

OPINION NO. 86-039

Syllabus:

1. Pursuant to R.C. 5311.01(I)(1), a "[u]nit," except in the case of a water slip, means a part of the condominium property consisting of one or more rooms on one or more floors of a building"; a cube of airspace directly above a bounded area of the earth upon which a person may place his own mobile home does not fit within this definition.
2. An area two feet by two feet by eight feet within an existing structure is not a "room" of a building as that term is commonly understood, and thus does not constitute a "unit" for purposes of R.C. 5311.01(I)(1).
3. An arrangement which purports to come within R.C. Chapter 5311 but which does not conform to the definition of "unit" appearing in R.C. 5311.01(I) is, notwithstanding R.C. 5311.02, subject to such provisions of R.C. Chapter 711 as may be applicable to its particular facts.

To: Douglas O. Meyer, Ottawa County Prosecuting Attorney, Port Clinton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 28, 1986

I have before me your request for an opinion on three questions concerning the law relative to condominium property. See R.C. Chapter 5311. Your first two questions ask whether provisions appearing in particular documents conform to the requirements of R.C. Chapter 5311. I am unable to use the opinion-rendering function of this office to make determinations concerning the validity of particular documents, or the rights of persons under such documents. See generally 1983 Op. Att'y Gen. No. 83-087 at 2-342 (the Attorney General is "without authority to render an opinion interpreting a particular agreement or contract. The determination of particular parties' rights is a matter which falls within the jurisdiction of the judiciary..."). See also State ex rel. Curd v. Backhaus, 56 Ohio App. 2d 79, 381 N.E.2d 646 (Cuyahoga County 1977) (the declaration and bylaws of a condominium association are essentially contractual in nature). I can, however, address the general concerns which are raised by your request and, to that end, I have rephrased your questions to read as follows:

1. Does the declaration of a mobile home park condominium which defines the condominium unit as a cube of space directly above a bounded area of the earth, with that bounded area being the space upon which the unit owner may place a mobile home, conform to the requirements of R.C. Chapter 5311?
2. Does the declaration of a mobile home park condominium which defines the condominium unit as a space of two feet by two feet by eight feet within an existing structure, with the unit owner to place a mobile home within the common area of the condominium property, conform to the requirements of R.C. Chapter 5311?

3. If either or both of the above do not conform to R.C. Chapter 5311, does the conveyance of interests in such units constitute a failure to comply with R.C. Chapter 711 or a violation of R.C. 711.13?

R.C. Chapter 5311 contains a statutory framework for creating condominium property. R.C. 5311.01 sets forth definitions, including the following:

As used in this chapter, except as otherwise provided:

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

(I)(1) "Unit." except in the case of a water slip, means a part of the condominium property consisting of one or more rooms on one or more floors of a building and designated as a unit in the declaration and delineated on the drawings provided for in section 5311.07 of the Revised Code.

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

(M) "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 areas and facilities. (Emphasis added.)

R.C. 5311.02 provides that R.C. Chapter 5311 "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 R.C. Chapter 5311. Your questions relate to instances in which declarations submitting property to the provisions of R.C. Chapter 5311 seek to establish mobile home parks. In the situations which you have described, the declarations define "unit" in terms that do not clearly fit within R.C. 5311.01(I). R.C. 5311.01(I)(1) states plainly that, except in the case of a water slip,¹ "unit" means "a part of the condominium property consisting of one or more rooms on one or more floors of a building...." It is firmly established that statutory language which is clear on its face should be given its plain meaning. See R.C. 1.42; Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph five). If the definition of "unit" is applied literally, a unit must consist of some portion of a building. See, e.g., 1971 Op. Att'y Gen. No. 71-031 at 2-101 ("'[u]nit' is defined restrictively as 'rooms'"). Thus, where, as in the first example which you have presented, the entity which is defined as a unit contains no part of a building, but rather is defined as a cube of space above a bounded area of earth, the

¹ R.C. 5311.01(I)(2) defines "'[u]nit,' in the case of a water slip." That definition is not relevant to the situations with which you are concerned.

unit so defined does not appear to come within R.C. 5311.01(I)(1).² Cf. Prestwick Landowners' Ass'n v. Underhill, 69 Ohio App. 2d 45, 47, 429 N.E.2d 1191, 1194 (Summit County 1980) ("[t]he definitions under R.C. 5311.01 and 5311.03 preclude a 'unit' from being an individual parcel of real estate"). A person acquiring such a cube of space acquires a right to place a mobile home within the airspace, but does not thereby acquire ownership of "one or more rooms on one or more floors of a building," for purposes of conformance with the definition contained in R.C. 5311.01(I)(1).

The requirement that a unit consist of some portion of a building is reflected also in other sections of R.C. Chapter 5311. For example, R.C. 5311.03(E)(1) provides that "[o]wnership of a unit that is not a water slip unit includes the right to exclusive possession, use, and enjoyment of the interior surfaces of all its perimeter walls, floors, and ceilings and of all supporting walls, fixtures, and other parts of the building within its boundaries...." See also R.C. 5311.03(F). Further, R.C. 5311.05(B)(4) provides that a declaration submitting property to the provisions of R.C. Chapter 5311 shall contain a "general description of the building or buildings thereby submitted to the provisions" of R.C. Chapter 5311, and R.C. 5311.05(B)(5) provides that such a declaration shall include a statement of the number of rooms in each unit. See also Op. No. 71-031 at 2-100 ("the general understanding of the term ['condominium'] contemplates that the land will be held in common ownership and the 'units' will consist of the interior walls and air space").

Your second question concerns a situation in which a portion of an existing building is defined as the unit, but the portion is too small to be inhabited and the intention is that the unit owner will provide living quarters by placing his mobile home within the common area of the condominium property. It might be argued that a portion of a building which is two feet by two feet by eight feet may be considered a "room" on one or more floors of a building and, thus, that it will qualify as a "unit" under R.C. 5311.01(I)(1). See Webster's New World Dictionary 1235 (2d college ed. 1978) (defining "room" as "a space within a building enclosed by walls or separated from other similar spaces by walls or partitions"). See generally 1978 Op. Att'y Gen. No. 78-007 at 2-15 ("Ohio law recognizes that parts or units of a building

² It appears that, if a particular unit should be destroyed, its owner would possess a cube of airspace, together with an undivided interest in the land. See Cribbet, Condominium--Home Ownership for Megalopolis?, 61 Mich. L. Rev., Book 2, 1207, 1228 (1963) (discussing provision of the Illinois Condominium Property Act which provided for the application of insurance proceeds to reconstruction). It does not, however, follow that such cubes of airspace, in themselves, qualify as units under R.C. 5311.01(I)(1). See generally R.C. 5311.14 (concerning action to be taken upon damage to or destruction of all or any part of the common areas and facilities of a condominium property); R.C. 5311.16 (concerning insurance for condominiums); Rohan, Drafting Condominium Instruments: Provisions for Destruction, Obsolescence and Eminent Domain, 65 Colum. L. Rev. 593, 594 (1965) (if a segment of property of a condominium unit is "damaged and not restored, the declaration must be amended to reallocate the ownership, assessment and voting ratio" (footnote omitted)).

may be considered real property"). Words used in a statute should, however, "be given their common, ordinary and accepted meaning in the connection in which they are used." Wachendorf v. Shaver (syllabus, paragraph five). See R.C. 1.42. "[B]uilding is the general term applied to a fixed structure in which people dwell, work, etc." Webster's New World Dictionary 185 (2d college ed. 1978). "Room" and "rooms" are further defined as: "space, esp. enough space, to contain something or in which to do something"; "living quarters; lodgings; apartment." Webster's New World Dictionary 1235 (2d college ed. 1978). The connotation of R.C. 5311.01(I)(1) is, thus, that a unit is to consist of a portion of a building which is large enough to constitute one or more rooms of that building in which people may dwell, work, or otherwise occupy their time. See also Webster's New World Dictionary 535 (2d college ed. 1978) (defining "floor" as "a level or story in a building"). While I shall not attempt to define precisely the minimum area which such a unit must occupy, I do conclude that an area which is two feet by two feet by eight feet in size does not constitute "one or more rooms on one or more floors of a building," as those words are used in R.C. 5311.01(I)(1).³

Your third question concerns the consequences of the conclusion that the examples set forth in your first two questions do not fit within the definition of "unit" set forth in R.C. 5311.01(I)(1). You have asked whether the conveyance of property under the arrangements described in your first two questions would constitute a failure to comply with R.C. Chapter 711, which governs the platting of subdivisions, or a violation of R.C. 711.13.

R.C. 5311.02 specifically exempts transactions made under R.C. Chapter 5311 from the provisions of R.C. Chapter 711. R.C. 5311.02 states, in part: "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." Thus, the conveyance or transfer of property which is properly subject to R.C. Chapter 5311 is not subject to the provisions of R.C. Chapter 711. It has,

³ If a valid unit existed, the right to use a part of the common area as a location for a mobile home would appear to be permissible under R.C. Chapter 5311, if properly included within the declaration. See R.C. 5311.01(K) ("[l]imited common areas and facilities" means the common areas and facilities designated in the declaration as reserved for the use of a certain unit or units to the exclusion of the other units"); R.C. 5311.04(A) ("[t]he common areas and facilities of a condominium property are owned by the unit owners as tenants in common, and the ownership shall remain undivided..."); R.C. 5311.04(E) ("[e]ach unit owner may use the common areas and facilities 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"); Grimes v. Moreland, 41 Ohio Misc. 69, 322 N.E.2d 699 (C.P. Franklin County 1974) (the erection of fences and installation of air conditioner compressors by unit owners in the common area of a condominium property constitute the taking of property which is the subject of the undivided interest of all unit owners, and such actions may not be taken except pursuant to an amendment to the declaration unanimously approved by the unit owners).

however, been stated that "[d]eclaring certain real estate to be a condominium does not make it so." Prestwick Landowners' Ass'n v. Underhill, 69 Ohio App. 2d at 47, 429 N.E.2d at 1194. It is, therefore, possible that an arrangement which purports to comply with R.C. Chapter 5311 does not, in fact, constitute a statutory condominium arrangement. See Prestwick Landowners' Ass'n v. Underhill; Op. No. 71-031. An arrangement which is not properly under R.C. Chapter 5311 is not, by operation of R.C. 5311.02, excluded from the coverage of R.C. Chapter 711. Thus, if property is not properly subject to R.C. Chapter 5311, such property is subject to such provisions of R.C. Chapter 711 as may be applicable. See generally Op. No. 71-031.

A determination as to the extent of applicability of R.C. Chapter 711 to an arrangement which does not come within R.C. Chapter 5311 will, of course, depend upon the facts involved in the particular arrangement and upon any local provisions that may exist. See generally, e.g., 1982 Op. Att'y Gen. No. 82-072; Op. No. 71-031; 1960 Op. Att'y Gen. No. 1921, p. 733; 1953 Op. Att'y Gen. No. 3343, p. 688; 1953 Op. Att'y Gen. No. 3285, p. 654. See also 1985 Op. Att'y Gen. No. 85-004; 1984 Op. Att'y Gen. No. 84-073.

R.C. 711.001 contains the following definitions:

As used in sections 711.001 to 711.38, inclusive, of the Revised Code:

(A) "Plat" means a map of a tract or parcel of land.

(B) "Subdivision" means:

(1) The division of any parcel of land shown as a unit or as contiguous units on the last preceding tax roll, into two or more parcels, sites, or lots, any one of which is less than five acres for the purpose, whether immediate or future, of transfer of ownership, provided, however, that the division or partition of land into parcels of more than five acres not involving any new streets or easements of access, and the sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building sites, shall be exempted; or

(2) The improvement of one or more parcels of land for residential, commercial or industrial structures or groups of structures involving the division or allocation of land for the opening, widening or extension of any street or streets, except private streets serving industrial structures; the division or allocation of land as open spaces for common use by owners, occupants or lease holders or as easements for the extension and maintenance of public sewer, water, storm drainage or other public facilities.

Under R.C. 711.001(B), a "subdivision" includes the division of a parcel of land into two or more parcels, sites, or lots, any one of which is less than five acres, for the purpose of transfer of ownership, and also includes the division or allocation of land as open spaces for common use by owners, occupants, or lease holders. It appears that an arrangement which seeks, but fails, to satisfy the requirements of R.C. Chapter 5311 may, depending upon the facts involved, come within this definition. See generally Op. No. 82-072; Op. No. 71-031; 1960 Op. No. 1921; 1953 Op. No. 3343; 1953 Op. No. 3285. See also R.C. 5311.17 (when condominium property is removed from R.C. Chapter 5311, the property is owned in common by the unit owners).

R.C. 5311.07 requires the preparation of drawings of condominium property, as follows:

A set of drawings shall be prepared for every condominium property which show graphically, insofar as is possible, all the particulars of the land or water slips, buildings, and other improvements, including, but not limited to, the layout, location, designation, and dimensions of each unit, the layout, location, and dimensions of the common areas and facilities and limited common areas and facilities, the location and dimensions of all appurtenant easements or encroachments, and, if the condominium property is not contiguous, the distances between any parcels of land or any water slips.

It may be that drawings prepared under this provision for an arrangement which fails to comply with R.C. Chapter 5311 will qualify as a plat of a subdivision for purposes of R.C. 711.001. A determination as to whether that situation exists must, however, be made on case-by-case basis. See generally Op. No. 82-072; Op. No. 71-031; 1960 Op. No. 1921; 1953 Op. No. 3343; 1953 Op. No. 3285.

You have inquired specifically about the applicability of R.C. 711.13, which states:

Whoever, being the owner or agent of the owner of any land within or without a municipal corporation, willfully transfers any lot, parcel, or tract of such land from or in accordance with a plat of a subdivision as specifically defined in this chapter, before the plat has been recorded in the office of the county recorder, shall forfeit and pay the sum of not less than ten nor more than five hundred dollars for each lot, parcel, or tract of land so sold. The description of the lot, parcel, or tract by metes and bounds in the deed or transfer shall not serve to exempt the seller from the forfeiture provided in this section.

If the land is within a municipal corporation, the sum may be recovered in a civil action, brought in any court of competent jurisdiction by the city director of law or other corresponding official of the municipal corporation in the name of the municipal corporation and for the use of the street repair fund thereof.

If the land is situated outside a municipal corporation, the sum may be recovered in a civil action, brought by the prosecuting attorney, other corresponding official, or planning commission of the county in which the land is situated, in the name of the county and for the use of the road repair fund thereof.

The sale of lots, parcels, or tracts from a plat of a subdivision on which any and all areas indicated as streets or open grounds are expressly indicated as for the exclusive use of the abutting or other owners in the subdivision and not as public streets, ways, or grounds shall not serve to exempt the seller from the requirements of this chapter or from the forfeiture provided in this section. (Emphasis added.)

Under this provision, a forfeiture may be sought by judicial action against a person who "willfully transfers any lot,

parcel, or tract of such land from or in accordance with a plat of a subdivision as specifically defined in this chapter, before the plat has been recorded." A determination as to whether a transfer consists of a "lot, parcel, or tract of...land" will depend upon the particular arrangement. A determination as to whether a transfer was willful may be affected by the existence of an attempt to comply with R.C. Chapter 5311. It has, further, been stated that the language of R.C. 711.13 "quite plainly indicates that a plat must have been in existence prior to the conveyance" in order for a penalty to be incurred. 1953 Op. No. 3285 at 669. Thus, a number of factors must be considered in determining whether to proceed under R.C. 711.13. Upon appropriate facts, however, an action for forfeiture may be brought under R.C. 711.13, as prescribed therein. See generally Strong v. Darling, 9 Ohio 201 (1839) (finding that the predecessor to R.C. 711.13 imposed a forfeiture but did not vitiate a contract made before a plat was recorded).

In conclusion, it is my opinion, and you are hereby advised, as follows:

1. Pursuant to R.C. 5311.01(I)(1), a "[u]nit," except in the case of a water slip, means a part of the condominium property consisting of one or more rooms on one or more floors of a building"; a cube of airspace directly above a bounded area of the earth upon which a person may place his own mobile home does not fit within this definition.
2. An area of two feet by two feet by eight feet within an existing structure is not a "room" of a building as that term is commonly understood, and thus does not constitute a "unit" for purposes of R.C. 5311.01(I)(1).
3. An arrangement which purports to come within R.C. Chapter 5311 but which does not conform to the definition of "unit" appearing in R.C. 5311.01(I) is, notwithstanding R.C. 5311.02, subject to such provisions of R.C. Chapter 711 as may be applicable to its particular facts.