

Analysis of the New Ohio Homeowner's Association Law



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Introduction

A new law (the "Law") which will affect every existing homeowners association ("HOA"), and those formed hereafter, was signed by Governor Strickland on June 10, 2010. The Law, designated as Amended Substitute Senate Bill Number 187, is intended to supplement the existing Documentation (for convenience, the term "Documentation" in this Article refers collectively or individually to Deed Restrictions, Bylaws, Codes of Regulation, or Rules and Regulations) of all HOA's in Ohio (except for condominiums, which are governed by a different law). The Law is called the Ohio Planned Community Law. It will go into effect on September 8, 2010, and can be found at ORC 5312.01, *et seq.*

It would be wise for each HOA to carefully review, and likely revise, some provisions of their Documentation or they may find that they are required to comply with various procedural requirements, economic mandates and rules that may be contrary to established practices, impractical in their application, uneconomical, and generally impacting in a negative fashion, the administration of the community. There are in the Law, numerous harmful traps and pitfalls to be avoided. There also are some provisions of the Law which are beneficial.

The Law attempts to establish a uniform framework for the operation and management of an HOA. It supplements existing Documentation. If Documentation is silent as to a matter addressed by the Law, the Law will control and the HOA will

have to comply with it. As a result, in order to avoid unintended consequences, Documentation should be reviewed to address each and every requirement and mandate of the Law. If there is a direct conflict between a provision in the Documentation and the Law, the Documentation will control.

The Law affects the authority, deliberations and decisions of a Board of Trustees or Directors (the "Board") in various ways. The general thrust of the Law is to give the Board very broad authority to govern, and it can generally act in all instances on behalf of the HOA unless specifically limited. In addition to the general operational and enforcement functions and authority, unless specifically prohibited or limited by the Documentation, the Board may, among other things, enter into contracts for hundreds of thousands of dollars upon whatever terms of payment it determines, thereby committing the HOA to payment of substantial sums of money; purchase equipment or borrow money for such purchases; subject to certain limitations, acquire, mortgage or convey real property; prohibit property owners from attending Board meetings; levy and collect fees for the use, rental, or operation of the community facilities; and enter into business without seeking and receiving the approval of the property owners.

The Law requires the Board to set aside funds for a reserve "adequate to repair and replace major capital items in the normal course of operations..." This language is broad and ambiguous. There are no other guidelines. The law of unintended consequences as applied in this case might result in a requirement that the money required to be set aside for a reserve could compromise the HOA operating budget, and adversely impair the HOA's ability to conduct business in the normal and ordinary course. An annual vote of the property owners is required in order to waive the statutory reserve requirement. The threshold to achieve the waiver is 75% of the voting power of the HOA.

The Law contains a number of provisions which are beneficial to HOA's, and which lend themselves to a more efficient operation of an HOA. These are items which do not necessarily have to be in the Documentation, and which are automatically applicable. At the same time, the HOA will lose the benefits of the Law if the Documentation is incomplete in certain aspects, a few examples of which are as follows: a provision for electronic communication for Board meetings to permit members of the Board to participate by phone or other means, even if not physically present at the meeting; detailed procedures and clearly established authority regarding the assessment collection process, and the imposition of assessment liens; delegation to the Board of authority to suspend voting privileges and the right to use common facilities if a property owner is more than 30 days delinquent; delegation to the HOA of authority to intervene in disputes between two or more property owners if the Board deems it beneficial to do so; and delegation of authority to enter upon a property owner's lot in the enforcement of the Documentation (an example of where this provision is useful is if a property owner permits an unsightly or unsanitary condition to exist on his or her property).

Nothing in the Law invalidates any provisions of Documentation if (i) the provision was in the Documentation; and, (ii) the Documentation was recorded with your county recorder prior to September 8, 2010. In addition, the Law requires that any Bylaws or Codes of Regulation in effect on September 8, 2010 must be recorded

within 180 days thereafter, if not previously recorded prior to September 8, 2010. There are additional provisions with different time limits for recording, which are applicable to post September 8, 2010 amendments to Bylaws or Codes of Regulation. The Law contains no specific monetary penalties for failure of an HOA to comply with it. But, failure to comply with these recording requirements will result in the HOA being prohibited from filing any lawsuits of any kind (including against delinquent property owners or other violators of the Documentation).

Summary

In summary, the Law grants to the Board broad discretion in some areas. Conversely, the Law limits the discretion of the Board in other areas. These grants and limitations can create substantial authority vested in the Board. The Law also imposes constraints or other requirements as to the operations of an HOA, which, in turn, can create far reaching consequences, or otherwise may be difficult to satisfy under practical circumstances. These situations need to be carefully analyzed in the context of the existing Documentation. Amendments to the Documentation may be necessary so as to not to subject the HOA to various traps, pitfalls or unintended consequences. At the same time, an HOA will want to be able to take advantage of the beneficial aspects of the Law.

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