or restrictions in such a 481
governing document, the governing document shall control. This 482
chapter shall control if any governing document is silent with 483
respect to any provision of this chapter. 484