

## CHAPTER 5311: CONDOMINIUM PROPERTY

### 5311.01 Condominium property definitions.

(A) "Agent" means any person who represents a developer or who acts for or on behalf of a developer in selling or offering to sell any ownership interest in a condominium development. "Agent" does not include an attorney whose representation of a developer consists solely of rendering legal services.

(B) "Additional property" means land, including surface and air rights, or improvements to land that are described in an original declaration and that may be added in the future to an expandable condominium property.

(C) "Affiliate of a developer" means any person who controls a developer or is controlled by a developer. For the purposes of this division:

(1) A person "controls" a developer if any of the following applies:

(a) The person is a general partner, officer, member, manager, director, or employer of the developer.

(b) The person owns, controls, holds with power to vote, or holds proxies representing more than twenty per cent of the voting interest in the developer, doing so either directly or indirectly, acting in concert with one or more other persons, or through one or more subsidiaries.

(c) The person controls, in any manner, the election of a majority of the developer's directors.

(d) The person has contributed more than twenty per cent of the developer's capital.

(2) A person "is controlled by" a developer if any of the following applies:

(a) The developer is a general partner, member, manager, officer, director, or employer of the person.

(b) The developer owns, controls, holds with power to vote, or holds proxies representing more than twenty per cent of the voting interest in the person, doing so either directly or indirectly, acting in concert with one or more other persons, or through one or more subsidiaries.

(c) The developer controls, in any manner, the election of a majority of the person's directors.

(d) The developer has contributed more than twenty per cent of the person's capital.

(3) "Control" does not exist for purposes of division (C)(1) or (2) of this section if a person or developer holds any power described in either of those divisions solely as security for an obligation and that power is not exercised.

(D) "Body of water" means a stream, lake, pond, marsh, river, or other body of natural or artificial surface water.

(E) "Common assessments" means assessments that are charged proportionately against all units for

common purposes.

(F) "Common elements" means, unless otherwise provided in the declaration, the following parts of the condominium property:

(1) The land described in the declaration;

(2) All other areas, facilities, places, and structures that are not part of a unit, including, but not limited to, the following:

(a) Foundations, columns, girders, beams, supports, supporting walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of buildings;

(b) Basements, yards, gardens, parking areas, garages, and storage spaces;

(c) Premises for the lodging of janitors or persons in charge of the property;

(d) Installations of central services, including, but not limited to, power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;

(e) Elevators, tanks, pumps, motors, fans, compressors, ducts, and, in general, all apparatus and installations existing for common use;

(f) Community and commercial facilities that are not listed in division (F)(2)(a), (b), (c), (d), or (e) of this section but provided for in the declaration;

(g) All parts of the condominium property that are not listed in division (F)(2)(a), (b), (c), (d), (e), or (f) of this section that are necessary or convenient to its existence, maintenance, and safety, that are normally in common use, or that have been designated as common elements in the declaration or drawings.

(G) "Common expenses" means expenses designated as common expenses in this chapter or in the declaration.

(H) "Common losses" means the amount by which the common expenses during any period of time exceeds the common assessments and common profits during that period.

(I) "Common profits" means the amount by which the total income received from any of the following exceeds expenses allocable to the particular income, rental, fee, or charge:

(1) Assessments charged for special benefits to specific units;

(2) Rents received from the rental of equipment or space in common elements;

(3) Any other fee, charge, or income other than common assessments.

(J) "Common surplus" means the amount by which common assessments collected during any period

exceed common expenses.

(K) "Condominium" means a form of real property ownership in which a declaration has been filed submitting the property to the condominium form of ownership pursuant to this chapter and under which each owner has an individual ownership interest in a unit with the right to exclusive possession of that unit and an undivided ownership interest with the other unit owners in the common elements of the condominium property.

(L) "Condominium development" means a condominium property in which two or more individual residential or water slip units, together with their undivided interests in the common elements of the property, are offered for sale pursuant to a common promotional plan.

(M) "Condominium instruments" means the declaration and accompanying drawings and plans, the bylaws of the unit owners association, the condominium development disclosure statement described in section 5311.26 of the Revised Code, any contracts pertaining to the management of the condominium property, and any other documents, contracts, or instruments establishing ownership of or exerting control over a condominium property or unit.

(N) "Condominium ownership interest" means a fee simple estate or a ninety-nine-year leasehold estate, renewable forever, in a unit, together with an appurtenant undivided interest in the common elements.

(O) "Condominium property" means all real and personal property submitted to the provisions of this chapter, including land, the buildings, improvements, and structures on that land, the land under a water slip, the buildings, improvements, and structures that form or that are utilized in connection with that water slip, and all easements, rights, and appurtenances belonging to the land or to the land under a water slip.

(P) "Conversion condominium development" means a condominium development that was operated as a rental property and occupied by tenants immediately prior to the submission of the property to the provisions of this chapter.

(Q) "Convertible unit" means a unit that may be converted into one or more units and common elements, including limited common elements.

(R) "Declaration" means the instrument by which property is submitted to the provisions of this chapter. "Declaration" includes all amendments to that declaration.

(S) "Developer" means any person who directly or indirectly sells or offers for sale condominium ownership interests in a condominium development. "Developer" includes the declarant of a condominium development and any successor to that declarant who stands in the same relation to the condominium development as the declarant.

(T) "Exclusive use area" means common elements that the declaration reserves for delegation by the board of directors to the use of a certain unit or units, to the exclusion of other units.

(U) "Expandable condominium property" means a condominium property in which the original

declaration reserves the right to add additional property.

(V) "Leasehold condominium development" means a condominium development in which each unit owner owns a ninety-nine-year leasehold estate, renewable forever, in the owner's unit, in the land upon which that unit is situated, or in both, together with an undivided leasehold interest in the common elements, with all leasehold interests due to expire at the same time.

(W) "Limited common elements" means the common elements that the declaration designates as being reserved for use by a certain unit or units, to the exclusion of the other units.

(X) "Offer" includes any inducement or solicitation to encourage a person to acquire a condominium ownership interest in a condominium development.

(Y) "Par value" means a number, expressed in dollars, points, or as a percentage or fraction, attached to a unit by the declaration.

(Z) "Purchaser" means a person who purchases a condominium ownership interest for consideration pursuant to an agreement for the conveyance or transfer of that interest for consideration.

(AA) "Sale of a condominium ownership interest" means the execution by both parties of an agreement for the conveyance or transfer for consideration of a condominium ownership interest. "Sale of a condominium ownership interest" does not include a transfer of one or more units from the developer to another developer, a subsidiary of the developer, or a financial institution for the purpose of facilitating the sale or development of the remaining or unsold portion of the condominium property or additional property.

(BB) "Unit" means the part of the condominium property that is designated as a unit in the declaration, is delineated as a unit on the drawings prepared pursuant to section 5311.07 of the Revised Code, and is one of the following:

(1) A residential unit, in which the designated part of the condominium property is devoted in whole or in part to use as a residential dwelling consisting of one or more rooms on one or more floors of a building. A "residential unit" may include exterior portions of the building, spaces in a carport, and parking spaces as described and designated in the declaration and drawings.

(2) A water slip unit, which consists of the land that is under the water in a water slip and the land that is under the piers or wharves that form the water slip, and that is used for the mooring of watercraft.

(3) A commercial unit in which the property is designated for separate ownership or occupancy solely for commercial purposes, industrial purposes, or other nonresidential or nonwater slip use.

(CC) "Unit owner" means a person who owns a condominium ownership interest in a unit.

(DD) "Unit owners association" means the organization that administers the condominium property and that consists of all the owners of units in a condominium property.

(EE) "Watercraft" has the same meaning as in division (A) of section 1547.01 of the Revised Code.

(FF) "Water slip" means a channel of water between piers or wharves.

Effective Date: 07-20-2004

### **5311.02 Chapter applicable to condominium property.**

Chapter 5311. of the Revised Code applies only to property that is specifically submitted to its provisions by the execution and filing for record of a declaration by the owner, as provided in this chapter. In every instance, any property so submitted shall be either a fee simple estate or a ninety-nine year leasehold, renewable forever. Neither the submission of property to the provisions of this chapter, nor the conveyance or transfer of a condominium ownership interest constitutes a subdivision within the meaning of, or is subject to, Chapter 711. of the Revised Code.

Effective Date: 10-01-1978

### **5311.03 Condominium units deemed real property.**

(A) Each unit of a condominium property, together with the undivided interest in the common elements appurtenant to it, is real property for all purposes and is real estate within the meaning of all provisions of the Revised Code.

(B) A unit owner is entitled to the exclusive ownership and possession of the unit and to ownership of an undivided interest in the common elements as expressed in the declaration.

(C)(1) Each residential and commercial unit shall have a direct exit to a public street or highway, to a common element leading to a public street or highway, or to a permanent easement leading to a public street or highway.

(2) Each water slip unit shall have a direct exit to a body of water, to a common element leading to a body of water, or to a permanent easement leading to a body of water. Each water slip unit also shall have a direct exit to a public street or highway or to a common element leading to a public street or highway.

(D) Unless otherwise provided in the declaration or drawings :

(1) The boundaries of residential and commercial units are the interior surfaces of the perimeter walls, floors, and ceilings.

(2) Windows and doors, sashes, thresholds, frames, jambs, and hardware in the perimeter walls, floors, or ceilings of the unit are part of the unit.

(3) Supporting walls, fixtures, and other parts of the building that are within the boundaries of the unit but that are necessary for the existence, support, maintenance, safety, or comfort of any other part of the condominium property are not part of the unit.

(E)(1) Ownership of a residential unit includes the right to exclusive possession, use, and enjoyment of the interior surfaces of the perimeter walls, floors, and ceilings and of the supporting walls, fixtures,

and other parts of the building within its boundaries, including the right to paint, tile, wax, paper, or otherwise finish, refinish, or decorate the unit.

(2) Ownership of a water slip unit includes the exclusive right to moor a watercraft in the portion of water above the water slip unit and the right to exclusive possession, use, and enjoyment of the piers or wharves that are within the boundaries of the water slip unit.

(3) Ownership of a commercial unit includes the right to exclusive possession, use, and enjoyment of the unit within the unit's boundaries.

(F) Each unit is subject to the right of access for the purpose of maintenance, repair, or service of any common element located within its boundaries or of any portion of the unit itself by persons authorized by the board of directors of the unit owners association. No maintenance, repair, or service of any portion of a unit shall be authorized, however, unless it is necessary in the opinion of the board of directors for public safety or in order to prevent damage to or destruction of any other part of the condominium property.

Effective Date: 07-20-2004

### **5311.031 Relocation and reallocation of boundaries.**

(A) Except as otherwise provided in the declaration, the boundaries between adjoining units and appurtenant limited common elements may be relocated and the undivided interests in the common elements appurtenant to those units may be reallocated by an amendment to the declaration pursuant to the following procedures:

(1)(a) The owners of the adjoining units shall submit to the board of directors of the unit owners association a written application for the relocation and reallocation. The application shall be accompanied by the written consents of the holders of all liens on those units, except liens for real estate taxes and assessments not due and payable.

(b) In the application, the owners of the adjoining units may request a specific reallocation of their undivided interests in the common elements allocated to the adjoining units.

(2) Unless the board of directors finds any requested reallocation of the undivided interests in the common elements to be unreasonable, within thirty days after the board receives the application, the association shall prepare, at the expense of the owners of the adjoining units, an amendment to the declaration that is executed by the owners of the affected units and that includes all of the following:

(a) Identification of the affected units;

(b) Words of conveyance between the owners of the units;

(c) A specification of the undivided interests in the common elements, the proportionate shares of common surplus and common expenses, and the voting powers of each unit resulting from the relocation and reallocation, the total of which shall equal the interests, shares, and powers of the former adjoining units.

(3) At the expense of the owners of the affected units, the association shall record the amendment to the declaration together with both of the following:

(a) Any drawing, plat, or plans necessary to show the altered boundaries of the affected units;

(b) The dimensions and identifying number of each unit that results from the relocation and reallocation.

(B) Existing liens automatically shall attach to each unit that results from the relocation and reallocation.

Effective Date: 07-20-2004

### **5311.032 Reallocation of rights to use of limited common elements.**

(A) Except as otherwise provided in the declaration, rights to the use of limited common elements may be reallocated between or among units by an amendment to the declaration pursuant to the following procedures:

(1) The owners of the affected units shall prepare and execute at their expense an amendment to the declaration that identifies the affected units and specifies the reallocated rights to the affected limited common elements.

(2) The owners of the affected units shall submit to the board of directors of the unit owners association the amendment, accompanied by the written consents of the owners of all affected units and the holders of all liens on those units except liens for real estate taxes and assessments not due and payable.

(3) At the expense of the owners of the affected units, the unit owners association shall record the submitted amendment to the declaration.

(B)(1) If the declaration reserves any common element as an exclusive use area, the board of directors may delegate that common element to the use of a certain unit or units, to the exclusion of other units. The delegation of a common element may be subject to criteria that the unit owners association establishes, including the payment of an additional fee that is part of each benefited unit's common expenses and that is only to be used for the delegated common element.

(2) Nothing in division (B)(1) of this section affects a unit owner's right to exclusive use of any common element that the declaration designates as a limited common element appurtenant to the owner's unit.

Effective Date: 07-20-2004

### **5311.033 Conversion of convertible units.**

(A)(1) Except as otherwise provided in the declaration, all or any portion of a convertible unit may be converted into one or more units or common elements, including limited common elements.

(2)(a) To cause the conversion, the owner shall prepare and execute an amendment to the declaration that describes the conversion and record the amendment together with the drawings described in division (E) of section 5311.07 of the Revised Code.

(b) The amendment shall specify the undivided interests in the common elements, proportionate shares of common surplus and common expenses, and the voting powers of each unit resulting from the conversion, the total of which shall equal the interest, share, and power of the unit that was converted. The amendment to the declaration shall assign an identifying number to each unit formed, allocate to each unit a portion of the undivided interest in the common elements appurtenant to the convertible unit, describe or delineate the limited common elements formed out of the convertible unit, and show or designate each unit to which those limited common elements are reserved.

(3) The conversion of a convertible unit pursuant to this section is deemed to occur at the time that all appropriate instruments are recorded in accordance with division (A)(2) of this section and division (E) of section 5311.07 of the Revised Code.

(B) A convertible unit that, in whole or in part, is not converted in accordance with this section shall be treated as a single unit until it is so converted.

Effective Date: 07-20-2004

### **5311.04 Common areas and facilities.**

(A) The common elements of a condominium property are owned by the unit owners as tenants in common, and the ownership shall remain undivided. No action for partition of any part of the common elements may be commenced, except as provided in section 5311.14 of the Revised Code, and no unit owner otherwise may waive or release any rights in the common elements.

(B) The declaration shall set forth the undivided interest in the common elements appurtenant to each unit.

(1) For units in condominium properties other than expandable condominium properties, the undivided interest in the common elements shall be computed in the proportion that the fair market value of the unit bears to the aggregate fair market value of all units on the date that the declaration is originally filed for record, shall be based on the size or par value of the unit, or shall be computed on an equal basis.

(2) Except as provided in division(D) of this section, the interest in the common elements appurtenant to units in expandable condominium properties may be computed in any proportion or on any basis that is the same for units submitted by the declaration as originally filed and those submitted later by the addition of additional property and that uniformly reallocates undivided interests of units previously submitted when additional property is submitted.

(C) If a par value is assigned to any unit, a par value shall be assigned to every unit. Substantially



identical units shall be assigned the same par value, but units located at substantially different heights above the ground or having substantially different views, amenities, or other characteristics that might result in differences in fair market value may be considered substantially identical. If par value is stated in terms of dollars, it need not reflect or relate in any way to the sale price or fair market value of any unit, and no opinion, appraisal, or market transaction at a different figure affects the par value of any unit.

(D) The declaration for an expandable condominium property shall not allocate interest in the common elements on the basis of par value, unless the declaration as originally filed does either of the following:

(1) Requires that all units created on any additional property that is added to the condominium property be substantially identical to the units created on the condominium property previously submitted;

(2) Describes the types of units that may be created on any additional property and states the par value that will be assigned to every unit that is created.

(E) Except as provided in sections 5311.031 to 5311.033 and 5311.051 of the Revised Code, the undivided interest in the common elements of each unit as expressed in the original declaration shall not be altered except by an amendment to the declaration unanimously approved by all unit owners affected. The undivided interest in the common elements shall not be separated from the unit to which it appertains and is deemed conveyed or encumbered with the unit even though that interest is not expressly mentioned or described in the deed, mortgage, lease, or other instrument of conveyance or encumbrance.

(F) Each unit owner may use the common elements in accordance with the purposes for which they are intended. No unit owner may hinder or encroach upon the lawful rights of the other unit owners in the common elements.

(G) Subject to rules the board of directors adopts pursuant to division (B)(5) of section 5311.081 of the Revised Code, the board may authorize the use of limited common elements, as distinguished from the common elements and exclusive use areas, for the construction of open, unenclosed patios, hedges, decks, fences, or similar improvements provided that the improvements are maintained and insured by the owner of the unit to which the limited common area is appurtenant. The construction of an addition to or an expansion of a unit into limited common elements or common elements may not be authorized without the consent of all unit owners.

(H)(1) Subject to the bylaws and the declaration, the unit owners association may purchase, hold title to, and sell real property that is not declared to be part of the condominium property.

(2) Any transaction pursuant to division (H)(1) of this section that takes place prior to the date that the unit owners other than the developer assume control of the unit owners association requires the approval of the developer, the approval of the unit owners other than the developer who exercise not less than seventy-five per cent of the voting power of the unit owners association, and the authorization of the board of directors.

(3) Any transaction pursuant to division (H)(1) of this section that takes place after the unit owners assume control of the unit owners association requires the approval of the unit owners who exercise not less than seventy-five per cent of the voting power of the unit owners association and the authorization of the board of directors.

(4) Expenses incurred in connection with any transaction pursuant to division (H)(1) of this section are common expenses.

Effective Date: 10-01-1978

### **5311.041 Common expenses.**

(A) All costs of the administration, operation, maintenance, repair, and replacement of common elements are common expenses.

(B)(1) The declaration, either as filed and recorded by the declarant pursuant to section 5311.06 of the Revised Code or as amended by a vote of the unit owners exercising not less than ninety per cent of the voting power of the unit owners association, may provide that, regardless of undivided interests, the following common expenses shall be computed on an equal per unit basis:

(a) Expenses that arise out of the administration, operation, maintenance, repair, and replacement of security, telecommunications, rubbish removal, roads, entrances, recreation facilities, landscaping, and grounds care;

(b) Legal, accounting, and management expenses.

(2) Expenses not included in division (B)(1) of this section shall be computed on the basis of the undivided interest in the common elements allocated to each unit.

Effective Date: 07-20-2004

### **5311.05 Condominium declaration.**

(A) A declaration submitting property to the provisions of this chapter shall be signed and acknowledged by the owner before a judge or clerk of a court of record, county auditor, county engineer, notary public, or mayor, who shall certify the acknowledgment and subscribe the certificate of acknowledgment.

(B) A declaration shall contain all of the following:

(1) A legal description of the land or, for a water slip condominium property, of the land and the land under the water area, submitted to the provisions of this chapter;

(2) The name of the condominium property, which shall include the word "condominium";

(3) The purpose of the condominium property, the units and recreational and commercial facilities situated in the condominium property, and any restrictions upon the use of the condominium property;

(4) A general description of buildings submitted to the provisions of this chapter, stating the principal construction materials and the number of stories, basements, and units. The declaration for a water slip property shall also contain a general description of each water slip and of the piers and wharves forming each water slip submitted to the provisions of this chapter;

(5) The unit designation of each unit submitted to the provisions of this chapter and a statement of its location, approximate area, the immediate common element or limited common element to which it has access, and any other information necessary for its proper identification;

(6) A description of the common elements and limited common elements submitted to the provisions of this chapter, the undivided interest in those elements appurtenant to each unit, the basis upon which those appurtenant undivided interests are allocated, and the procedures whereby the undivided interests appertaining to each unit may be altered . The undivided interests, basis, and procedures shall be in accordance with sections 5311.031 to 5311.033 and 5311.04 of the Revised Code;

(7) A statement that each unit owner is a member of a unit owners association established for the administration of the condominium property;

(8) The name of a person to receive service of process for the unit owners association, together with the person's residence or place of business located in this state;

(9) A statement of any membership requirement if the unit owners association or any unit owners are required to be members of a not-for-profit organization that provides facilities or recreation, education, or social services to owners of property other than the condominium property;

(10) The method by which the declaration may be amended, which, except as provided in division(E) of this section, division (E) of section 5311.04, division (B) of section 5311.041, and sections 5311.031 to 5311.033 and 5311.051 of the Revised Code, requires the affirmative vote of unit owners exercising not less than seventy-five per cent of the voting power;

(11) Any further provisions deemed desirable.

(C) The declaration for an expandable condominium property shall contain all of the following in addition to the requirements of division (B) of this section:

(1) The explicit reservation of the declarant's option to expand the condominium property;

(2) A statement of any limitations on that option to expand, including a statement as to whether the consent of any unit owner is required, and how that consent is to be ascertained; or a statement that there are no limitations on the option to expand;

(3) (a) The time at which the option to expand the condominium development expires, which shall not exceed seven years from the date the declaration is filed for record;

(b) A statement that the declarant may, during the six months prior to the time that the option expires, extend the option for an additional seven years with the consent of the holders of a majority of the voting power of the unit owners other than the declarant;

(c) A statement of any circumstances that will terminate the option to expand prior to the time established pursuant to division (C)(3)(a) or (b) of this section.

(4) A legal description of all additional property that, through exercise of the option, may be submitted to the provisions of this chapter and added to the condominium property;

(5) A statement that specifies all of the following:

(a) Whether the addition of all or a particular portion of the additional property is mandatory;

(b) If the addition of additional property is not mandatory, whether all or a particular portion of the additional property must be added if any other additional property is added;

(c) Whether or not there are any limitations on portions of additional property that may be added.

(6) A statement of whether portions of the additional property may be added at different times and a statement that sets forth any limitations on the addition of additional property at different times, including the legal descriptions of the boundaries of portions that may be added and specifications on the order in which those portions may be added to the condominium property or a statement that there are no limitations on the addition of additional property;

(7) A statement of any limitations on the location of any improvements that may be made on any portion of the additional property added to the condominium property, or a statement that there are no limitations of that kind;

(8) A statement of the maximum number of units that may be created on the additional property. If portions of the additional property may be added to the condominium property and the boundaries of those portions are fixed in accordance with division (C)(6) of this section, the declaration also shall state the maximum number of units that may be created on each portion added to the condominium property. If portions of the additional property may be added to the condominium property and the boundaries of those portions are not fixed in accordance with division (C)(6) of this section, the declaration also shall state the maximum number of units per acre that may be created on any portion added to the condominium property.

(9) Except when the original condominium property contained no units restricted to residential use, a statement of the maximum percentage of the aggregate land area and the maximum percentage of aggregate floor area that may be devoted to units not restricted to residential use on any additional property added to the condominium property;

(10) A statement of the extent to which any structures erected on any portion of the additional property added to the condominium property will be compatible with structures on the submitted property in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that the structures need not be compatible in those respects;

(11) With respect to all improvements to any portion of additional property added to the condominium property, other than structures, a statement setting forth both of the following:

(a) A description of the improvements that must be made or a statement that no other improvements must be made;

(b) Any restrictions or limitations on the improvements that may be made or a statement that there are no restrictions or limitations on improvements.

(12) With respect to all units created on any portion of additional property added to the condominium property, a statement setting forth both of the following:

(a) Whether all units of that kind must be substantially identical to units on previously submitted property;

(b) Any limitations on the types of units that may be created on the additional property or a statement that there are no limitations of that kind.

(13) A description of any reserved right of the declarant to create limited common elements within any portion of the additional property added to the condominium property or to designate common elements within each portion. The description shall specify the types, sizes, and maximum number of limited common elements in each portion that may subsequently be assigned to units;

(14) Drawings and plans that the declarant considers appropriate in supplementing the requirements of division (C) of this section;

(15) A statement that a successor owner of the condominium property or of additional property added to the condominium property who is not an affiliate of the developer and who is a bona fide purchaser of the property for value, or a purchaser who acquires the property at a sheriff's sale or by deed in lieu of a foreclosure, is not liable in damages for harm caused by an action or omission of the developer or a breach of an obligation by the developer.

(D) The declaration for a leasehold condominium development shall contain all of the following in addition to the requirements of division (B) of this section:

(1) With respect to any ground lease or other leases, the expiration or termination of which could terminate or reduce the amount of condominium property, a statement setting forth the county in which the lease is recorded and the volume and page of the record;

(2) A statement setting forth the date upon which each lease referred to in division (D)(1) of this section expires;

(3)(a) A statement of whether the unit owners own any land or improvements of the condominium property in fee simple, and if so, a description of the improvements and a legal description of the land ;

(b) A statement of any rights the unit owners have to remove any improvements within a reasonable time after the expiration or termination of any ninety-nine year lease, or a statement that they have no rights of that nature.

(4) A statement of the rights that the unit owners have to redeem the reversion or any of the reversions, or a statement that they have no rights of that nature;

(5) A statement that, subsequent to the recording of the declaration, no lessor who executed it and no successor in interest to that lessor has any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of the unit owner's share of the rent to the person designated in the declaration for the receipt of that rent and who otherwise complies with all covenants that, if violated, entitle the lessor to terminate the lease.

(E)(1) Without a vote of the unit owners, the board of directors may amend the declaration in any manner necessary for any of the following purposes:

(a) To meet the requirements of institutional mortgagees, guarantors and insurers of first mortgage loans, the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, and similar institutions;

(b) To meet the requirements of insurance underwriters;

(c) To bring the declaration into compliance with this chapter;

(d) To correct clerical or typographical errors or obvious factual errors in the declaration or an exhibit to the declaration;

(e) To designate a successor to the person named to receive service of process for the unit owners association. If the association is incorporated in this state, this may be accomplished by filing with the secretary of state an appropriate change of statutory agent designation.

(2) Division (E)(1) of this section applies to condominium properties submitted to this chapter prior to, on, or after the effective date of this amendment.

(3) Any unit owner who is aggrieved by an amendment to the declaration that the board of directors makes pursuant to division (E)(1) of this section may commence a declaratory judgment action to have the amendment declared invalid as violative of division (E)(1) of this section. Any action filed pursuant to division (E)(3) of this section shall be filed in the appropriate court of common pleas within one year from the date of the recordation of the amendment.

Effective Date: 07-20-2004

### **5311.051 Expandable condominium property.**

Land and improvements on the property of an expandable condominium property are considered added to the condominium property and submitted to the provisions of this chapter upon the declarant and all owners and lessees of the added land executing and filing for record pursuant to sections 5311.06 and 5311.07 of the Revised Code, an amendment to the declaration that contains the information, drawings, and plans with respect to the additional property and improvements required by those sections and by divisions (A) and (B) of section 5311.05 of the Revised Code. The amendment, pursuant to the declaration and section 5311.04 of the Revised Code, shall allocate and reallocate

undivided interests in the common elements of the condominium property appertaining to each unit of the condominium property. The execution and filing for record of an amendment submitting additional property to an expandable condominium property is an effective amendment of the declaration without a vote of the unit owners.

Effective Date: 07-20-2004

### **5311.052 Action to contest change in percentage interests in common areas and facilities of unit owners.**

If a condominium property for which the declaration was filed with a county recorder prior to October 1, 1978, has been expanded by the addition of units in accordance with the declaration, and if the unit owners do not commence an action to contest the change in the undivided interests in the common elements in a court of competent jurisdiction within two years after the date that the amendment was filed with the county recorder, each of the unit owners of the condominium property as expanded is deemed to have assented to and ratified the amendment, and the undivided interests in the common elements of the unit owners is no longer contestable.

Effective Date: 07-20-2004

### **5311.06 Declaration of condominium property filed and recorded.**

(A)(1) A declaration of condominium property shall be filed and recorded in the office of the recorder of the county or counties in which the land or water slips described in the declaration are situated. All original declarations when filed shall be accompanied by a set of drawings of the condominium property as required by section 5311.07 of the Revised Code and a true copy of the bylaws of the unit owners association as required by section 5311.08 of the Revised Code.

(2) Any amendment to the declaration that effects any change in the bylaws or drawings, including an amendment to add additional land or an improvement to the condominium property, shall be accompanied by a true copy of the change in the bylaws and drawings.

(B) A recorder shall not accept any declaration or amendment and any bylaws and drawings for recording until a copy of the declaration or amendment and the bylaws and drawings have been filed with the auditor of the county and the declaration or amendment contains the auditor's certification that a copy of the declaration or amendment and any bylaws and drawings have been filed with the auditor.

(C) No interest in a unit shall be conveyed until the declaration, bylaws, and drawings, certified as required by this section, have been filed for record. Errors or omissions in the declaration, bylaws, or drawings do not affect the title of a grantee of a unit.

(D) This section does not prohibit a developer and a purchaser from entering into an agreement for the sale of a condominium ownership interest prior to filing the documents that create that condominium ownership interest.

Effective Date: 07-20-2004

### **5311.07 Condominium drawings.**

(A)(1) A set of drawings shall be prepared for every condominium property that graphically shows the boundaries, location, designation, length, width, and height of each unit ; the boundaries, location, designation, and dimensions of the common elements and the limited common elements and exclusive use areas; and the location and dimensions of all appurtenant easements or encroachments .

(2) If the condominium property is not contiguous, the drawings shall show the distances between parcels of land or water slips.

(3) The drawings for commercial units that do not have wall surfaces shall show the monumental perimeter boundaries of those units.

(4) The drawings need not show interior walls or partitions that are not load-bearing.

(B) Each drawing shall bear both of the following:

(1) The certified statement of a registered architect or registered professional engineer that the drawing accurately shows each building or water slip as built or constructed;

(2) The certified statement of a registered professional surveyor that the drawing accurately reflects the location of improvements and recorded easements.

(C) If some, but not all, portions of the condominium property are to be held by unit owners in a leasehold estate, the drawings shall show the location and dimensions of each portion and shall label the portion as leased land or as leased property. If there is more than one portion of leased land or leased property, the drawings shall label each portion in a manner that is different from the labels designating any other portions of the leased land or leased property and different from the identifying number of any unit.

(D) If the condominium property contains any improvements other than units, the drawings or amendments shall indicate which, if any, of the improvements have been begun but have not been substantially completed by the use of the phrase "(NOT YET COMPLETED)."

(E)(1) If any owner of a convertible unit converts all or any portion of a convertible unit into one or more units and common elements, including limited common elements, the owner shall prepare, file, and record drawings as described in divisions (E)(2) and (3) of this section that pertain to the portion of the building, improvement, or structure that constituted the former convertible unit.

(2) The drawings shall show the boundaries, location, designation, length, width, and height of each unit formed out of the former convertible unit; the boundaries, location, designation, and dimensions of the limited common elements appurtenant to each unit; and the boundaries, location, designation, and dimensions of any common element formed out of the former convertible unit.

(3) Each drawing shall bear the certified statement of a registered architect or registered professional



engineer that the drawing accurately shows the units, common elements, and appurtenant limited common elements formed out of the former convertible unit.

Effective Date: 07-20-2004

### **5311.08 Unit owners association.**

(A)(1) Every condominium property shall be administered by a unit owners association . All power and authority of the unit owners association shall be exercised by a board of directors, which the unit owners shall elect from among the unit owners or the spouses of unit owners. If a unit owner is not an individual, that unit owner may nominate for the board of directors any principal, member of a limited liability company, partner, director, officer, or employee of that unit owner.

(2) The board of directors shall elect a president, secretary, treasurer, and other officers that the board may desire.

(3) Unless otherwise provided in the declaration or the bylaws, all meetings of the unit owners association are open to the unit owners, and those present in person or by proxy when action is taken during a meeting of the unit owners association constitute a sufficient quorum.

(4)(a) A meeting of the board of directors may be held by any method of communication, including electronic or telephonic communication provided that each member of the board can hear, participate, and respond to every other member of the board.

(b) In lieu of conducting a meeting, the board of directors may take action with the unanimous written consent of the members of the board. Those written consents shall be filed with the minutes of the meetings of the board.

(B) The unit owners association shall be governed by bylaws. No modification of or amendment to the bylaws is valid unless it is set forth in an amendment to the declaration, and the amendment to the declaration is filed for record. Unless otherwise provided by the declaration, the bylaws shall provide for the following:

(1)(a) The election of the board of directors of the unit owners association;

(b) The number of persons constituting the board;

(c) The terms of the directors, with not less than one-fifth to expire annually;

(d) The powers and duties of the board;

(e) The compensation of the directors;

(f) The method of removal of directors from office;

(g) The election of officers of the board;

(h) Whether or not the services of a manager or managing agent may be engaged .

(2) The time and place for holding meetings; the manner of and authority for calling, giving notice of, and conducting meetings; and the requirement, in terms of undivided interests in the common elements, of a quorum for meetings of the unit owners association;

(3) By whom and the procedure by which maintenance, repair, and replacement of the common elements may be authorized;

(4) The common expenses for which assessments may be made and the manner of collecting from the unit owners their respective shares of the common expenses;

(5) The method of distributing the common profits;

(6) By whom and the procedure by which administrative rules governing the operation and use of the condominium property or any portion of the property may be adopted and amended. These rules may govern any aspect of the condominium property that is not required to be governed by bylaws and may include standards governing the type and nature of information and documents that are subject to examination and copying by unit owners pursuant to section 5311.091 of the Revised Code, including the times and location at which items may be examined or copied and any required fee for copying the information or documents.

(C) (1) The unit owners association shall be established not later than the date that the deed or other evidence of ownership is filed for record following the first sale of a condominium ownership interest in a condominium development. Membership in the unit owners association shall be limited to unit owners, and all unit owners shall be members. Until the unit owners association is established, the developer shall act in all instances in which action of the unit owners association or its officers is authorized or required by law or the declaration.

(2)(a) Not later than sixty days after the developer has sold and conveyed condominium ownership interests appertaining to twenty-five per cent of the undivided interests in the common elements in a condominium development, the unit owners association shall meet, and the unit owners other than the developer shall elect not less than one-third of the members of the board of directors.

(b) When computing undivided interests in expandable condominium properties for purposes of divisions (C) and (D) of this section, the undivided interests in common elements shall be computed by comparing the number of units sold and conveyed to the maximum number of units that may be created, as stated in the declaration pursuant to division (C)(8) of section 5311.05 of the Revised Code.

(D)(1) Except as provided in division (C) of this section, the declaration or bylaws of a condominium development may authorize the developer or persons the developer designates to appoint and remove members of the board of directors of the unit owners association and to exercise the powers and responsibilities otherwise assigned by law, the declaration, or the bylaws to the unit owners association or to the board of directors. The authorization for developer control may extend from the date the unit owners association is established until sixty days after the sale and conveyance to purchasers in good faith for value of condominium ownership interests to which seventy-five per cent of the undivided

interests in the common elements appertain, except that in no case may the authorization extend for more than five years after the unit owners association is established if the declaration includes expandable condominium property or more than three years after the unit owners association is established if the declaration does not include expandable condominium property.

(2) If there is a unit owner other than the developer, the declaration of a condominium development shall not be amended to increase the scope or the period of the developer's control.

(3) Within sixty days after the expiration of the period during which the developer has control pursuant to division (D)(1) of this section, the unit owners association shall meet and elect all members of the board of directors of the association. The persons elected shall take office at the end of the meeting during which they are elected and shall, as soon as reasonably possible, appoint officers.

(E) The board of directors, or the developer while in control of the association, may take any measures necessary to incorporate the unit owners association as a not-for-profit corporation.

Effective Date: 07-20-2004

### **5311.081 Powers and duties of board of directors.**

(A) Unless otherwise provided in the declaration or bylaws, the unit owners association, through the board of directors, shall do both of the following:

(1) Adopt and amend budgets for revenues, expenditures, and reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments, provided that the amount set aside annually for reserves shall not be less than ten per cent of the budget for that year unless the reserve requirement is waived annually by the unit owners exercising not less than a majority of the voting power of the unit owners association;

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

(B) Unless otherwise provided in the declaration, the unit owners association, through the board of directors, may exercise all powers of the association, including the power to do the following:

(1) Hire and fire managing agents, attorneys, accountants, and other independent contractors and employees that the board determines are necessary or desirable in the management of the condominium property and the association;

(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 unit owners association, the board of directors, or the condominium property, or that involves two or more unit owners and relates to matters affecting the condominium property;

(3) Enter into contracts and incur liabilities relating to the operation of the condominium property;

(4) Regulate the use, maintenance, repair, replacement, modification, and appearance of the condominium property;

- (5) Adopt rules that regulate the use or occupancy of units, the maintenance, repair, replacement, modification, and appearance of units, common elements, and limited common elements when the actions regulated by those rules affect common elements or other units;
- (6) Cause additional improvements to be made as part of the common elements;
- (7) Purchase, encumber, and convey units, and, subject to any restrictions in the declaration or bylaws and with the approvals required by division (H)(2) or (3) of section 5311.04 of the Revised Code, acquire an interest in other real property and encumber or convey that interest. All expenses incurred in connection with the acquisition, encumbrance, use, and operation of that interest are common expenses.
- (8) Acquire, encumber, and convey or otherwise transfer personal property;
- (9) Hold in the name of the unit owners association the real property and personal property acquired pursuant to divisions (B)(7) and (8) of this section;
- (10) Grant easements, leases, licenses, and concessions through or over the common elements;
- (11) Impose and collect fees or other charges for the use, rental, or operation of the common elements or for services provided to unit owners;
- (12) Impose interest and late charges for the late payment of assessments; impose returned check charges; and, pursuant to division (C) of this section, impose reasonable enforcement assessments for violations of the declaration, the bylaws, and the rules of the unit owners association, and reasonable charges for damage to the common elements or other property;
- (13) Adopt and amend rules that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;
- (14) Subject to applicable laws, adopt and amend rules that regulate the termination of utility or other service to a commercial unit if the unit owner is delinquent in the payment of an assessment that pays, in whole or in part, the cost of that service;
- (15) Impose reasonable charges for preparing, recording, or copying amendments to the declaration, resale certificates, or statements of unpaid assessments;
- (16) Enter a unit for bona fide purposes when conditions exist that involve an imminent risk of damage or harm to common elements, another unit, or to the health or safety of the occupants of that unit or another unit;
- (17) To the extent provided in the declaration or bylaws, assign the unit owners association's rights to common assessments, or other future income, to a lender as security for a loan to the unit owners association;
- (18) Suspend the voting privileges and use of recreational facilities of a unit owner who is delinquent in the payment of assessments for more than thirty days;

- (19) Purchase insurance and fidelity bonds the directors consider appropriate or necessary;
- (20) Invest excess funds in investments that meet standards for fiduciary investments under Ohio law;
- (21) Exercise powers that are:
  - (a) Conferred by the declaration or the bylaws of the unit owners association or the board of directors;
  - (b) Necessary to incorporate the unit owners association as a not-for-profit corporation;
  - (c) Permitted to be exercised in this state by a not-for-profit corporation;
  - (d) Necessary and proper for the government and operation of the unit owners association.
- (C)(1) Prior to imposing a charge for damages or an enforcement assessment pursuant to division (B)(12) of this section, the board of directors shall give the unit owner a written notice that includes all of the following:
  - (a) A description of the property damage or violation;
  - (b) The amount of the proposed charge or assessment;
  - (c) A statement that the owner has a right to a hearing before the board of directors to contest the proposed charge or assessment;
  - (d) A statement setting forth the procedures to request a hearing pursuant to division (C)(2) of this section;
  - (e) A reasonable date by which the unit owner must cure the violation to avoid the proposed charge or assessment.
- (2)(a) To request a hearing, the owner shall deliver a written notice to the board of directors not later than the tenth day after receiving the notice required by division (C)(1) of this section. If the owner fails to make a timely request for a hearing, the right to that hearing is waived, and the board may immediately impose a charge for damages or an enforcement assessment pursuant to division (C) of this section.
- (b) If a unit owner requests a hearing, at least seven days prior to the hearing the board of directors shall provide the unit owner with a written notice that includes the date, time, and location of the hearing.
- (3) The board of directors shall not levy a charge or assessment before holding any hearing requested pursuant to division (C)(2) of this section.
- (4) The unit owners, through the board of directors, may allow a reasonable time to cure a violation described in division (B)(12) of this section before imposing a charge or assessment.

(5) Within thirty days following a hearing at which the board of directors imposes a charge or assessment, the unit owners association shall deliver a written notice of the charge or assessment to the unit owner.

(6) Any written notice that division (C) of this section requires shall be delivered to the unit owner or any occupant of the unit by personal delivery, by certified mail, return receipt requested, or by regular mail.

Effective Date: 07-20-2004

### **5311.09 Unit owners association records.**

(A) (1) The unit owners association shall keep all of the following:

(a) 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 ;

(b) Records showing the allocation, distribution, and collection of the common profits, losses, and expenses among and from the unit owners;

(c) Minutes of the meetings of the association and the board of directors;

(d) Records of the names and addresses of the unit owners and their respective undivided interests in the common elements.

(2) Within thirty days after a unit owner obtains a condominium ownership interest, the unit owner shall provide the following information in writing to the unit owners association through the board of directors:

(a) The home address, home and business mailing addresses, and the home and business telephone numbers of the unit owner and all occupants of the unit;

(b) The name, business address, and business telephone number of any person who manages the owner's unit as an agent of that owner.

(3) Within thirty days after a change in any information that division (A)(2) of this section requires, a unit owner shall notify the association, through the board of directors, in writing of the change. When the board of directors requests, a unit owner shall verify or update the information.

(B) (1) When elected members of a board of directors of a unit owners association take control of the association, the declarant or developer shall deliver to the board correct and complete copies of all of the following:

(a) The books, records, and minutes referred to in division (A) of this section;

(b) The declaration, the bylaws, the drawings prepared pursuant to section 5311.07 of the Revised Code, as recorded, and any articles of incorporation of the unit owners association, as recorded;

(c) Except in the case of a conversion condominium, documents, information, and sources of information concerning the location of underground utility lines, and plans and specifications that are not proprietary or copyrighted, of the buildings, other improvements, and structures of the condominium property that are reasonably available to the developer, but only in connection with condominium developments declared on or after the effective date of this amendment and condominium developments that are declared prior to that date but originally built or constructed on or after that date.

(2) The board of directors may commence a civil action on behalf of the unit owners association in the court of common pleas of the county in which the condominium property is located to obtain injunctive relief or recover damages for harm resulting from the declarant's or developer's failure to comply with division (B)(1) of this section.

Effective Date: 07-20-2004

### **5311.091 Examination of books, records, minutes.**

(A) Except as otherwise prohibited by this section, any member of a unit owners association may examine and copy the books, records, and minutes described in division (A) of section 5311.09 of the Revised Code pursuant to reasonable standards set forth in the declaration, bylaws, or rules the board promulgates, which 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 reasonable fee for copying the documents.

(B) The unit owners association is not required to permit the examination and copying of any of the following from books, records, and minutes:

- (1) Information that pertains to condominium property-related personnel matters;
- (2) Communications with legal counsel or attorney work product pertaining to pending litigation or other condominium property-related matters;
- (3) Information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;
- (4) Information that relates to the enforcement of the declaration, bylaws, or rules of the unit owners association against unit owners;
- (5) Information the disclosure of which is prohibited by state or federal law.

Effective Date: 07-20-2004

### **5311.10 Description of units in deed, mortgage, lease, other instrument of conveyance or encumbrance and lien.**

In any deed, mortgage, lease, or other instrument of conveyance or encumbrance of, or by which a lien is created upon any interest or estate in any unit of condominium property, it is sufficient to describe the unit by setting forth the name of the condominium property, the number or other designation of the unit, and the numbers of the volumes and initial pages of the records of the declaration and drawings of the condominium property. This section does not require reference by volume and page to amendments to the declaration or the drawings of the condominium property that accompany an amendment, and the omission of any reference to amendments does not affect the validity of any deed, mortgage, lease, or other instrument referred to in this section.

Effective Date: 07-20-2004

### **5311.11 Each unit is separate parcel for taxation and assessment purposes.**

Each unit of a condominium property and the undivided interest in the common elements appurtenant to it is deemed a separate parcel for all purposes of taxation and assessment of real property, and no other unit or other part of the condominium property shall be charged with the payment of those taxes and assessments.

Effective Date: 07-20-2004

### **5311.12 Liens and encumbrances paid prior to conveyance.**

No owner of property submitted to the provisions of this chapter shall convey fee title to any unit of the condominium property until all liens and encumbrances, except taxes and assessments of political subdivisions not then due and payable, affecting both the unit and any other part of the condominium property are paid and satisfied, the unit is released from the operation of those liens and encumbrances, or the purchaser of the unit assumes the lien.

Effective Date: 07-20-2004

### **5311.13 Liens and encumbrances procedure.**

(A) Liens and encumbrances arise with respect to and affect a unit of a condominium property and the undivided interest in the common elements appurtenant to it in the same manner and under the same conditions as liens and encumbrances arise with respect to and affect any other real estate, except as provided in this section.

(B) Any person who does work or labor upon or furnishes machinery, material, or fuel for the alteration or repair of any unit without the consent or authorization of any owner or lessee of any interest in the unit or the owner's or lessee's authorized agent nevertheless is entitled to a lien to secure payment for the work, labor, machinery, material, or fuel on the estate or interest in the unit of the owner, pursuant to sections 1311.01 to 1311.38 of the Revised Code, if the work, labor, alteration, or repair was duly authorized or directed by the board of directors of the unit owners association and necessary in the opinion of the board of directors for public safety or to prevent damage to or destruction of any other part of the condominium property.



(C) Any person who does work or labor upon or furnishes machinery, material, or fuel for the construction, alteration, repair, improvement, enhancement, or embellishment of any part of the common elements of any condominium property is entitled to a lien to secure payment for the work, labor, machinery, material, or fuel on the estates or interests of all owners in all units and their respective undivided interests in the common elements, pursuant to sections 1311.01 to 1311.38 of the Revised Code, if the work, labor, construction, alteration, repair, improvement, enhancement, or embellishment was duly authorized or directed by the board of directors of the unit owners association.

(D) If a lien or encumbrance arises with respect to and affects any estate or interest in two or more units, the proportionate amount of the obligation secured or evidenced by the lien or encumbrance that is attributable to the estate or interest in any unit shall be in the ratio that the undivided interests in the common elements appurtenant to that unit bears to the total undivided interests in the common elements appurtenant to all units. An estate or interest in a unit may be released and discharged from the operation of the lien or encumbrance, in the same manner and to the same extent that a lien or encumbrance is released and discharged with respect to any separate parcel of real estate, by payment to the lienholder or encumbrancer of the proportionate amount of the obligation secured or evidenced by the lien or encumbrance that is attributable to the estate or interest.

(E)(1) When a lien exists under Chapter 1311. of the Revised Code to secure payment for work or labor done or machinery, material, or fuel furnished for property that subsequently becomes condominium property through the filing and recording of a declaration under section 5311.06 of the Revised Code, regardless of the property to which the lien originally attached, after the declaration is filed for record, the lien is enforceable as to condominium property only against units and their appurtenant interests in the common elements that the developer owned or conveyed, other than as described in division (F) of this section.

(2) Foreclosure of a lien described in division (E)(1) of this section does not of itself terminate the condominium property.

(3) Divisions (E)(1) and (2) of this section do not limit the right to enforce a lien arising under Chapter 1311. of the Revised Code against property that does not become condominium property through the filing and recording of a declaration under section 5311.06 of the Revised Code.

(F) No lien acquired under Chapter 1311. of the Revised Code is enforceable against any purchaser in good faith for value of a unit and its appurtenant interest in the common elements from the developer unless the affidavit required by section 1311.06 of the Revised Code is filed for record before the deed or other instrument of conveyance of the unit is filed for record.

Effective Date: 07-20-2004

### **5311.14 Repair or restoration of damages - sale.**

(A) Unless provided otherwise in the declaration, damage to or destruction of all or any part of the common elements of a condominium property shall be promptly repaired and restored by the board of directors of the unit owners association. The cost of the repairs and restoration shall be paid from the proceeds of insurance, if any, payable because of the damage or destruction, and the balance of that cost is a common expense.

(B)(1) Unless provided otherwise in the declaration, in the event of damage to or destruction of all or any part of the common elements of a condominium property, the unit owners, by the affirmative vote of those entitled to exercise not less than seventy-five per cent of the voting power or a greater per cent if provided in the declaration, may elect not to repair or restore the damaged or destroyed common elements.

(2) Upon an election not to repair or restore, all of the condominium property is subject to an action for sale as upon partition at the suit of unit owners exercising a majority of the voting power of unit owners. If the condominium property is sold pursuant to division (B)(2) of this section, any net proceeds of the sale, the net proceeds of insurance, and any other indemnity arising because of the damage or destruction are considered as one fund for distribution to all unit owners in proportion to the undivided interests in the common elements appurtenant to their units.

No unit owner is entitled to receive any portion of those proceeds until all liens and encumbrances on the unit, except taxes and assessments of political subdivisions not then due and payable, are paid, released, or discharged.

Effective Date: 07-20-2004

### **5311.15 Repealed.**

Effective Date: 07-20-2004

### **5311.16 Condominium insurance.**

Unless otherwise provided by the declaration or bylaws, the board of directors shall insure all unit owners, their tenants, and all persons lawfully in possession or control of any part of the condominium property for the amount that it determines against liability for personal injury or property damage arising from or relating to the common elements and shall obtain for the benefit of all unit owners, fire and extended coverage insurance on all buildings and structures of the condominium property in an amount not less than eighty per cent of the fair market value. The cost of the insurance is a common expense.

Effective Date: 07-20-2004

### **5311.17 Removing condominium property from provisions of condominium law.**

(A) Unless otherwise provided by the declaration or division (B) of section 5311.14 of the Revised Code, the unit owners, by the affirmative vote of all unit owners, may elect to remove condominium property from the provisions of this chapter. In the event of that election, all liens and encumbrances, except taxes and assessments of political subdivisions not then due and payable, upon all or any part of the condominium property, shall be paid, released, modified, or discharged. A certificate setting forth that the election was made shall be filed with the recorder of the county or counties in which the condominium property is situated and recorded by each recorder. The certificate shall be signed as follows:

(1) By the president or other chief officer of the unit owners association, who shall certify in the certificate under oath that all liens and encumbrances, except taxes and assessments of political subdivisions not then due and payable, upon all or any part of the common elements have been paid, released, modified, or discharged ;

(2) By the unit owners, each of whom shall certify in the certificate under oath that all liens and encumbrances on the owner's unit or units have been paid, released, modified, or discharged, except taxes and assessments of political subdivisions not then due and payable.

(B) A recorder shall not accept for recording any certificate pursuant to this section until a copy is filed with the auditor of the same county, and the certificate contains the auditor's endorsement that a copy is filed with the auditor.

(C) A condominium property is deemed removed from the provisions of this chapter upon the filing of the certificate with the recorder or recorders, and upon that removal, the property is owned in common by the unit owners. The undivided interest in the property owned by each unit owner is the undivided interest in the common elements appurtenant to the units in the condominium property previously owned by each owner.

Effective Date: 07-20-2004

### **5311.18 Lien for common expenses.**

(A)(1) Unless otherwise provided by the declaration or the bylaws, the unit owners association has a lien upon the estate or interest of the owner in any unit and the appurtenant undivided interest in the common elements for the payment of any of the following expenses that are chargeable against the unit and that remain unpaid for ten days after any portion has become due and payable :

(a) The portion of the common expenses chargeable against the unit;

(b) Interest, administrative late fees, enforcement assessments, and collection costs, attorney's fees, and paralegal fees the association incurs if authorized by the declaration, the bylaws, or the rules of the unit owners association and if chargeable against the unit.

(2) Unless otherwise provided by the declaration, the bylaws, or the rules of the unit owners association, the association shall credit payments made by a unit owner for the expenses described in divisions (A)(1)(a) and (b) of this section in the following order of priority:

(a) First, to interest owed to the association;

(b) Second, to administrative late fees owed to the association;

(c) Third, to collection costs, attorney's fees, and paralegal fees incurred by the association;

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

(3) The lien described in division (A)(1) of this section is effective on the date that a certificate of lien in the form described in division (A)(3) of this section is filed for record in the office of the recorder of the county or counties in which the condominium property is situated pursuant to an authorization given by the board of directors of the unit owners association. The certificate shall contain a description of the unit, the name of the record owner of the unit, and the amount of the unpaid portion of the common expenses and, subject to subsequent adjustments, any unpaid interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, and paralegal fees. The certificate shall be subscribed by the president or other designated representative of the association.

(4) The lien described in division (A)(1) of this section is valid for a period of five years from the date of filing, unless it is sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or unless it is discharged by the final judgment or order of a court in an action brought to discharge the lien as provided in division (C) of this section.

(B)(1) The lien described in division (A)(1) of this section is prior to any lien or encumbrance subsequently arising or created except liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been filed for record and may be foreclosed in the same manner as a mortgage on real property in an action brought on behalf of the unit owners association by the president or other chief officer of the association pursuant to authority given to that individual by the board of directors.

(2) In a foreclosure action a unit owners association commences pursuant to division (B)(1) of this section or a foreclosure action the holder of a first mortgage or other lien on a unit commences, the owner of the unit, as the defendant in the action, shall be required to pay a reasonable rental for the unit during the pendency of the action. The unit owners association or the holder of the lien is entitled to the appointment of a receiver to collect the rental. Each rental payment a receiver collects during the pendency of the foreclosure action shall be applied first to the payment of the portion of the common expenses chargeable to the unit during the foreclosure action.

(3) In a foreclosure action the holder of a lien on a unit commences, the holder of that lien shall name the unit owners association as a defendant in the action.

(4) Unless prohibited by the declaration or the bylaws, following a foreclosure action a unit owners association commences pursuant to division (B)(1) of this section or a foreclosure action the holder of a lien on a unit commences, the association or its agent duly authorized by action of the board of directors, is entitled to become a purchaser at the foreclosure sale.

(5) A mortgage on a unit may contain a provision that secures the mortgagee's advances for the payment of the portion of the common expenses chargeable against the unit upon which the mortgagee holds the mortgage.

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

(C) A unit owner who believes that the portion of the common expenses chargeable to the unit, for which the unit owners association files a certificate of lien pursuant to division (A) of this section, has

been improperly charged may commence an action for the discharge of the lien in the court of common pleas of the county in which all or a part of the condominium property is situated. In the action, if it is finally determined that the portion of the common expenses was improperly charged to the unit owner or the unit, the court shall enter an order that it determines to be just, which may provide for a discharge of record of all or a portion of the lien.

Effective Date: 07-20-2004

### **5311.19 Compliance with deed restrictions, declaration, bylaws and administrative rules and regulations.**

(A) All unit owners, their tenants, all persons lawfully in possession and control of any part of a condominium property, and the unit owners association of a condominium property shall comply with all covenants, conditions, and restrictions set forth in a deed to which they are subject or in the declaration, the bylaws, or the rules of the unit owners association, as lawfully amended. Violations of those covenants, conditions, or restrictions shall be grounds for the unit owners association or any unit owner to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorney's fees in both types of action.

(B)(1) Except as otherwise provided in the declaration or the bylaws, a unit owners association may initiate eviction proceedings, pursuant to Chapters 5321. and 1923. of the Revised Code, to evict a tenant for a violation of division (A) of this section. The action shall be brought by the unit owners association, as the unit owner's agent, in the name of the unit owner.

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

(3) The costs of any eviction action brought pursuant to division (B)(1) of this section, including reasonable attorney's fees, shall be charged to the unit owner and shall be the subject of a special assessment against the offending unit and made a lien against that unit.

Effective Date: 07-20-2004

### **5311.191 Condominium declaration prohibiting placement of flag unenforceable.**

(A) No declaration, bylaw, rule, regulation, or agreement of a condominium property or construction of any of these items by the board of managers of its unit owners association shall prohibit the placement of a flagpole that is to be used for the purpose of displaying, or shall prohibit the display of, the flag of the United States on or within the limited common areas and facilities of a unit owner or on the immediately adjacent exterior of the building in which the unit of a unit owner is located, if the flag is displayed in accordance with any of the following:

(1) The patriotic customs set forth in 4 U.S.C.A. 5-10, as amended, governing the display and use of the flag of the United States;

(2) The recommended flagpole standards set forth in "Our Flag," published pursuant to S.C.R. 61 of the 105th Congress, 1st Session (1998);

(3) Any federal law, proclamation of the president of the United States or the governor, section of the Revised Code, or local ordinance or resolution.

(B) A declaration, bylaw, rule, regulation, or agreement or the construction of any of these items that violates division (A) of this section is against public policy and unenforceable in any court of this state to the extent it violates that division.

Effective Date: 04-07-2003

### **5311.20 Unit owners association may sue or be sued.**

In any action relating to the common elements or to any right, duty, or obligation possessed or imposed upon the unit owners association by statute or otherwise, the unit owners association may sue or be sued as a separate legal entity. In any action of that nature, service of summons or other process may be made upon the unit owners association by serving the process personally upon the president or other designated representative of the unit owners association named in the declaration to receive service of process, or the person named as statutory agent of the association if it is an incorporated entity, or by leaving the process at the residence or place of business of a person named in the declaration or named as statutory agent. Any action brought by or on behalf of the unit owners association shall be pursuant to authority granted by the board of directors.

Effective Date: 07-20-2004

### **5311.21 Common profits and expenses distributed.**

Unless retained by the board of directors as reserves, the common profits of a condominium property shall be distributed among, and, except as provided in division (B) of section 5311.041 of the Revised Code, the common expenses shall be charged to the unit owners according to the undivided interests in the common elements appurtenant to their respective units.

Effective Date: 07-20-2004

### **5311.22 Voting.**

(A) Unless otherwise provided in the declaration or bylaws, each unit owner may exercise that percentage of the total voting power of all unit owners on any question for which the vote of unit owners is permitted or required that is equivalent to the undivided interest in the common elements appurtenant to the owner's unit.

(B) Fiduciaries who are owners of record of a unit or units may vote their respective interests as unit owners. Unless otherwise provided in the declaration or bylaws, if two or more persons, whether fiduciaries, tenants in common, or otherwise, own undivided interests in a unit, each person may exercise the proportion of the voting power of all of the owners of the unit that is equivalent to the

person's proportionate undivided interest in the unit.

(C) A fiduciary for a unit owner or of the estate of a unit owner may vote as though the fiduciary were the unit owner when the fiduciary has furnished to the unit owners association proof, satisfactory to it, of the fiduciary's appointment and qualification as an executor under the last will of a deceased unit owner , an administrator of the estate of a deceased unit owner , a guardian, committee, or conservator of the estate of a minor or incompetent who is a unit owner , a trustee in bankruptcy of a unit owner , a statutory or judicial receiver or liquidator of the estate or affairs of a unit owner , or an assignee for the benefit of creditors of a unit owner.

(D) When any fiduciary or representative of a unit owner who is not described in division (C) of this section has furnished the unit owners association with satisfactory proof of authority, that person may vote as though a unit owner.

Effective Date: 07-20-2004

### **5311.23 Failure to comply with lawful provision of condominium instruments.**

(A) A declarant, developer, agent, or unit owner or any person entitled to occupy a unit is liable in damages in a civil action for harm caused to any person or to the unit owners association by that individual's failure to comply with any lawful provision of the condominium instruments.

(B) Any interested person, including a unit owners association, may commence an action for a declaratory judgment to determine that person's legal relations under the condominium instruments or to obtain an injunction against a declarant, developer, agent, unit owner, or person entitled to occupy a unit who refuses to comply, or threatens to refuse to comply, with a provision of the condominium instruments.

(C) In connection with either type of action described in this section, one or more unit owners may bring a class action on behalf of all unit owners. The lawful provisions of the condominium instruments, if necessary to carry out their purposes, may be enforced in either type of action against the condominium property or any person who owns or previously has owned any estate or interest in the condominium property.

(D) An action by the unit owners association under this section may be commenced by the association in its own name, in the name of the board of directors, or in the name of the association's managing agent.

Effective Date: 07-20-2004

### **5311.24 Exceptions to requirements for written instruments.**

(A) Sections 5311.25 to 5311.27 of the Revised Code do not apply to any of the following, unless the method of disposing of the condominium property is adopted for the purpose of evading their provisions:

- (1) The sale of a condominium ownership interest solely for commercial or industrial purposes or uses;
  - (2) The sale of real estate under or pursuant to court order;
  - (3) The sale of real estate by the United States, by this state or any political subdivision of this state, or by any of their agencies or instrumentalities;
  - (4) The sale of condominium ownership interests in individual dwelling units or individual water slip units and in their appurtenant common elements for the account of a person other than a declarant, developer, or agent when the sale is not conducted pursuant to the common promotional plan of the developer for sales in a condominium development.
- (B) A sale or offer to sell a condominium ownership interest does not exist when a reservation agreement is entered into that does not legally require a prospective purchaser to purchase a condominium ownership interest and under which the prospective purchaser may relinquish all rights and receive a full refund of all deposits, without penalty, at any time prior to entering into a contract to purchase a condominium ownership interest.

Effective Date: 07-20-2004

### **5311.241 Repealed.**

Effective Date: 07-20-2004

### **5311.25 Required provisions for condominium instruments.**

- (A) (1) Except as provided in division (A)(2) of this section, any deposit or down payment made in connection with the sale of a condominium ownership interest shall be held in trust or escrow until delivered at settlement, returned to or otherwise credited to the purchaser, or forfeited to the developer . If a deposit or down payment of more than two thousand dollars is held for more than ninety days and is not withdrawn pursuant to division (A)(2) of this section, interest at a rate equal to the prevailing rate payable by federally insured financial institutions in the county of the condominium property on daily interest accounts for any period exceeding ninety days shall be credited to the purchaser at settlement or upon return or other credit made to the purchaser or added to any forfeiture to the developer . Interest is payable only on the amount of the deposit or down payment that exceeds two thousand dollars.
- (2)(a) If a contract for the sale of a condominium ownership interest contains the legend described in division (A)(2)(b) of this section, a developer may, in accordance with the contractual provisions, withdraw a deposit or down payment from trust or escrow upon the commencement of construction of the structure of the condominium property in which the purchaser's unit will be located and use the moneys in the actual construction and development of the condominium property. The developer shall not use the moneys for advertising purposes or for the salaries, commissions, or expenses of agents.
- (b) A contract that permits withdrawals of a deposit or down payment for the purposes described in division (A)(2)(a) of this section shall include the following legend conspicuously printed or stamped in boldface type on the contract's first page and immediately above the signature of the purchaser:



"Purchaser acknowledges that, pursuant to this contract, the developer may withdraw and then use for construction and development of the condominium property any deposit or down payment that the purchaser makes prior to closing."

(3) Deposits and down payments held in trust or escrow in accordance with division (A)(1) of this section are not subject to attachment, garnishment, or other legal process by creditors of the developer, agents, or the purchaser of the condominium ownership interest.

(B) Except in the capacity as a unit owner of unsold condominium ownership interests, the developer or agent shall not retain a property interest in any of the common elements after unit owners other than the developer assume control of the unit owners association except as follows:

(1) In a leasehold condominium development, the developer or agent may retain the same interest in the common elements as the developer or agent retains in the entire condominium development.

(2) In an expandable condominium property, the developer may retain an interest consistent with the declaration and necessary to ensure both of the following, whether or not the condominium property is expanded to include the additional property:

(a) Ingress and egress over the common elements for the benefit of the additional property;

(b) The availability of utilities from and to the common elements for the benefit of the additional property.

(3) The developer may retain the right to enter upon the condominium property to fulfill any warranty obligations to the unit owners association or to unit owners.

(C) The owners of condominium ownership interests that have been sold by the developer or an agent shall assume control of the common elements and of the unit owners association as prescribed in divisions (C) and (D) of section 5311.08 of the Revised Code .

(D) Unless a contract or other agreement is renewed by a vote of the unit owners exercising a majority of the voting power of the unit owners association, neither the unit owners association nor the unit owners shall be subject to either of the following:

(1) For more than ninety days subsequent to the date that the unit owners other than the developer assume control of the unit owners association, any management contract executed prior to that assumption of control;

(2) For more than one year subsequent to an assumption of control, any other contract executed prior to that assumption of control, except for contracts for necessary utility services.

(E)(1) Except as provided in division (E)(4) of this section, the developer shall furnish both of the following:

(a) A minimum of a two-year warranty covering the full cost of labor and materials for any repair or replacement of roof and structural components, and mechanical, electrical, plumbing, and common

service elements serving the condominium property or additional property as a whole, occasioned or necessitated by a defect in material or workmanship;

(b) A one-year warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical, and other elements pertaining to each unit occasioned or necessitated by a defect in material or workmanship.

(2) The two-year warranty shall commence as follows:

(a) For a condominium development other than an expandable condominium development, on the date the deed or other evidence of ownership is filed for record following the sale of the first condominium ownership interest in the development to a purchaser in good faith for value ;

(b)(i) For an expandable condominium development, for property submitted by the original declaration, on the date the deed or other evidence of ownership is filed for record following the sale of the first condominium ownership interest in the property to a purchaser in good faith for value;

(ii) For an expandable condominium development, for any additional property submitted by amendment to the declaration, on the date the deed or other evidence of ownership is filed for record following the sale of the first condominium ownership interest in the additional property to a purchaser in good faith for value.

(3) The one-year warranty for each unit shall commence on the date the deed or other evidence of ownership is filed for record following the developer's sale and conveyance of the condominium ownership interest in the unit to a purchaser in good faith for value.

(4) The valid assignment by the developer of the express and implied warranty of the manufacturer satisfies the developer's obligation under this section with respect to ranges, refrigerators, washing machines, clothes dryers, hot water heaters, and other similar appliances installed and furnished as part of the unit by the developer . The developer's warranty under division (E)(1) of this section is limited to the installation of the appliances.

(5) All warranties made to the developer that exceed time periods specified in division (E)(1) of this section with respect to any part of a unit shall be assigned to the purchaser of that unit and warranties with respect to any part of the common elements shall be assigned to the unit owners association.

(F) The developer shall assume the rights and obligations of a unit owner in the developer's capacity as owner of condominium ownership interests not yet sold, including the obligation to pay common expenses attaching to those interests, from the date the declaration is filed for record even if the construction of the units and the appurtenant common elements subject to the condominium ownership interests has not started or is not complete.

(G) In a conversion condominium development, the developer shall offer each tenant an option, exercisable within not less than ninety days after notice, to purchase a condominium ownership interest in the development that the tenant occupies and at a price that is not greater than the price at which the unit will be offered to the general public for the subsequent one hundred eighty-day period. The developer shall give each tenant written notice of not less than one hundred twenty days prior to

the conversion or intended conversion, during which time the tenant may not be evicted to accommodate or facilitate the sale of any unit if the tenant is not in default under the tenant's terms of tenancy. The ninety-day and one hundred twenty-day notice periods may run concurrently and may be waived in writing by a tenant. If two or more tenants occupy a unit in a conversion condominium development, the option to purchase shall be given jointly to those tenants.

(H) Except as provided in section 5311.24 of the Revised Code, no developer or agent, directly or indirectly, shall sell or offer to sell a condominium ownership interest in a condominium development unless the condominium instruments include a statement that sets forth the requirements of this section and sections 5311.26 and 5311.27 of the Revised Code.

Effective Date: 07-20-2004

### **5311.26 Written statement of material circumstances or features affecting condominium development.**

Except as provided in section 5311.24 of the Revised Code, no developer or agent, directly or indirectly, shall sell or offer to sell a condominium ownership interest in a residential or water slip condominium development unless the developer or agent provides the prospective purchaser a condominium development disclosure statement that discloses fully and accurately all material circumstances or features affecting the development in a readable and understandable written statement. The statement shall not intentionally omit any material fact or contain any untrue statement of a material fact and shall contain all of the following:

(A) The name and address of the condominium development, and the name, address, and telephone number of the developer and of the development manager if other than the developer, or that manager's agent;

(B) A general narrative description of the development stating the total number of units, a description of the types of units, the total number of units that may be included in the development by reason of future expansion or merger of the development, and a precise statement of the nature of the condominium ownership interest that is being offered;

(C) A general disclosure of the following:

(1) The status of construction, zoning, site plan, or other governmental approvals ;

(2) Compliance or notice of failure to comply with any federal, state, or local statutes or regulations affecting the development ;

(3) The actual or scheduled dates of completion of any buildings, recreation facilities, and other common elements;

(4) Whether the developer is required to construct recreational facilities or other common elements;

(D) The significant terms of any financing offered by or through the developer to purchasers of the condominium ownership interests in the development, including the name of any bank or other

institution involved in the financing, the minimum down payment, a statement that the prospective purchaser may obtain financing from another bank or institution, and the annual interest rate;

(E) A description of warranties for structural elements and mechanical and other systems, stated separately for units and for common elements;

(F) A two-year projection, revised and updated within the past year if changed, unless the developer no longer controls the association, of annual expenditures necessary to operate and maintain the common elements of the condominium development and the cost of any mandatory dues and membership in a not-for-profit organization described in division (B)(9) of section 5311.05 of the Revised Code. The projection shall be prepared by the developer, specifically state the assumptions and bases of the projection, and include a complete statement of the estimated monthly cost per unit for the two-year period, including all of the following:

(1) The formula for determining each unit's share of common expenses;

(2) The amount of insurance and a description of the basis or formula used in arriving at that amount;

(3) The dollar amount of operating and maintenance expenses;

(4) The monthly cost of utilities;

(5) Any other costs, fees, and assessments reasonably ascertainable by the developer.

(G) For a conversion condominium development, the offering price of each unsold unit or type of unsold unit and a report by the developer stating the age, the condition, and the developer's opinion of the remaining useful life of structural elements and mechanical and supporting systems, together with the developer's estimate of repair and replacement costs projected for five years from the date the property is submitted to the provisions of this chapter . The report shall be based on facts reasonably ascertainable by the developer through inspection of relevant drawings and records and, to the extent permitted by the physical limits of the site, by personal inspection of the elements and systems . Any limits on the inspection shall be stated in the report .

(H) A statement of significant provisions for management of the condominium development, including all of the following:

(1) Conditions for the formation of a unit owners association;

(2) The apportionment of voting rights among the members of the unit owners association;

(3) The contractual rights and responsibilities of the unit owners association;

(4) A statement advising the purchaser that the condominium instruments are binding legal documents and describing how those instruments may be altered or amended by the unit owners association.

(I) A facsimile of any management contract or other agreement affecting the operation, use, or maintenance of or access to all or any part of the condominium development, with a brief narrative

statement of the effect of each agreement upon a purchaser, including a specification of the services to be rendered and the charges to be made under it, and a statement of the relationship, if any, between the developer and the managing agent;

(J) A statement in conspicuous boldface type of the purchaser's right to review the condominium instruments, the purchaser's right to void the contract, any conditions for the return of a deposit, and the rights of purchasers under section 5311.27 of the Revised Code;

(K) The existence or requirement for the establishment of a reserve fund to finance the cost of repair or replacement of the components of the common elements;

(L) The significant terms of any encumbrances, easements, liens, and matters of title affecting the condominium development;

(M) A statement of the requirement for escrow of deposits and the right of the developer to use all or any part of these;

(N) A statement of any restraints on the free alienability of all or any part of the condominium development;

(O) A statement describing any present litigation concerning the condominium development.

Effective Date: 07-20-2004

### **5311.27 Purchaser's remedies - attorney general actions.**

(A)(1) In addition to any other remedy available, a contract or agreement for the sale of a condominium ownership interest that is executed in violation of section 5311.25 or 5311.26 of the Revised Code shall be voidable by the purchaser until the later of fifteen days after the contract is entered into for sale of the condominium ownership interest or fifteen days after the purchaser executes a document evidencing receipt of the information required by section 5311.26 of the Revised Code, except that in no case is the contract or agreement voidable after the title to the condominium ownership interest is conveyed to the purchaser.

(2) Upon the exercise of the right to void the contract or agreement, the developer or an agent shall refund fully and promptly to the purchaser any deposit or other prepaid fee or item and any amount paid on the purchase price and shall pay all closing costs paid by the purchaser or for which the purchaser is liable in connection with the void sale.

(B)(1) Any developer or agent who sells a condominium ownership interest in violation of section 5311.25 or 5311.26 of the Revised Code shall be liable to the purchaser in an amount equal to the difference between the amount paid for the interest and the least of the following amounts:

(a) The fair market value of the interest as of the time the suit is brought;

(b) The price at which the interest is disposed of in a bona fide market transaction before suit is brought;

(c) The price at which the unit is disposed of in a bona fide market transaction after suit is brought but before judgment is entered.

(2)(a) In no case shall the amount recoverable under this section be less than five hundred dollars for each violation against each purchaser bringing an action under this section, together with court costs and reasonable attorney's fees.

(b) If the purchaser complaining of the violation of section 5311.25 or 5311.26 of the Revised Code brings or maintains an action that the purchaser knows to be groundless or in bad faith and if the developer or agent prevails, the court shall award reasonable attorney's fees to the developer or agent.

(C)(1) If the attorney general has reason to believe that substantial numbers of persons are affected and substantial harm is occurring or is about to occur to those persons or that the case is otherwise of substantial public interest, the attorney general may do either of the following:

(a) Bring an action to obtain a declaratory judgment that an act or practice of a developer violates section 5311.25 or 5311.26 of the Revised Code or the condominium instruments, or to enjoin a developer who is violating or threatening to violate those sections or instruments;

(b) Bring a class action for damages on behalf of persons injured by a developer's violation of section 5311.25 or 5311.26 of the Revised Code or of the condominium instruments.

(2)(a) On motion of the attorney general and without bond, in an attorney general's action under this section, the court may make appropriate orders, including, but not limited to, orders for appointment of a master or a receiver, for sequestration of assets, to reimburse persons found to have been damaged, or to grant other appropriate relief. The court may assess the expenses of a master or receiver against the developer.

(b) Any moneys or property recovered by the attorney general in an action under this section that, with due diligence within five years, cannot be restored to persons entitled to them shall be unclaimed funds reportable under Chapter 169. of the Revised Code.

(c) No action may be brought by the attorney general under this section to recover for a transaction more than two years after the occurrence of a violation.

(d) If a court determines that provision has been made for reimbursement or other appropriate corrective action, insofar as practicable, with respect to all persons damaged by a violation, or in any other appropriate case, the attorney general, with court approval, may terminate enforcement proceedings brought by the attorney general upon acceptance of an assurance from the developer of voluntary compliance with sections 5311.25 and 5311.26 of the Revised Code or with the condominium instruments, with respect to the alleged violation. The assurance shall be filed with the court and entered as a consent judgment. A consent judgment is not evidence of prior violation of those sections. Disregard of the terms of a consent judgment entered upon an assurance shall be treated as a violation of an injunction issued under this section.

(D) Nonmaterial errors and omissions in the disclosure statements required by sections 5311.25 and

5311.26 of the Revised Code shall not be actionable in a civil action otherwise authorized by this section if the developer or agent has attempted in good faith to comply with the disclosure requirements and if the developer or agent has substantially complied with those requirements.

Effective Date: 07-20-2004