



Ohio Legislative Service Commission

Bill Analysis

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H.B. 371

130th General Assembly
(As Introduced)

Reps. Grossman and Perales, Anielski

BILL SUMMARY

- Requires the Division of Real Estate and Professional Licensing to establish and maintain a database registry of the names of condominium unit owners associations in Ohio and to adopt rules regarding registration and fees.
- Requires the board of directors of a unit owners association to apply to the Division to register the association in the database and to subsequently display a certificate or registration issued by the Division.
- Creates the Ohio Condominium Dispute Resolution Commission and outlines the duties, powers, and procedures of the Commission.
- Requires all meetings of a unit owners association's board of directors to be open to all unit owners.
- Requires the board of directors to vote on the record.
- Requires notice of a meeting of the board of directors to be posted in common areas of the property and website and to be sent to certain unit owners.
- Requires the board of directors to provide to all unit owners a summary of the unit owners association budget not later than 30 days after adoption.
- Adds to the records that a unit owners association must keep.
- Extends the permission afforded to any member of a unit owners association to examine and copy information the association is required to keep to a manager or managing agent of the condominium property.

- Requires a unit owner, manager, or managing agent to submit notice five days in advance of the date the person intends to examine the information the association is required to keep.
- Permits the board of directors to establish a policy requiring supervision of the examination of information and a fee for such supervision.
- Requires a manager or managing agent hired by certain unit owners associations to hold an active real estate broker's license or to hold an active real estate salesperson's license and be affiliated with a broker who has executed a management agreement with the association.
- Permits a directed or undirected proxy executed by a unit owner to vote in certain cases.
- Adds "condominium association" to the definition of "unit owners association."
- Defines "manager" and "managing agent" for purposes of the Ohio Condominium Law.

TABLE OF CONTENTS

Overview of the Ohio Condominium Law	3
Registry of unit owners associations	3
Application, fees, and registration	4
Effective date for registry provisions.....	5
Ohio Condominium Dispute Resolution Commission	5
Membership, organization, and basic authority of the Commission	5
Executive officer.....	7
Hearings and investigations	7
Process for filing and hearing complaints	8
Orders and subpoenas.....	9
Other duties	10
Board of directors – meeting requirements.....	12
Board of directors – budget summary	12
Unit owners association – recordkeeping requirements	13
Examination and copying of records.....	13
Licensing requirements for managers and managing agents	14
Proxy voting	14
Criminal penalties	14
Ohio Condominium Law definitions.....	15



CONTENT AND OPERATION

Overview of the Ohio Condominium Law

Condominiums in Ohio are governed by the Ohio Condominium Law, which provides for self-governance of condominium developments by a unit owners association and its elected board of directors. The declaration and bylaws required by law, as well as the Ohio Condominium Law and the operating rules the association adopts, establish the duties and responsibilities of the association and its board of directors.¹

Registry of unit owners associations

The bill requires the Division of Real Estate and Professional Licensing (the Division) in the Department of Commerce (the Department) to establish and maintain a registry, in the form of a database, of the names of all unit owners associations in Ohio. Information in the database must be available for public viewing, and the Division must include access to the information in the database on the Division's website and in other materials, as determined by the Superintendent of Real Estate and Professional Licensing (the Superintendent).

The bill directs the Division to perform all of the following duties:

- Adopt, amend, and rescind rules in accordance with the Administrative Procedure Act to carry out the bill's provisions governing registration of unit owners associations;
- Prescribe the form and content of all applications to be used for registration and renewal of registration pursuant to the bill's provisions;
- Review applications for registration and issue registration certificates to unit owners associations that meet the requirements for registration pursuant to the bill;
- Collect all fees related to the registration and renewal of registration certificates for unit owners associations;
- Maintain a written record of each unit owners association registered with the Division, which is to include documentation as required by the Division. The record must be available for inspection by the public

¹ Chapter 5311. of the Revised Code.



through the website and copies must be made available in accordance with the Public Records Law.

- Hire all division personnel necessary for the creation and maintenance of the database.²

Application, fees, and registration

The bill requires a board of directors to apply to the Division to register the board's unit owners association on forms prescribed by the Division. Accompanying the application, the applicant must submit any information required by the Division and a registration fee as specified in rules adopted by the Ohio Condominium Dispute Resolution Commission (the Commission). In no event may the registration fee exceed \$3 for each unit.³

The bill permits the Director of Commerce (the Director), by rule, to reduce the amount of the registration fee required by the bill in any year if the Director determines that the fee is generating more funds than the Division and the Commission need to carry out their powers and duties under the Ohio Condominium Law. If the Director reduces the amount of the registration fee, the Director must reduce it for all owners or other persons required to pay the fee. If the Director has reduced the fee, the Director may later raise it up to the amounts permitted by the bill if, in any year, the Director determines that the total amount of funds the fee is generating at the reduced amount is insufficient for the Division and the Commission to carry out their powers and duties.⁴

Upon receipt of the completed application form, documentation, and registration fee, the bill directs the Division to issue a certificate of registration to the unit owners association. The board of directors of the association must display the certificate in a conspicuous place on the premises of the condominium property for which the registration was obtained. If no appropriate place for displaying the certificate exists on the premises, the board of directors must keep the certificate on file and available for public inspection at the board's office or the office of the unit association's managing agent.⁵

The bill provides that each registration issued pursuant to the provisions of the bill expire annually on August 31 and may be renewed. The renewal fee must be the

² R.C. 5311.082 and R.C. Chapter 119; R.C. 149.43, not in the bill.

³ R.C. 5311.083(A)(1).

⁴ R.C. 5311.083(A)(2).

⁵ R.C. 5311.083(B).



same as the initial registration fee. If a board of directors fails to timely file its renewal, it is required to pay a late penalty fee in an amount equal to 50% of the renewal fee. All registration and renewal fees collected for registration and renewal must be paid into the state treasury to the credit of the Division to be used by the Division to carry out its powers and duties under the Ohio Condominium Law and by the Commission.⁶

Effective date for registry provisions

The bill delays the effective date of the provisions regarding the statewide registry. These provisions will take effect 120 days after the effective date of the bill. During that period, the Superintendent must collect and process applications for unit owners association registration and issue certificates of registration. During that time, no association is required to have a certificate of registration.⁷

Ohio Condominium Dispute Resolution Commission

The bill creates the Ohio Condominium Dispute Resolution Commission.

Membership, organization, and basic authority of the Commission

The Commission consists of seven members, appointed by the Governor, with the advice and consent of the Senate. The membership is comprised as follows:

- Two members must be unit owners and members of a unit owners association, but not members of a unit owners association board of directors. One of these members must be from a "small association" (a condominium development with 50 units or less), and one must be from a "large association" (a condominium development with more than 50 units).
- Two members must be members of a unit owners association board of directors. One of these members must be from a small association and one must be from a large association.
- One member must be a certified public accountant.
- One member must be a real estate attorney.

⁶ R.C. 5311.083(C) and (D).

⁷ Section 3.



- One member must represent the public and be a noncondominium property homeowner.⁸

The bill directs the Governor to make initial appointments to the Commission within a reasonable time. The initial members of the Commission will serve staggered terms ending on the June 30 one, two, three, four, or five years after appointment, as determined by the Governor. After the initial terms, terms of office will be for five years, commencing on July 1 and ending on June 30. Each member will hold office from the date of appointment until the end of the term for which the member is appointed. No more than four members may be members of any one political party and no member may serve concurrently on the Commission and as a member of the Ohio Real Estate Commission or the Ohio Real Estate Appraiser Board. Before entering upon the duties of office, each member must subscribe to and file with the Secretary of State the constitutional oath of office. The Governor may remove any member for misconduct, neglect of duty, incapacity, or malfeasance in accordance with continuing law regarding member removal and suspension by the Governor.

All vacancies that occur are to be filled in the manner prescribed for the regular appointments to the Commission. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed will hold office for the remainder of such term. Any member is to continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of 60 days has elapsed, whichever occurs first. A member may not hold office for more than two consecutive full terms.⁹

Annually, upon the qualification of the member appointed in such year, the bill directs the Commission to organize by selecting from its members a chairperson and vice-chairperson and to do all things necessary and proper to carry out and enforce the Ohio Condominium Law. The Commission is to meet at least once each calendar quarter to conduct its business, and a majority of members constitutes a quorum. Members do not receive compensation, but may be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.

The bill authorizes the Commission to do all of the following:

- Administer oaths;
- Issue subpoenas;

⁸ R.C. 5311.28(A) and (D).

⁹ R.C. 5311.28(B)(1); R.C. 3.14, not in the bill.



- Summon witnesses;
- Compel the production of books, papers, records, and other forms of evidence;
- Fix the time and place for hearing any matter related to compliance with provisions of the Ohio Condominium Law.¹⁰

The bill requires the Division to provide the Commission with meeting space, staff services, and other technical assistance required by the Commission in carrying out its duties.¹¹

Executive officer

The Commission is a part of the Department of Commerce for administrative purposes. The Director of Commerce is ex officio the executive officer of the Commission, or the Director may appoint the Superintendent to act as executive officer of the Commission.¹²

Hearings and investigations

The bill directs the Commission or the Superintendent to hear and investigate all of the following:

- General complaints and disputes between a unit owner and a unit owners association or board of directors;
- Request by a majority of unit owners in a unit owners association or upon a motion of the board of directors of an association to audit the elections of the association;
- Disputes over access to records of a unit owners association or board of directors.

The Commission or the Superintendent must establish and maintain an investigation and audit section to investigate complaints and conduct inspections, audits, and other inquiries as in the judgment of the Commission or Superintendent are appropriate. The investigators or auditors have the right to review and audit all of the

¹⁰ R.C. 5311.28(B)(2) to (5).

¹¹ R.C. 5311.28(C).

¹² R.C. 5311.30(A).



records required to be kept by the unit owners association during normal business hours (see "**Recordkeeping**," below).

The Commission or Superintendent may, in connection with investigations and audits, subpoena witnesses in the manner described in the bill (see "**Orders and subpoenas**," below).

The bill requires the Commission and Superintendent, the investigators and auditors, and other personnel of the Department to hold in confidence all information that is obtained by the Commission, Superintendent, investigators, and auditors performing investigations or conducting inspections, audits, and other inquiries under provisions of the bill and all reports, documents, and other work products that arise from that information and that are prepared by the Commission, investigators, auditors, or other personnel of the Department.¹³

Process for filing and hearing complaints

The bill permits any person to file a complaint regarding the activity, practice, policy, or procedure of, or regarding an alleged violation of the provisions dealing with unit owners associations and their records and boards of directors by any board of directors or unit owners association registered under the Ohio Condominium Law that adversely affects or may adversely affect the interest of a unit owner. All complaints must be in writing and submitted to the Division on forms provided by it.

Upon receiving a complaint, the Division must (1) acknowledge receipt of the complaint by sending written notice to the person who filed the complaint not more than 20 days after its receipt, (2) send written notice of the complaint within seven days after its receipt to the entity that is the subject of the complaints, and (3) before taking further action, allow the entity that is the subject of the complaint 30 days after the date the Division sends notice of the complaint to respond to the Division with respect to the complaint. The Commission is required to hear each filed complaint within 180 days after its filing, unless it has been resolved by the parties to the complaint.¹⁴

The Superintendent or Commission, on the Superintendent's or Commission's own motion or as a result of a complaint received and with good cause shown, must investigate or cause to be investigated alleged violations of the Ohio Condominium Law. If the Commission or the Superintendent believes that a violation has occurred, the Commission or Superintendent may (1) request the prosecuting attorney of the county in which the alleged violation occurred to initiate such proceedings as are

¹³ R.C. 5311.30(B) to (D).

¹⁴ R.C. 5311.32.

appropriated and (2) in accordance with the provisions of the bill, audit the records of the condominium association named in the complaint to ensure compliance with the Law. The Commission or Superintendent, at any time, may dismiss a complaint if the Commission or Superintendent determines there is not good cause shown for the complaint. If a complaint is dismissed, the Commission or Superintendent must notify the person who filed the complaint within 20 days of reaching the Commission's or Superintendent's decision and identify the reason why the complaint was dismissed.

If necessary due to the Division's performance of the duties described in the bill regarding investigating complaints, the Superintendent may issue subpoenas and compel the production of books, papers, records, and other forms of evidence.¹⁵

Orders and subpoenas

The bill permits the Commission or the Superintendent to compel, by order or subpoena, the production of any book, paper, or document in relation to any matter over which the Commission or Superintendent has jurisdiction and that is the subject of an inquiry and investigation by the Commission or Superintendent. The bill also allows the Commission or Superintendent to compel, by order or subpoena, the attendance of witnesses to testify in a hearing held under the provision of the bill. For those purposes, the Commission or Superintendent have the same power as judges of courts of common pleas to administer oaths, compel the attendance of witnesses, and compel the production of any book, paper, or document. Service of the subpoena may be made by sheriffs or constables, or by certified mail, return receipt requested, and the subpoena will be deemed served on the date delivery is made or the date the person refused to accept delivery. Witnesses will receive, after their appearance before the Commission or Superintendent, the fees and mileage provided for under Ohio law. If two or more witnesses travel together in the same vehicle, the mileage fee will be paid to only one of those witnesses, but the witnesses may agree to divide the fee among themselves in any manner.

If a person fails to file any statement or report, obey any subpoena, give testimony, answer questions, or produce any books, records, or papers that the Commission or Superintendent requires, the bill allows the Commission or Superintendent to apply to the court of common pleas of any county in Ohio to do the following:

- Make an order awarding process of subpoena or subpoena duces tecum for the person to appear and testify before the Commission or Superintendent;

¹⁵ R.C. 5311.33.

- Order any person to give testimony and answer questions, and to produce books, records, or papers, as required by the Commission or Superintendent.

Upon the filing of such an order in the office of the clerk of the court of common pleas, the clerk, under the seal of the court, must issue process of subpoena for the person to appear before the Commission or Superintendent at a time and place named in the subpoena, and each day thereafter until the examination of the person is completed. The subpoena may contain a direction that the witness bring with the witness to the examination any books, records, or papers mentioned in the subpoena. The clerk must also issue, under the seal of the court, such other orders, in reference to the examination, appearance, and production of books, records, or papers, as the court directs.

If any person summoned by a subpoena fails to obey the subpoena, to give testimony, to answer questions as required, or to obey an order of the court, the court, on motion supported by proof, may order an attachment for contempt to be issued against the person charged with disobedience of any order or injunction issued by the court. If the person is brought before the court by virtue of the attachment, and if upon a hearing the disobedience appears, the court may order the offender to be committed and kept in close custody.¹⁶

Other duties

The Commission must adopt, amend, and rescind rules in accordance with the Administrative Procedure Act as are necessary in carrying out the Commission's duties, including rules relative to the following:

- Transacting the Commission's business and managing its affairs;
- Establishing registration and renewal fees;
- Establishing procedures for receiving, reviewing, and responding to complaints filed under the Ohio Condominium Law;
- Conducting investigations in response to complaints filed under the Law;
- Auditing elections in accordance with the Law or as part of an investigation in response to a complaint filed under the Law;
- Conducting audits as provided in the Law;

¹⁶ R.C. 5311.29.

- Resolving complaints by using informal techniques of mediation, conciliation, and persuasion, including requiring the parties involved in a complaint to be given prompt notice of any offers to resolve disputes and responses thereto;
- Advising all parties making a complaint, or who are the subject of a complaint, of any recommendations or findings of fact made by the Commission with respect to the complaint;
- Requesting the party who has filed a complaint or is the subject of a complaint, and is affected by recommendations of the Commission made with respect to the complaint, to notify the Commission within a time specified by the Commission of any action the party has taken in response to the Commission's recommendations;
- Conducting nonpublic hearings and maintaining Commission proceedings and records as confidential when the Commission determines that the nature of the complaints merits that action;
- Determining the method to be used in serving notices as required by the Law.

The bill also requires the Commission to:

- Publicize information concerning the existence and duties of the Commission and the procedure for filing complaints under the Law;
- Conduct hearings on complaints;
- Submit at least annually by March 31 a report on the Commission's activities of the immediately preceding calendar year to the Governor and the majority and minority leaders of the Senate and the House of Representatives. The report must indicate the total number of complaints received, initiated, and investigated pursuant to the provisions of the bill, the total number of complaints for which hearings were held, the total number of referrals made to prosecuting attorneys as provided in the bill, and information regarding the nature of the inappropriate conduct alleged in each referral and the status or disposition made of each referral occurring during the preceding two years.
- Review, at least once a year, all actions taken by the prosecuting attorneys in response to referrals made to them by the Commission or the Superintendent;



- Perform all functions as are necessary in administering and enforcing the provisions regarding the Commission.¹⁷

Board of directors – meeting requirements

The bill requires all meetings of a unit owners association's board of directors to be open to all unit owners. It also requires a portion of each board meeting to be allocated for comments by unit owners. A unit owner may send an agent or representative, as authorized by a notarized statement of the unit owner, to attend a board meeting in the unit owner's place.

Under the bill, at least five days prior to a meeting of the board of directors, the board must post a notice of the meeting in the common areas of the condominium property and on the website maintained by the association or managing agent, if there is such a website. The board must also send notice to a unit owner who has requested to be included in a mailing list, by electronic mail to the unit owner's electronic mail address or by traditional mail to the unit owner's home mailing address, as requested by the unit owner. The board must make all public materials provided to board members for the meeting available to unit owners upon request. The bill expands the existing law requirement that each member of the board be able to hear, participate, and respond to every other member of the board to also apply to unit owners: each board member and unit owner that participates in a board meeting must be able to hear, participate, and respond to every other board member or unit owner.

The bill requires the board of directors to vote on the record and removes the requirement that, in lieu of conducting a meeting, the board may take action with the unanimous written consent of the members of the board, which written consent must currently be filed with the minutes of the meetings of the board.¹⁸

Board of directors – budget summary

The bill requires the board of directors, not later than 30 days after it adopts a budget under provisions of the Ohio Condominium Law, to provide to all unit owners a summary of the budget including an explanation of the amount and method of calculating and funding reserves, if applicable. Continuing law requires the board to adopt and amend budgets for revenues, expenditures, and reserves unless otherwise provided in the declaration or bylaws of the unit owners association.¹⁹

¹⁷ R.C. 5311.31.

¹⁸ R.C. 5311.08(A)(4).

¹⁹ R.C. 5311.081.

Unit owners association – recordkeeping requirements

Continuing law requires a unit owners association to keep certain information and to allow any member of the association to examine and copy books, records, and minutes. The bill expands the information that a unit owners association must keep to include the following:

- Records showing the names and addresses of the members of the board of directors and association officers;
- Records of all actions taken without a meeting of the board of directors;
- The original or restated declaration, bylaws, and drawings and any articles of incorporation, as recorded;
- All financial statements and tax returns, which must be kept for a minimum of three years;
- All current contracts into which the condominium development has entered;
- Records of approvals or denials for requests for design or architectural approval from the board of directors or the unit owners association;
- Ballots, proxies, and other voting records of the board of directors and the unit owners association, which must be kept for a minimum of one year.²⁰

Continuing law requires a unit owner, within 30 days of obtaining a condominium ownership interest, to provide certain information to the unit owners association through the board of directors. One piece of information that is required under existing law is the name, business address, and business telephone number of any person who manages that owner's unit as an agent of that owner. The bill adds that if the manager is required to be licensed as a real estate broker or salesperson under Ohio law, the unit owner must also provide a copy of that person's license.²¹

Examination and copying of records

Law retained in part by the bill allows any member of the unit owners association to examine and copy the **books, records, and minutes** of the association. The bill requires that any manager or managing agent of the condominium property, in

²⁰ R.C. 5311.09(A)(1)(e) through (k).

²¹ R.C. 5311.09(A)(2)(b).



addition to any member, be permitted to examine and copy **information** included in the records of the association (see "**Unit owners association – recordkeeping requirements,**" above). The bill removes "standards governing the type of documents that are subject to examination and copying" from inclusion in the list of reasonable standards set forth in the declaration, bylaws, or rules the board may promulgate and adds a fee for the supervision of examination to the reasonable standards list.

The bill expressly permits an association to establish a policy of requiring a reasonable fee to be charged for the supervision of examination of the records, in addition to a fee for copying the documents. Also, a member, manager, or managing agent desiring to examine or copy information must submit a notice five days in advance of the date of examination.²²

Licensing requirements for managers and managing agents

The bill requires a manager or managing agent of a condominium development containing more than ten units, in order to manage or be hired by a unit owners association, to hold an active real estate broker's license or real estate salesperson's license issued under Ohio law. In addition, a real estate salesperson may not perform the duties of a manager or managing agent unless the salesperson is affiliated with a broker who has executed a management agreement with the unit owner's association.²³ These provisions take effect 120 days after the effective date of the bill.²⁴

Proxy voting

The bill permits, unless otherwise provided in an association's declaration or bylaws, votes allocated to a unit to be cast by a directed or undirected proxy executed by a unit owner, provided that a person may not cast votes representing more than 15% of the votes in the association pursuant to undirected proxies.²⁵

Criminal penalties

The bill creates criminal penalties for violations of provisions of the Ohio Condominium Law. A board of directors of a unit owners association that violates provisions of the bill regarding registration and renewal for the statewide registry is guilty of a third degree misdemeanor. A person or entity that violates provisions of the

²² R.C. 5311.091(A).

²³ R.C. 5311.15, conforming changes in R.C. 5311.08(F) and 5311.081.

²⁴ Section 3.

²⁵ R.C. 5311.22(E).

Law regarding unit owners and unit owners associations and requirements regarding records and their examination and the requirement regarding the licensure of managers and managing agents is guilty of a first degree misdemeanor. A person or entity who violates provisions of the Law governing the board of directors of a unit owners association is guilty of a fifth degree felony and, notwithstanding financial sanctions provisions of law, the court may impose upon the offender an additional fine of not more than \$2,500 (see **COMMENT**).²⁶

Ohio Condominium Law definitions

The bill includes "condominium association" in the definition of "unit owners association," as an organization that administers the property and consists of all the owners of units in a property.²⁷

The bill defines "manager" or "managing agent" to mean a person that is responsible, alone or in concert with others, for the management of a condominium property.²⁸

COMMENT

The bill creates criminal penalties for violations of R.C. 5311.08, 5311.081, 5311.083, 5311.09, and 5311.091, which contain many separate requirements. It is unclear who would be criminally liable for certain violations: the organization or the individuals comprising the organization.

HISTORY

ACTION	DATE
Introduced	12-04-13

H0371-I-130.docx/ks

²⁶ R.C. 5311.99.

²⁷ R.C. 5311.01(DD).

²⁸ R.C. 5311.01(GG).

