



A Legal Update on the Ohio Planned Community Act

by Gene R. Abercrombie and Andrew L. Smith

The Ohio Planned Community Act set forth at Ohio Revised Code Chapter 5312 (the Act) became effective on September 10, 2010. The Act defines a “planned community” as a community made of individual lots for which a deed, common plan or declaration requires one of the following: (1) owners to become members of an owners association; (2) owners or the owners association to hold or lease property for the owners’ benefit; or (3) owners to support property or facilities by membership or fees. Condominium Associations are not within the purview of the Act, but are separately governed by Ohio Revised Code Chapter 5311.

To establish a planned community a person must file and record a declaration and bylaws (also known as code of regulations) in the recorder’s office of the county where the community is located. The Act requires the declaration and bylaws to state certain detailed information such as the board of director terms and the method for amending the declaration and bylaws. However, the Ohio Planned Community Act is not retroactive. Any provisions of a document created before the Act’s effective date are not invalidated if those provisions were in the document at the time the document was recorded. Moreover, as of March 9, 2011, the board of directors of any community that was in existence on the Act’s effective date must file and record the community’s bylaws in the recorder’s office of

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About the photo: Flag flying over Hancock County Courthouse.

the county where the community is located. Similarly, any bylaw amendments of a community in existence on the Act's effective date must file and record the community's bylaws in the recorder's office. Associations shall be precluded from filing liens or taking other enforcement actions until the bylaws are recorded.

The owners association must be established by the date the first lot in the planned community is conveyed to a purchaser. Ohio law mandates that the owners association be organized as a non-profit corporation. The owners association is required to create a board of directors elected by the owners and their spouses. Owners, principal members of an LLC, partners, directors, officer, trustees and employees of an owner cannot be members of the board. The board then elects officers from the members of the board, including a president, secretary and treasurer. The board is required to hold at least one meeting a year, and such meetings may be held by any method of communication. Instead of holding a meeting, the board may act by unanimous written consent.

Moreover, the Act gives the board extensive powers over the planned community. The Act mandates the board to adopt an annual estimated budget for revenues and expenses, which includes a reserve for repair and replacement costs. The board may enter into contracts and incur liabilities regarding the operation of the property. The board can hire and fire employees and independent professionals such as attorneys, engineers and accountants. The board has the power to acquire, convey and encumber real and personal property as well as grant easements, leases, and licenses through property held by the owner association. The board may adopt and enforce rules relating to the planned community. The board can even invest excess funds in investments as long as the board meets Ohio's prudent investor standards.

Under the Act, the owners association is responsible for reasonable maintenance, repair, and replacement of property held by the owners association. But each owner is responsible for maintenance, repair, and replacement of his or her own lot. Additionally, the Act gives owners certain due process rights. Within reasonable standards set forth in the declaration and by laws, owners may examine and copy the books, records and minutes of the owners association. The board of directors must give an owner a detailed written notice before imposing a charge for damages or an enforcement assessment. The Act also gives an owner the statutory right to have a hearing before the board to contest a charge or assessment.

For questions regarding the Ohio Planned Community Act, please contact Mr. Abercrombie or Mr. Smith at our Toledo office (419-241-6000).



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