Chapter 94

2007 EDITION

Real Property Development

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94.020 [Repealed by 1971 c.478 §1]

94.021 [1987 c.459 §3; 1989 c.595 §4; renumbered 100.150 in 1989]

94.022 [1987 c.459 §4; 1989 c.595 §5; renumbered 100.155 in 1989]

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94.025 [Repealed by 1971 c.478 §1]

94.029 [Formerly 91.509; 1983 c.530 §49; 1983 c.615 §1; 1987 c.459 §8; 1989 c.595 §7; renumbered 100.105 in 1989]

94.030 [Repealed by 1971 c.478 §1]

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94.105 [Repealed by 1971 c.478 §1]

94.109 [Formerly 91.523; renumbered 100.300 in 1989]

94.110 [Repealed by 1971 c.478 §1]

94.115 [Repealed by 1971 c.478 §1]

94.116 [Formerly 91.524; renumbered 100.305 in 1989]

94.120 [Repealed by 1971 c.478 §1]

94.122 [Formerly 91.526; 1989 c.595 §13; renumbered 100.310 in 1989]

94.125 [Repealed by 1971 c.478 §1]

94.128 [1981 c.886 §5; 1989 c.595 §14; renumbered 100.315 in 1989]

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94.134 [1981 c.886 §6; 1989 c.595 §15; renumbered 100.320 in 1989]

94.135 [Repealed by 1971 c.478 §1]

94.140 [Repealed by 1971 c.478 §1]

94.145 [Repealed by 1971 c.478 §1]

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94.150 [Repealed by 1971 c.478 §1]

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94.158 [Formerly 91.533; 1987 c.459 §17; 1989 c.595 §17; renumbered 100.415 in 1989]

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94.164 [Formerly 91.534; renumbered 100.420 in 1989]

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94.171 [Formerly 91.536; 1987 c.459 §18; renumbered 100.430 in 1989]

94.175 [Repealed by 1971 c.478 §1]

94.177 [1981 c.647 §32; renumbered 100.435 in 1989]

94.180 [Repealed by 1971 c.478 §1]

94.185 [Formerly 91.539; 1989 c.595 §18; renumbered 100.440 in 1989]

94.190 [Formerly 91.542; renumbered 100.445 in 1989]

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94.205 [Repealed by 1971 c.478 §1]

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94.210 [Repealed by 1971 c.478 §1]

94.214 [Formerly 91.554; renumbered 100.480 in 1989]

94.215 [Repealed by 1971 c.478 §1]

94.220 [Repealed by 1971 c.478 §1]

94.221 [Formerly 91.557; renumbered 100.485 in 1989]

94.225 [Repealed by 1971 c.478 §1]

94.230 [Repealed by 1971 c.478 §1]

94.231 [Formerly 91.561; renumbered 100.505 in 1989]

94.235 [Repealed by 1971 c.478 §1]

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94.240 [Repealed by 1971 c.478 §1]

94.243 [Formerly 91.563; 1983 c.309 §8c; 1983 c.615 §5; renumbered 100.515 in 1989]

94.245 [Repealed by 1971 c.478 §1]

94.250 [1981 c.647 §31; 1983 c.309 §8d; renumbered 100.520 in 1989]

94.255 [Formerly 91.564; renumbered 100.525 in 1989]

94.260 [Formerly 91.566; 1987 c.459 §19; 1989 c.595 §22; renumbered 100.530 in 1989]

94.265 [Formerly 91.569; renumbered 100.535 in 1989]

94.270 [Formerly 91.572; renumbered 100.540 in 1989]

94.275 [Formerly 91.576; renumbered 100.545 in 1989]

94.280 [Formerly 91.578; 1983 c.615 §6; 1989 c.595 §23; renumbered 100.550 in 1989]

94.285 [Formerly 91.581; renumbered 100.555 in 1989]

94.295 [Formerly 91.584; 1989 c.595 §24; renumbered 100.600 in 1989]

94.300 [Formerly 91.587; 1989 c.595 §25; renumbered 100.605 in 1989]

94.305 [Repealed by 1971 c.478 §1]

94.306 [Formerly 91.591; 1989 c.595 §26; renumbered 100.610 in 1989]

94.310 [Repealed by 1971 c.478 §1]

94.312 [Formerly 91.593; 1989 c.595 §27; renumbered 100.615 in 1989]

94.315 [Repealed by 1971 c.478 §1]

94.318 [Formerly 91.596; 1989 c.595 §28; renumbered 100.620 in 1989]

94.320 [Repealed by 1971 c.478 §1]

94.322 [1983 c.615 §8; renumbered 100.625 in 1989]

94.324 [Formerly 91.599; 1985 c.760 §1; repealed by 1987 c.459 §41]

94.325 [Repealed by 1971 c.478 §1]

94.330 [Amended by 1969 c.591 §278; repealed by 1971 c.478 §1]

94.331 [Formerly 91.602; 1987 c.459 §20; 1989 c.595 §29; renumbered 100.635 in 1989]

94.333 [1987 c.459 §22; renumbered 100.015 in 1989]

94.335 [Repealed by 1971 c.478 §1]

94.336 [Formerly 91.606; repealed by 1987 c.459 §41]

94.340 [Repealed by 1971 c.478 §1]

94.342 [Formerly 91.608; 1987 c.459 §29; renumbered 100.645 in 1989]

94.345 [Repealed by 1971 c.478 §1]

94.348 [Formerly 91.611; 1987 c.459 §30; renumbered 100.650 in 1989]

94.350 [Repealed by 1971 c.478 §1]

94.351 [1987 c.459 §24; 1989 c.595 §30; renumbered 100.655 in 1989]

94.353 [1987 c.459 §25; renumbered 100.640 in 1989]

94.354 [1987 c.459 §23; renumbered 100.670 in 1989]

94.355 [Repealed by 1971 c.478 §1]

94.356 [1987 c.459 §26; renumbered 100.660 in 1989]

94.357 [1987 c.459 §27; renumbered 100.675 in 1989]

94.358 [1987 c.459 §28; renumbered 100.680 in 1989]

94.359 [Formerly 91.614; 1987 c.459 §31; renumbered 100.700 in 1989]

94.360 [Repealed by 1971 c.478 §1]

94.365 [Repealed by 1971 c.478 §1]

94.366 [Formerly 91.617; repealed by 1987 c.459 §41]

94.370 [Repealed by 1971 c.478 §1]

94.372 [Formerly 91.621; repealed by 1987 c.459 §41]

94.375 [Repealed by 1971 c.478 §1]

94.378 [Formerly 91.623; repealed by 1987 c.459 §41]

94.380 [Repealed by 1971 c.478 §1]

94.384 [Formerly 91.626; 1987 c.459 §32; 1989 c.171 §12; 1989 c.595 §31; renumbered 100.705 in 1989]

94.385 [Repealed by 1971 c.478 §1]

94.390 [Repealed by 1971 c.478 §1]

94.391 [Formerly 91.629; 1987 c.459 §35; renumbered 100.710 in 1989]

94.395 [Repealed by 1971 c.478 §1]

94.400 [Formerly 91.631; renumbered 100.720 in 1989]

94.405 [Repealed by 1971 c.478 §1]

94.406 [Formerly 91.634; renumbered 100.725 in 1989]

94.410 [Repealed by 1971 c.478 §1]

94.412 [Formerly 91.637; 1989 c.595 §47; renumbered 100.730 in 1989]

94.415 [Repealed by 1971 c.478 §1]

94.418 [1981 c.647 §24; renumbered 100.735 in 1989]

94.420 [Repealed by 1971 c.478 §1]

94.424 [Formerly 91.641; 1989 c.595 §32; renumbered 100.740 in 1989]

94.425 [Repealed by 1971 c.478 §1]

94.430 [Repealed by 1971 c.478 §1]

94.431 [Formerly 91.646; 1987 c.459 §36; renumbered 100.745 in 1989]

94.435 [Repealed by 1971 c.478 §1]

94.437 [Formerly 91.649; renumbered 100.750 in 1989]

94.440 [Repealed by 1971 c.478 §1]

94.445 [Repealed by 1971 c.478 §1]

94.448 [Formerly 91.652; renumbered 100.770 in 1989]

94.454 [Formerly 91.656; renumbered 100.775 in 1989]

94.460 [Formerly 91.658; renumbered 100.780 in 1989]

94.465 [Formerly 91.661; 1989 c.595 §33; renumbered 100.785 in 1989]

94.470 [Formerly 91.664; 1983 c.696 §7b; 1989 c.706 §7; renumbered 100.900 in 1989]

94.475 [Formerly 91.667; renumbered 100.905 in 1989]

94.480 [Formerly 91.671; renumbered 100.910 in 1989]

DEVELOPMENT AGREEMENTS

94.504 Development agreements; contents; duration; effect on affordable housing covenants. (1) A city or county may enter into a development agreement as provided in ORS 94.504 to 94.528 with any person having a legal or equitable interest in real property for the development of that property.

(2) A development agreement shall specify:

(a) The duration of the agreement;

(b) The permitted uses of the property;

(c) The density or intensity of use;

(d) The maximum height and size of proposed structures;

(e) Provisions for reservation or dedication of land for public purposes;

(f) A schedule of fees and charges;

(g) A schedule and procedure for compliance review;

(h) Responsibility for providing infrastructure and services;

(i) The effect on the agreement when changes in regional policy or federal or state law or rules render compliance with the agreement impossible, unlawful or inconsistent with such laws, rules or policy;

(j) Remedies available to the parties upon a breach of the agreement;

(k) The extent to which the agreement is assignable; and

(L) The effect on the applicability or implementation of the agreement when a city annexes all or part of the property subject to a development agreement.

(3) A development agreement shall set forth all future discretionary approvals required for the development specified in the agreement and shall specify the conditions, terms, restrictions and requirements for those discretionary approvals.

(4) A development agreement shall also provide that construction shall be commenced within a specified period of time and that the entire project or any phase of the project be completed by a specified time.

(5) A development agreement shall contain a provision that makes all city or county obligations to expend moneys under the development agreement contingent upon future appropriations as part of the local budget process. The development agreement shall further provide that nothing in the agreement requires a city or county to appropriate any such moneys.

(6) A development agreement must state the assumptions underlying the agreement that relate to the ability of the city or county to serve the development. The development agreement must also specify the procedures to be followed when there is a change in circumstances that affects compliance with the agreement.

(7) A development agreement is binding upon a city or county pursuant to its terms and for the duration specified in the agreement.

(8) The maximum duration of a development agreement entered into with:

(a) A city is 15 years; and

(b) A county is seven years.

(9) ORS 94.504 to 94.528 do not limit the authority of a city or county to take action pursuant to ORS 456.270 to 456.295. [1993 c.780 §1; 2005 c.315 §1; 2007 c.691 §7]

Note: 94.504 to 94.528 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 94 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

94.505 [Repealed by 1971 c.478 §1]

94.508 Approval by governing body; findings; adoption. (1) A development agreement shall not be approved by the governing body of a city or county unless the governing body finds that the agreement is consistent with local regulations then in place for the city or county.

(2) The governing body of a city or county shall approve a development agreement or amend a development agreement by adoption of an ordinance declaring approval or setting forth the amendments to the agreement. Notwithstanding ORS 197.015 (10)(b), the approval or amendment of a development agreement is a land use decision under ORS chapter 197. [1993 c.780 §2; 2005 c.22 §74; 2007 c.354 §27]

Note: See note under 94.504.

94.510 [Repealed by 1971 c.478 §1]

94.513 Procedures on consideration and approval. (1) A city or county may, by ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the owner of property on which development is sought or another person having a legal or equitable interest in that property.

(2) Approval of a development agreement requires compliance with local regulations and the approval of the city or county governing body after notice and hearing. The notice of the hearing shall, in addition to any other requirements, state the time and place of the public hearing and contain a brief statement of the major terms of the proposed development agreement, including a description of the area within the city or county that will be affected by the proposed development agreement. [1993 c.780 §3]

Note: See note under 94.504.

94.515 [Repealed by 1971 c.478 §1]

94.518 Application of local government law and policies to agreement. Unless otherwise provided by the development agreement, the comprehensive plan, zoning ordinances and other rules and policies of the jurisdiction governing permitted uses of land, density and design applicable to the development of the property subject to a development agreement shall be the comprehensive plan and those ordinances, rules and policies of the jurisdiction in effect at the time of approval of the development agreement. [1993 c.780 §4]

Note: See note under 94.504.

94.520 [Repealed by 1971 c.478 §1]

94.522 Amendment or cancellation of agreement; enforceability. (1) A development agreement may be amended or canceled by mutual consent of the parties to the agreement or their successors in interest. The governing body of a city or county shall amend or cancel a development agreement by adoption of an ordinance declaring cancellation of the agreement or setting forth the amendments to the agreement.

(2) Until a development agreement is canceled under this section, the terms of the

development agreement are enforceable by any party to the agreement. [1993 c.780 §5]

Note: See note under 94.504.

94.525 [Repealed by 1971 c.478 §1]

94.528 Recording. Not later than 10 days after the execution of a development agreement under ORS 94.504 to 94.528, the governing body of the city or county shall cause the development agreement to be presented for recording in the office of the county clerk of the county in which the property subject to the agreement is situated. In addition to other provisions required by ORS 94.504 to 94.528, the development agreement shall contain a legal description of the property subject to the agreement. [1993 c.780 §6]

Note: See note under 94.504.

94.530 [Repealed by 1971 c.478 §1]

TRANSFERABLE DEVELOPMENT CREDITS

94.531 Severable development interest in real property; transferable development credit. (1) The governing body of a city or county is authorized to recognize a severable development interest in real property. The governing body of the city or county may establish a system for the purchase and sale of development interests. The interest transferred shall be known as a transferable development credit. A transferable development credit shall include the ability to establish in a location in the city or county a specified amount of residential or nonresidential development that is different from development types or exceeds development limitations provided in the applicable land use regulations for the location. All development authorized or approved using transferable development credits shall comply with the land use planning goals adopted under ORS 197.225 and the acknowledged comprehensive plan.

(2) The ability to develop land from which credits are transferred shall be reduced by the amount of the development credits transferred, and development on the land to which credits are transferred may be increased in accordance with a transfer system formally adopted by the governing body of the city or county.

(3) The holder of a recorded mortgage encumbering land from which credits are transferred shall be given prior written notice of the proposed conveyance by the record owner of the property and must consent to the conveyance before any development credits may be transferred from the property.

(4) A city or county with a transferable development credit system shall maintain a registry of all lots or parcels from which credits have been transferred, the lots or parcels to which credits have been transferred and the allowable development level for each lot or parcel following transfer.

(5) A city or county, or an elected official, appointed official, employee or agent of a city or county, shall not be found liable for damages resulting from any error made in:

(a) Allowing the use of a transferable development credit that complies with an adopted transferable development credit system and the acknowledged comprehensive plan; or

(b) Maintaining the registry required under subsection (4) of this section. [1999 c.573 §1]

Note: 94.531 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 94 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

94.540 [Repealed by 1971 c.478 §1]

PLANNED COMMUNITIES

(General Provisions)

94.550 Definitions for ORS 94.550 to 94.783. As used in ORS 94.550 to 94.783:

(1) "Assessment" means any charge imposed or levied by a homeowners association on or against an owner or lot pursuant to the provisions of the declaration or the bylaws of the planned community or provisions of ORS 94.550 to 94.783.

(2) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than one lot in a planned community, or an agreement affecting more than one lot by which the developer holds such planned community under an option, contract to sell or trust agreement.

(3) "Class I planned community" means a planned community that:

(a) Contains at least 13 lots or in which the declarant has reserved the right to increase the total number of lots beyond 12; and

(b) Has an estimated annual assessment, including an amount required for reserves under ORS 94.595, exceeding $10,000 for all lots or $100 per lot, whichever is greater, based on:

(A) For a planned community created on or after January 1, 2002, the initial estimated annual assessment, including a constructive assessment based on a subsidy of the association through a contribution of funds, goods or services by the declarant; or

(B) For a planned community created before January 1, 2002, a reasonable estimate of the cost of fulfilling existing obligations

imposed by the declaration, bylaws or other governing document as of January 1, 2002.

(4) "Class II planned community" means a planned community that:

(a) Is not a Class I planned community;

(b) Contains at least five lots; and

(c) Has an estimated annual assessment exceeding $1,000 for all lots based on:

(A) For a planned community created on or after January 1, 2002, the initial estimated annual assessment, including a constructive assessment based on a subsidy of the association through a contribution of funds, goods or services by the declarant; or

(B) For a planned community created before January 1, 2002, a reasonable estimate of the cost of fulfilling existing obligations imposed by the declaration, bylaws or other governing document as of January 1, 2002.

(5) "Class III planned community" means a planned community that is not a Class I or II planned community.

(6) "Common expenses" means expenditures made by or financial liabilities incurred by the homeowners association and includes any allocations to the reserve account under ORS 94.595.

(7) "Common property" means any real property or interest in real property within a planned community which is owned, held or leased by the homeowners association or owned as tenants in common by the lot owners, or designated in the declaration or the plat for transfer to the association.

(8) "Condominium" means property submitted to the provisions of ORS chapter 100.

(9) "Declarant" means any person who creates a planned community under ORS 94.550 to 94.785.

(10) "Declarant control" means any special declarant right relating to administrative control of a homeowners association, including but not limited to:

(a) The right of the declarant or person designated by the declarant to appoint or remove an officer or a member of the board of directors;

(b) Any weighted vote or special voting right granted to a declarant or to units owned by the declarant so that the declarant will hold a majority of the voting rights in the association by virtue of such weighted vote or special voting right; and

(c) The right of the declarant to exercise powers and responsibilities otherwise assigned by the declaration or bylaws or by the provisions of ORS 94.550 to 94.783 to the association, officers of the association or board of directors of the association.

(11) "Declaration" means the instrument described in ORS 94.580 which establishes a planned community, and any amendments to the instrument.

(12) "Governing document" means an instrument or plat relating to common ownership or common maintenance of a portion of a planned community and that is binding upon lots within the planned community.

(13) "Homeowners association" or "association" means the organization of owners of lots in a planned community, created under ORS 94.625, required by a governing document or formed under ORS 94.572.

(14) "Majority" or "majority of votes" or "majority of owners" means more than 50 percent of the votes in the planned community.

(15) "Mortgagee" means any person who is:

(a) A mortgagee under a mortgage;

(b) A beneficiary under a trust deed; or

(c) The vendor under a land sale contract.

(16) "Owner" means the owner of any lot in a planned community, unless otherwise specified, but does not include a person holding only a security interest in a lot.

(17) "Percent of owners" or "percentage of owners" means the owners representing the specified voting rights as determined under ORS 94.658.

(18)(a) "Planned community" means any subdivision under ORS 92.010 to 92.190 that results in a pattern of ownership of real property and all the buildings, improvements and rights located on or belonging to the real property, in which the owners collectively are responsible for the maintenance, operation, insurance or other expenses relating to any property within the planned community, including common property, if any, or for the exterior maintenance of any property that is individually owned.

(b) "Planned community" does not mean:

(A) A condominium under ORS chapter 100;

(B) A planned community that is exclusively commercial or industrial; or

(C) A timeshare plan under ORS 94.803 to 94.945.

(19) "Purchaser" means any person other than a declarant who, by means of a voluntary transfer, acquires a legal or equitable interest in a lot, other than as security for an obligation.

(20) "Purchaser for resale" means any person who purchases from the declarant more than two lots for the purpose of resale

whether or not the purchaser for resale makes improvements to the lots before reselling them.

(21) "Special declarant rights" means any rights, in addition to the rights of the declarant as a lot owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to 94.783, including but not limited to:

(a) Constructing or completing construction of improvements in the planned community which are described in the declaration;

(b) Expanding the planned community or withdrawing property from the planned community under ORS 94.580 (3) and (4);

(c) Converting lots into common property;

(d) Making the planned community subject to a master association under ORS 94.695; or

(e) Exercising any right of declarant control reserved under ORS 94.600.

(22) "Successor declarant" means the transferee of any special declarant right.

(23) "Turn over" means the act of turning over administrative responsibility pursuant to ORS 94.609 and 94.616.

(24) "Unit" means a building or portion of a building located upon a lot in a planned community and designated for separate occupancy or ownership, but does not include any building or portion of a building located on common property.

(25) "Votes" means the votes allocated to lots in the declaration under ORS 94.580 (2). [1981 c.782 §3; 1999 c.677 §1; 2001 c.756 §5; 2003 c.569 §3; 2007 c.410 §1]

94.560 Legislative findings. The Legislative Assembly finds that:

(1) In the State of Oregon there are hundreds of homeowners associations to which the Oregon Condominium Law (ORS chapter 100) does not apply.

(2) These homeowners associations have established a pattern of ownership in which ownership of a single unit makes the owner automatically a member of a homeowners association with responsibilities for management and maintenance.

(3) Many of these homeowners associations as associations and their members as individuals have experienced problems from the lack of statutory provisions. These problems which have arisen are usually the result of inexperience with this kind of ownership. This inexperience often leads to difficulties for the association when it assumes responsibility for the administration of the planned development because usually neither the developer who drafted the documents nor the local jurisdiction which may have reviewed them has realized the long term management implications of the restrictions imposed by the documents. The most serious and frequent error is imposing excessive voting requirements for any changes in the documents, a basic error that makes it and other errors unnecessarily difficult, if not impossible, to correct. Of almost equal importance is the lack of disclosure of significant differences this pattern of ownership imposes on the homeowner and the restrictions on choice that must be accepted.

(4) Oregon land conservation policies and the increasing cost of land will result in rapid growth of this kind of homeownership pattern.

(5) It is a matter of statewide concern that the Legislative Assembly address problems associated with homeowners associations in order to make this kind of homeownership pattern an acceptable choice and in order to assure proper maintenance of the projects so that the investment of the owners and the appearance of Oregon communities are protected.

(6) It is essential that the Legislative Assembly establish basic statutory requirements for disclosure to first and subsequent buyers, for the organization of the homeowners association, and for a process by which administrative responsibility for the planned community is transferred from the developer to the association of individual owners.

(7) ORS 94.550 to 94.783 are intended to make developers, their legal counsel and homeowners in Oregon homeowners associations the beneficiaries of experience accumulated under Oregon's condominium law and gathered from members of existing Oregon homeowners associations and associations in parts of the country where the record of experience is longer than that in Oregon. [1981 c.782 §3a]

(Creation of Planned Community)

94.565 Planned community to be created under ORS 94.550 to 94.783; exception; conveyance of lot or unit prohibited until declaration recorded. (1) Except as provided in ORS 94.570, a person may not create a planned community in this state except as provided in ORS 94.550 to 94.783.

(2) A person may not convey any lot or unit in a planned community until the planned community is created by the recording of the declaration for the planned community with the county recording officer of each county in which the planned community is located. [1981 c.782 §5; 1999 c.677 §2; 2001 c.756 §6]

94.570 Applicability of ORS 94.550 to 94.783. (1) ORS 94.550 to 94.783 apply to a planned community created before January 1, 2002, under ORS 94.550 to 94.783 and to a Class I planned community created on or after January 1, 2002.

(2) ORS 94.550 to 94.783, except for ORS 94.595 and 94.604, apply to a Class II planned community created on or after January 1, 2002.

(3) Notwithstanding any other provision of ORS 94.550 to 94.783, ORS 94.550 to 94.783 apply to a Class III planned community or a planned community that is exclusively commercial or industrial and that is created on or after January 1, 2002, if the declaration of the planned community so provides.

(4) Nothing in ORS 94.550 to 94.783 prohibits the establishment of a condominium subject to ORS chapter 100 or a timeshare plan subject to ORS 94.803 to 94.945 within a planned community. [1981 c.782 §6; 1983 c.530 §52; 1985 c.76 §3; 1999 c.677 §3; 2001 c.756 §7; 2003 c.569 §4]

94.572 Applicability of certain provisions of ORS 94.550 to 94.783 to Class I or Class II planned communities. (1)(a) A Class I or Class II planned community created before January 1, 2002, that was not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.630 (1), (3) and (4), 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 to the extent that those statutes are consistent with any governing documents. If the governing documents do not provide for the formation of an association, the requirements of this subsection are not effective until the formation of an association in accordance with paragraph (b) of this subsection. If a provision of the governing documents is inconsistent with this subsection, the owners may amend the governing documents using the procedures in this subsection:

(A) In accordance with the procedures for the adoption of amendments in the governing documents and subject to any limitations in the governing documents, the owners may amend the inconsistent provisions of the governing documents to conform to the extent feasible with this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.630 (1), (3) and (4), 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780. Nothing in this paragraph requires the owners to amend a declaration or bylaws to include the information required by ORS 94.580 or 94.635.

(B) If there are no procedures for amendment in the governing documents:

(i) For an amendment to a recorded governing document other than bylaws, the owners may amend the inconsistent provisions of the document to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.630 (1), (3) and (4), 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 by a vote of at least 75 percent of the owners in the planned community.

(ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the bylaws to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.630 (1), (3) and (4), 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 by a vote of at least a majority of the owners in the planned community.

(iii) An amendment may be adopted at a meeting held in accordance with the governing documents or by another procedure permitted by the governing documents following the procedures prescribed in ORS 94.647, 94.650 or 94.660.

(iv) An amendment to a recorded declaration shall be executed, certified and recorded as provided in ORS 94.590 (2) and (3) and shall be subject to ORS 94.590 (5). An amendment to the bylaws and any other governing document shall be executed and certified as provided in ORS 94.590 (3) and shall be recorded in the office of the recording officer of every county in which the planned community is located if the bylaws or other governing document to which the amendment relates were recorded.

(C) An amendment adopted pursuant to this paragraph shall include:

(i) A reference to the recording index numbers and date of recording of the declaration or other governing document, if recorded, to which the amendment relates; and

(ii) A statement that the amendment is adopted pursuant to the applicable subparagraph of this paragraph.

(b)(A) If the governing documents do not provide for the formation of an association of owners, at least 10 percent of the owners in the planned community or any governing

entity may initiate the formation of an association as provided in this paragraph. The owners or the governing entity initiating the association formation shall call an organizational meeting for the purpose of voting whether to form an association described in ORS 94.625. The notice of the meeting shall:

(i) Name the initiating owners or governing entity;

(ii) State that the organizational meeting is for the purpose of voting whether to form an association in accordance with the proposed articles of incorporation;

(iii) State that if the owners vote to form an association, the owners may elect the initial board of directors provided for in the articles of incorporation and may adopt the initial bylaws;

(iv) State that to form an association requires an affirmative vote of at least a majority of the owners in the planned community, or, if a larger percentage is specified in the applicable governing document, the larger percentage;

(v) State that to adopt articles of incorporation, to elect the initial board of directors pursuant to the articles of incorporation or to adopt the initial bylaws requires an affirmative vote of at least a majority of the owners present;

(vi) State that if the initial board of directors is not elected, an interim board of directors shall be elected pursuant to bylaws adopted as provided in subparagraph (C) of this paragraph;

(vii) State that a copy of the proposed articles of incorporation and bylaws will be available at least five business days before the meeting and state the method of requesting a copy; and

(viii) Be delivered in accordance with the declaration and bylaws. If there is no governing document or the document does not include applicable provisions, the owners or governing entity shall follow the procedures prescribed in ORS 94.650 (4).

(B) At least five business days before the organizational meeting, the initiating owners or governing entity shall cause articles of incorporation and bylaws to be drafted. The bylaws shall include, to the extent applicable, the information required by ORS 94.635.

(C) At the organizational meeting:

(i) Representatives of the initiating owners or governing entity shall, to the extent not inconsistent with the governing documents, conduct the meeting according to Robert's Rules of Order as provided in ORS 94.657.

(ii) The initiating owners or governing entity shall make available copies of the proposed articles of incorporation and the proposed bylaws.

(iii) The affirmative vote of at least a majority of the owners of a planned community, or, if a larger percentage is specified in the applicable governing document, the larger percentage, is required to form an association under this paragraph.

(iv) If the owners vote to form an association, the owners shall adopt articles of incorporation and may elect the initial board of directors as provided in the articles of incorporation, adopt bylaws and conduct any other authorized business by an affirmative vote of at least a majority of the owners present. If the owners do not elect the initial board of directors, owners shall elect an interim board of directors by an affirmative vote of at least a majority of the owners present to serve until the initial board of directors is elected.

(v) An owner may vote by proxy, or by written ballot, if approved, in the discretion of a majority of the initiating owners or governing entity.

(D) Not later than 10 business days after the organizational meeting, the board of directors shall:

(i) Cause the articles of incorporation to be filed with the Secretary of State under ORS chapter 65;

(ii) Cause the notice of planned community described in subsection (4) of this section to be prepared, executed and recorded in accordance with subsection (4) of this section;

(iii) Provide a copy of the notice of planned community to each owner, together with a copy of the adopted articles of incorporation and bylaws, if any, or a statement of the procedure and method for adoption of bylaws described in subparagraph (C) of this paragraph. The copies and any statement shall be delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated by the owners in writing; and

(iv) Cause a statement of association information to be prepared, executed and recorded in accordance with ORS 94.667.

(E) If the owners vote to form an association, all costs incurred under this paragraph, including but not limited to the preparation and filing of the articles of incorporation, drafting of bylaws, preparation of notice of meeting and the drafting, delivery and recording of all notices and statements shall be a common expense of the owners and shall be allocated as provided in the appropriate governing document or any amendment thereto.

(2)(a) The owners of lots in a Class I or Class II planned community that are subject to the provisions of ORS chapter 94 specified in subsection (1) of this section may elect to be subject to any other provisions of ORS 94.550 to 94.783 upon compliance with the procedures prescribed in subsection (1) of this section.

(b) If the owners of lots in a Class I or Class II planned community elect to be subject to additional provisions of ORS 94.550 to 94.783, unless the notice of planned community otherwise required or permitted under subsection (4) of this section includes a statement of the election pursuant to this paragraph, the board of directors of the association shall cause the notice of planned community described in subsection (4) of this section to be prepared, executed and recorded in accordance with subsection (4) of this section.

(3)(a) The owners of lots in a Class III planned community created before January 1, 2002, may elect to be subject to provisions of ORS 94.550 to 94.783 upon compliance with the applicable procedures in subsection (1) of this section.

(b) If the owners of lots in a Class III planned community elect to be subject to provisions of ORS 94.550 to 94.783, the board of directors of the association shall cause the notice of planned community described in subsection (4) of this section to be prepared, executed and recorded in accordance with subsection (4) of this section.

(4) The notice of planned community required or permitted by this section shall be:

(a) Titled "Notice of Planned Community under ORS 94.572";

(b) Executed by the president and secretary of the association; and

(c) Recorded in the office of the recording officer of every county in which the property is located.

(5) The notice of planned community shall include:

(a) The name of the planned community and association as identified in the recorded declaration, conditions, covenants and restrictions or other governing document and, if different, the current name of the association;

(b) A list of the properties, described as required for recordation in ORS 93.600, within the jurisdiction of the association;

(c) Information identifying the recorded declaration, conditions, covenants and restrictions or other governing documents and a reference to the recording index numbers and date of recording of the governing documents;

(d) A statement that the property described in accordance with paragraph (b) of this subsection is subject to specific provisions of the Oregon Planned Community Act;

(e) A reference to the specific provisions of the Oregon Planned Community Act that apply to the subject property and a reference to the subsection of this section under which the application is made; and

(f) If an association is formed under subsection (1)(b)(A) of this section, a statement to that effect.

(6) An amended statement shall include a reference to the recording index numbers and the date of recording of prior statements.

(7) The county clerk may charge a fee for recording a statement under this section according to the provisions of ORS 205.320 (4).

(8) The board of directors of an association not otherwise required to cause a notice of planned community described in subsection (4) of this section to be prepared and recorded under this section may cause a notice of planned community to be prepared, executed and recorded as provided in subsection (4) of this section.

(9) Title to a unit, lot or common property in a Class I or Class II planned community created before January 1, 2002, may not be rendered unmarketable or otherwise affected by a failure of the planned community to be in compliance with a requirement of this section.

(10) As used in this section:

(a) "Governing entity" means an incorporated or unincorporated association, committee, person or any other entity that has authority, under a governing document, to maintain commonly maintained property, impose assessments on lots or to act on behalf of lot owners within the planned community on matters of common concern.

(b) "Recorded declaration" means an instrument recorded with the county recording officer of the county in which the planned community is located that contains conditions, covenants and restrictions binding lots in the planned community or imposes servitudes upon the real property. [2001 c.756 §3; 2003 c.569 §5; 2005 c.543 §3; 2007 c.409 §33]

94.575 Applicability of subdivision law. ORS 92.010 to 92.170 apply to a planned community established under ORS 94.550 to 94.783. [1981 c.782 §4]

94.580 Declaration; recordation; contents. (1) A declarant shall record, in accordance with ORS 94.565, the declaration for a planned community in the office of the recording officer of each county in which the planned community is located.

(2) The declaration shall include:

(a) The name and classification of the planned community;

(b) The name of the association and the type of entity formed in accordance with ORS 94.625;

(c) A statement that the planned community is subject to ORS 94.550 to 94.783;

(d) A statement that the bylaws adopted under ORS 94.625 must be recorded;

(e) A legal description, as required under ORS 93.600, of the real property included in the planned community;

(f) A legal description, as required under ORS 93.600, of any real property included in the planned community which is or must become a common property;

(g) A description of any special declarant rights other than the rights described under subsections (3) and (4) of this section;

(h) A statement of the number of votes allocated to each lot in accordance with ORS 94.658;

(i) A method of determining the liability of each lot for common expenses and the right of each lot to any common profits of the association;

(j) A statement of when the lots, including lots owned by the declarant, become subject to assessment;

(k) If a Class I planned community, provisions for establishing a reserve account and for the preparation, review and update of the reserve study and the maintenance plan as required by ORS 94.595;

(L) Any restrictions on the alienation of lots. Any such restriction created by any document other than the declaration may be incorporated by reference to the official records of the county where the property is located;

(m) A statement of the use, residential or otherwise, for which each lot is intended;

(n) A statement as to whether or not the association pursuant to ORS 94.665 may sell, convey or subject to a security interest any portion of the common property and any limitation on such authority;

(o) A statement of any restriction on the use, maintenance or occupancy of lots or units;

(p) The method of amending the declaration and a statement of the percentage of votes required to approve an amendment of the declaration in accordance with ORS 94.590;

(q) A description of any contemplated improvements which the declarant agrees to build, or a statement that the declarant does not agree to build any improvement or does not choose to limit declarant's rights to add improvements not described in the declaration;

(r) A statement of any period of declarant control or other special declarant rights reserved by the declarant under ORS 94.600;

(s) A statement of the time at which the deed to the common property is to be delivered, whether by date or upon the occurrence of a stipulated event; and

(t) Any provisions restricting a right of the association with respect to the common property, or an individual lot owner with respect to the lot or improvements on the lot, including but not limited to:

(A) A right to divide the lot or to combine it with other lots;

(B) A right to repair or restore improvements on the lot at the owner's discretion in the event of damage or destruction;

(C) The requirement for architectural controls, including but not limited to fencing, landscaping or choice of exterior colors and materials of structures to be placed on the common property or on a lot; and

(D) The requirement of review of any plans of any structure to be placed on the common property or a lot.

(3) If the declarant reserves the right to expand the planned community by annexing lots or common property or by creating additional lots or common property by developing existing property in the planned community, the declaration shall contain, in addition to the provisions required under subsections (1) and (2) of this section, a general description of the plan of development including:

(a) The procedure by which the planned community will be expanded;

(b) The maximum number of lots and units to be included in the planned community or a statement that there is no limitation on the number of lots or units which the declarant may create or annex to the planned community;

(c) A general description of the nature and proposed use of any common property which the declarant agrees to create or annex to the planned community or a statement that there is no limitation on the right of the declarant to create or annex common property;

(d) The method of allocation of votes if additional lots are to be created or annexed to the planned community; and

(e) The formula to be used for reallocating the common expenses if additional lots are to be created or annexed to the planned

community, and the manner of reapportioning the common expenses if lots are created or annexed during the fiscal year.

(4) If the declarant may withdraw property from the planned community, the declaration shall include in addition to the provisions required under subsections (1), (2) and (3) of this section:

(a) The procedure by which property will be withdrawn;

(b) A general description of the property which may be withdrawn from the planned community;

(c) The method of allocation of votes if lots are withdrawn from the planned community;

(d) The formula to be used for reallocating the common expenses if the property to be withdrawn has been assessed for common expenses prior to withdrawal; and

(e) The date after which the right to withdraw property from the planned community shall expire or a statement that such a right shall not expire. [1981 c.782 §12; 1999 c.677 §4; 2001 c.756 §8; 2003 c.569 §6; 2007 c.409 §6a]

94.585 Authority to amend declaration and initial bylaws to comply with federal or state laws. A declarant may amend the declaration or initial bylaws in order to comply with requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, Rural Development or the Farm Service Agency of the United States Department of Agriculture, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. However, if the need to amend the declaration or the initial bylaws occurs after the turnover to the homeowners association has occurred, the amendment must be approved by the association in accordance with the approval provisions of the declaration or bylaws. [1981 c.782 §19; 1991 c.67 §18; 1999 c.677 §6; 2007 c.71 §26]

94.590 Amendment of declaration by owners. (1)(a) The declaration may be amended only with the approval of owners representing at least 75 percent of the total votes in the planned community or any larger percentage specified in the declaration.

(b) An amendment under this section may not:

(A) Limit or diminish any right of a declarant reserved under ORS 94.580 (3) or (4) or any other special declarant right without the consent of the declarant. A declarant may waive the declarant's right of consent.

(B) Change the boundaries of any lot or any uses to which any lot or unit is restricted as stated in the declaration under ORS 94.580 (2)(m) or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any lot or unit unless the owners of the affected lots or units unanimously consent to the amendment.

(c) Any changes to the plat, including required approvals or consents of owners or others, are governed by the applicable provisions of ORS 92.010 to 92.190.

(2)(a) Unless otherwise provided in the declaration, an amendment to the declaration may be proposed by a majority of the board of directors or by at least 30 percent of the owners in the planned community.

(b) When the association adopts an amendment to the declaration, the association shall record the amendment in the office of the recording officer in each county in which the planned community is located. An amendment of the declaration is effective only upon recordation.

(3) Notwithstanding a provision in a declaration that requires amendments to be executed and acknowledged by all owners approving the amendment, amendments to a declaration under this section shall be executed and certified on behalf of the association by the president and secretary as being adopted in accordance with the declaration and the provisions of this section and acknowledged in the manner provided for acknowledgment of deeds.

(4) An amendment to a declaration or plat shall be conclusively presumed to have been regularly adopted in compliance with all applicable procedures relating to such amendment unless an action is brought within one year after the date such amendment was recorded or the face of the recorded amendment indicates that the amendment received the approval of fewer votes than required for such approval. However, nothing in this subsection shall prevent the further amendment of an amended declaration or plat.

(5) During any period of declarant control, voting on an amendment under subsection (1) of this section shall be without regard to any weighted vote or special voting right reserved by the declarant except as otherwise provided under ORS 94.585. Nothing in this subsection is intended to prohibit

a declarant from reserving the right to require the declarant's consent to an amendment during the period reserved in the declaration for declarant control.

(6) The board of directors, upon the adoption of a resolution, may cause a restated declaration to be prepared and recorded to codify individual amendments that have been adopted in accordance with this section or ORS 94.585 without the further approval of owners. A declaration restated under this subsection must:

(a) Include all previously adopted amendments in effect and may not include any other changes except to correct scriveners' errors or to conform format and style;

(b) Include a statement that the board of directors has adopted a resolution in accordance with this subsection and is causing the declaration to be restated and recorded under this subsection;

(c) Include a reference to the recording index numbers and date of recording of the initial declaration and all previously recorded amendments in effect being codified;

(d) Include a certification by the president and secretary of the association that the restated declaration includes all previously adopted amendments in effect and no other changes except, if applicable, to correct scriveners' errors or to conform format and style; and

(e) Be executed and acknowledged by the president and secretary of the association and recorded in the deed records of each county in which the planned community is located. [1981 c.782 §21; 1999 c.677 §5; 2001 c.756 §9; 2003 c.569 §7; 2007 c.410 §22]

94.595 Reserve account for maintaining, repairing and replacing common property; reserve study; maintenance plan. (1) The declarant, on behalf of a homeowners association, shall:

(a) Conduct an initial reserve study as described in subsection (3) of this section;

(b) Prepare an initial maintenance plan as described in subsection (4) of this section; and

(c) Establish a reserve account as provided in subsection (2) of this section.

(2)(a) A reserve account shall be established to fund major maintenance, repair or replacement of all items of common property which will normally require major maintenance, repair or replacement, in whole or in part, in more than one and less than 30 years, for exterior painting if the common property includes exterior painted surfaces, for other items, whether or not involving common property, if the association has responsibility to maintain the items and for other items required by the declaration or bylaws. The reserve account need not include reserves for those items:

(A) That can reasonably be funded from the general budget or other funds or accounts of the association; or

(B) For which one or more, but less than all, owners are responsible for maintenance and replacement under the provisions of the declaration or bylaws.

(b) The reserve account shall be established in the name of the homeowners association. The association is responsible for administering the account and for making periodic payments into the account.

(c) The reserve portion of the initial assessment determined by the declarant shall be based on:

(A) The reserve study described in subsection (3) of this section; or

(B) Other reliable information.

(d) A reserve account established under this section must be funded by assessments against the individual lots for which the reserves are established.

(e) Unless the declaration provides otherwise, the assessments under this subsection begin accruing for all lots from the date the first lot is conveyed.

(3)(a) The board of directors of the association annually shall conduct a reserve study or review and update an existing study to determine the reserve account requirements and may:

(A) Adjust the amount of payments as indicated by the study or update; and

(B) Provide for other reserve items that the board of directors, in its discretion, may deem appropriate.

(b) The reserve study shall:

(A) Identify all items for which reserves are or will be established;

(B) Include the estimated remaining useful life of each item as of the date of the reserve study; and

(C) Include for each item, as applicable, an estimated cost of maintenance and repair and replacement at the end of the item's useful life.

(4)(a) The board of directors shall prepare a maintenance plan for the maintenance, repair and replacement of all property for which the association has maintenance, repair or replacement responsibility under the declaration or bylaws or ORS 94.550 to 94.783. The maintenance plan shall:

(A) Describe the maintenance, repair and replacement to be conducted;

(B) Include a schedule for the maintenance, repair and replacement;

(C) Be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the association; and

(D) Address issues that include but are not limited to warranties and the useful life of the items for which the association has maintenance, repair and replacement responsibility.

(b) The board of directors shall review and update the maintenance plan described under this subsection as necessary.

(5)(a) If the declaration or bylaws require a reserve account, the reserve study requirements of subsection (3) of this section and the maintenance plan requirements of subsection (4) of this section first apply to the association of a subdivision that meets the definition of a planned community under ORS 94.550 and is recorded prior to October 23, 1999, when:

(A) The board of directors adopts a resolution in compliance with the bylaws that applies the requirements of subsections (3) and (4) of this section to the association; or

(B) A petition signed by a majority of owners is submitted to the board of directors mandating that the requirements of subsections (3) and (4) of this section apply to the association.

(b) A reserve study and maintenance plan shall be completed within one year of adoption of the resolution or submission of the petition to the board of directors.

(6)(a) Except as provided in paragraph (b) of this subsection, the reserve account may be used only for the purposes for which reserves have been established and is to be kept separate from other funds.

(b) After the individual lot owners have assumed responsibility for administration of the planned community under ORS 94.616, if the board of directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds:

(A) The board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses.

(B) Not later than the adoption of the budget for the following year, the board of directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

(7) Nothing in this section prohibits prudent investment of reserve account funds subject to any constraints imposed by the declaration, bylaws or rules of the association.

(8) In addition to the authority of the board of directors under subsection (3)(a) of this section, following the second year after the association has assumed administrative responsibility for the planned community under ORS 94.616:

(a) By an affirmative vote of at least 75 percent of the owners of the planned community, the association may elect to reduce or increase future assessments for the reserve account; and

(b) The association may, on an annual basis by a unanimous vote, elect not to fund the reserve account.

(9) Assessments paid into the reserve account are the property of the association and are not refundable to sellers or owners of lots. [1981 c.782 §15; 1999 c.677 §7; 2001 c.756 §10; 2003 c.569 §8; 2005 c.543 §1; 2007 c.409 §7]

(Declarant Control; Turnover of Administrative Control)

94.600 Declarant control of association. (1) Subject to ORS 94.604 to 94.621, a declaration may reserve special declarant rights including, without limitation, the right to a period of declarant control that may be of limited or unlimited duration. A formal or written proxy or power of attorney is not required from an owner to vest the declarant with such authority.

(2) A declarant may voluntarily relinquish any rights reserved in the declaration under subsection (1) of this section.

(3) Upon the expiration of any period of declarant control reserved in the declaration under subsection (1) of this section, the rights automatically shall pass to the lot owners, including the declarant if the declarant owns a lot in the planned community.

(4) A declarant may not amend a declaration to increase the scope of special declarant rights reserved in the declaration after the sale of the first lot in the planned community unless owners representing 75 percent of the total vote, other than the declarant, agree to the amendment. [1981 c.782 §11; 1999 c.677 §8]

94.604 Transitional advisory committee. (1) As provided in this section, the declarant or the owners of a planned community that contains at least 20 lots in either the initial development or with the annexation of additional property shall form a transitional advisory committee to provide for the transition from administrative responsibility by the declarant of the planned community under ORS 94.600 to administrative responsibility by the association. The

declarant shall call a meeting of owners for the purpose of selecting a transitional advisory committee not later than the 60th day after the date the declarant conveys 50 percent or more of the lots then existing in the planned community to owners other than a successor declarant.

(2) The transitional advisory committee shall consist of three or more members. The owners, other than the declarant, shall select two or more members. The declarant may select no more than one member. The committee shall have reasonable access to all information and documents which the declarant is required to turn over to the association under ORS 94.616.

(3) An owner may call a meeting of owners to select the transitional advisory committee if the declarant fails to do so under subsection (1) of this section.

(4) Notwithstanding subsection (1) of this section, if the owners do not select members for the transitional advisory committee under subsection (2) of this section, the declarant shall have no further obligation to form the committee.

(5) The requirement for a transitional advisory committee shall not apply once the turnover meeting called under ORS 94.609 has been held. [1981 c.782 §64; 1999 c.677 §9; 2003 c.569 §9]

94.605 [Amended by 1965 c.619 §31; repealed by 1971 c.478 §1]

94.609 Notice of meeting to turn over administrative responsibility. (1) At the time specified in the declaration, but not later than 90 days after expiration of any period of declarant control reserved under ORS 94.600, or 90 days after conveying 10 lots in the planned community if there is not a period of declarant control, the declarant shall call a meeting for the purpose of turning over administrative responsibility for the planned community to the homeowners association.

(2) The declarant shall give notice of the meeting to each owner as provided in the bylaws.

(3) If the declarant does not call a meeting under this section within the required time, the transitional advisory committee formed under ORS 94.604 or any owner may call a meeting and give notice as required in this section. [1981 c.782 §65; 1999 c.677 §10]

94.610 [Amended by 1965 c.619 §32; repealed by 1971 c.478 §1]

94.615 [Repealed by 1971 c.478 §1]

94.616 Turnover meeting; transfer of administration; receivership. (1) At the meeting called under ORS 94.609, the declarant shall turn over to the homeowners association the responsibility for the administration of the planned community, and the association shall accept the administrative responsibility from the declarant.

(2) If a quorum of the owners is present, the owners shall elect not fewer than the number of directors sufficient to constitute a quorum of the board of directors in accordance with the declaration or bylaws of the association.

(3) At the meeting called under ORS 94.609, the declarant shall deliver to the association:

(a) The original or a photocopy of the recorded declaration and copies of the bylaws and the articles of incorporation, if any, of the planned community and any supplements and amendments to the articles or bylaws;

(b) A deed to the common property in the planned community, unless otherwise provided in the declaration;

(c) The minute books, including all minutes, and other books and records of the association and the board of directors;

(d) All rules and regulations adopted by the declarant;

(e) Resignations of officers and members of the board of directors who are required to resign because of the expiration of any period of declarant control reserved pursuant to ORS 94.600;

(f) A financial statement. The financial statement:

(A) Must consist of a balance sheet and an income and expense statement for the preceding 12-month period or the period following the recording of the declaration, whichever period is shorter; and

(B) Must be reviewed, in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, by an independent certified public accountant licensed in the State of Oregon if the annual assessments of an association exceed $75,000;

(g) All funds of the association and control of the funds, including all bank records;

(h) All tangible personal property that is property of the association, and an inventory of the property;

(i) Records of all property tax payments for the common property to be administered by the association;

(j) Copies of any income tax returns filed by the declarant in the name of the association, and supporting records for the returns;

(k) All bank signature cards;

(L) The reserve account established in the name of the association under ORS 94.595;

(m) The reserve study and the maintenance plan required under ORS 94.595, including all updates and other sources of information that serve as a basis for calculating reserves in accordance with ORS 94.595;

(n) An operating budget for the portion of the planned community turned over to association administration and a budget for replacement and maintenance of the common property;

(o) A copy of the following, if available:

(A) The as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;

(B) The original specifications, indicating all subsequent material changes;

(C) The plans for underground site service, site grading, drainage and landscaping together with cable television drawings;

(D) Any other plans and information relevant to future repair or maintenance of the property; and

(E) A list of the general contractor and the electrical, heating and plumbing subcontractors responsible for construction or installation of common property;

(p) Insurance policies;

(q) Copies of any occupancy permits issued for the planned community;

(r) Any other permits issued by governmental bodies applicable to the planned community in force or issued within one year before the date on which the owners assume administrative responsibility;

(s) A list of any written warranties on the common property that are in effect and the names of the contractor, subcontractor or supplier who made the installation for which the warranty is in effect;

(t) A roster of owners and their addresses and telephone numbers, if known, as shown on the records of the declarant;

(u) Leases of the common property and any other leases to which the association is a party;

(v) Employment or service contracts in which the association is one of the contracting parties or service contracts in which the association or the owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service; and

(w) Any other contracts to which the homeowners association is a party.

(4) In order to facilitate an orderly transition, during the three-month period following the turnover meeting, the declarant or an informed representative shall be available to meet with the board of directors on at least three mutually acceptable dates to review the documents delivered under subsection (3) of this section.

(5) If the declarant has complied with this section and unless the declarant has sufficient voting rights as a lot owner to control the association, the declarant is not responsible for the failure of the owners to elect the number of directors sufficient to constitute a quorum of the board of directors and assume control of the association in accordance with subsection (1) of this section. The declarant is relieved from further responsibility for the administration of the association, except as a lot owner.

(6) If the owners present do not constitute a quorum or the owners fail to elect the number of directors sufficient to constitute a quorum of the board of directors at the turnover meeting held in accordance with this section:

(a) At any time before the election of the number of directors sufficient to constitute a quorum, an owner or first mortgagee may call a special meeting for the purpose of election of directors and shall give notice of the meeting in accordance with the notice requirements in the bylaws for special meetings. The owners and first mortgagees present at the special meeting shall select a person to preside over the meeting.

(b) An owner or first mortgagee may request a court to appoint a receiver as provided in ORS 94.642. [1981 c.782 §67; 1983 c.206 §3; 1999 c.677 §11; 2001 c.756 §11; 2003 c.803 §19; 2007 c.409 §8]

94.620 [Repealed by 1971 c.478 §1]

94.621 Rights of declarant following turnover meeting. If a declarant has not completed development of lots or common property in a planned community at the time of the meeting called under ORS 94.609, the declarant may continue to hold the special declarant rights, other than a right of declarant control, reserved under the declaration. [1981 c.782 §68; 1999 c.677 §12]

94.622 Obligations and liabilities arising from transfer of special declarant rights. (1) As used in this section, "affiliate" means any person who controls a transferor or successor declarant, is controlled by a transferor or successor declarant or is under common control with a transferor or successor declarant.

(2) A person controls or is controlled by a transferor or successor declarant if the person:

(a) Is a general partner, officer, director or employee;

(b) Directly or indirectly, or acting in concert with one or more other persons or

through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests of the transferor or successor declarant;

(c) Controls in any manner the election of a majority of the members of the board of directors; or

(d) Has contributed more than 20 percent of the capital of the transferor or successor declarant.

(3) Upon the transfer of any special declarant right, the liabilities and obligations of a transferor are as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer. Lack of privity does not deprive any owner of standing to bring an action to enforce any obligation of the transferor.

(b) If a transferor retains any special declarant right, or if a successor declarant is an affiliate of the transferor, the transferor is subject to liability for all obligations and liabilities imposed on a declarant by the provisions of ORS 94.550 to 94.783 or by the declaration or bylaws arising after the transfer and is jointly and severally liable with the successor declarant for the liabilities and obligations of the successor declarant which relate to the subject lot.

(c) A transferor who retains no special declarant right has no obligation or liability for any act or omission or any breach of a contractual obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(4) Upon transfer of any special declarant right, the liabilities and obligations of a successor declarant are as follows:

(a) A successor declarant who is an affiliate of the transferor is subject to all obligations and liabilities imposed on a declarant by the provisions of this chapter or by the declaration or bylaws.

(b) A successor declarant who is not an affiliate of the transferor shall not be liable for any misrepresentations or warranties made or required to be made by the declarant or previous successor declarant or for any breach of fiduciary obligation by such person. Such a successor declarant, however, shall comply with any provisions of the declaration and bylaws which pertain to such successor declarant's ownership of the lot or lots and the exercise of any special declarant right. [1999 c.677 §34]

94.623 Acquisition of special declarant rights by successor declarant; exceptions. (1) Except as otherwise provided in subsections (2) and (3) of this section, a developer, vendor under a land sale contract, mortgagee of a mortgage or beneficiary of a trust deed affecting the declarant's interest in the property shall acquire all special declarant rights of the transferor upon transfer by the declarant or prior successor declarant of all of such transferor's interest in a lot or lots, unless:

(a) The conveyance evidences an intent not to transfer any special declarant rights;

(b) An instrument executed by the transferor and the transferee evidences an intent not to transfer any special declarant rights and is recorded in the office of the recording officer of every county in which the property is located; or

(c) The transferee executes an instrument disclaiming any right to exercise any special declarant rights and such instrument is recorded in the office of the recording officer of every county in which the property is located.

(2) A transferee under subsection (1) of this section shall acquire less than all special declarant rights if:

(a) The conveyance from the transferor or an instrument executed by the transferor and the transferee evidences an intent to transfer less than all special declarant rights and states the specific rights being transferred, and such instrument is recorded in the office of the recording officer of every county in which the property is located; or

(b) The transferee executes an instrument disclaiming specific special declarant rights and the instrument is recorded in the office of the recording officer of every county in which the property is located.

(3) When a transferee acquires all of the declarant's interest in a lot or lots in which the declarant has reserved the right to expand the planned community under ORS 94.580, the transferee shall not acquire the right to annex property unless the transferee simultaneously acquires from the declarant property adjacent to the lot or lots which are entitled to be annexed to the lot or lots, or unless the conveyance evidences an intent to transfer such right to the transferee.

(4) A declarant or a successor declarant may transfer all or less than all of the transferor's special declarant rights to a transferee, whether or not any interest in real property is conveyed, by an instrument executed by the declarant or successor declarant and the transferee evidencing an intent to transfer all or specific special declarant rights, which instrument shall be recorded in the office of the recording officer of every county in which the property is located. If the transfer is not subject to subsection (1) of this section, it shall also bear

the written consent of any holder of a blanket encumbrance on the lot.

(5) An instrument disclaiming or transferring special declarant rights shall be properly acknowledged as provided by law. [1999 c.677 §35]

(Homeowners Association; Management of Planned Community)

94.625 Formation of homeowners association; adoption of initial bylaws; amendment of bylaws. (1) Except as provided in subsection (2) of this section, not later than the date on which the first lot in the planned community is conveyed, the declarant shall:

(a) Organize the homeowners association as a nonprofit corporation under ORS chapter 65;

(b) Adopt, on behalf of the association, the initial bylaws required under ORS 94.635 to govern the administration of the planned community; and

(c) Record the bylaws in the office of the recording officer of each county in which the planned community is located.

(2) If the plat contains a conveyance of any property to the homeowners association, the declarant shall organize the homeowners association as a nonprofit corporation under ORS chapter 65 before the plat is recorded.

(3)(a) The board of directors of an association of a planned community created under ORS 94.550 to 94.783 before January 1, 2002, or a planned community described in ORS 94.572 shall cause the bylaws of the association and amendments to the bylaws in effect but not codified in the bylaws to be certified as provided in this subsection and recorded in the office of the recording officer of each county in which the planned community is located within 180 days of receipt of a written request from an owner that the bylaws be recorded.

(b) The president and secretary of the association shall certify and acknowledge, in the manner provided for acknowledgment of deeds, that:

(A) The bylaws are the duly adopted bylaws of the association; and

(B) Each amendment to the bylaws was duly adopted in accordance with the bylaws of the association.

(c) The 180-day period specified in paragraph (a) of this subsection may be extended as necessary if the board of directors is unable to record the bylaws for justifiable reasons.

(d) Failure to record the bylaws or amendments to the bylaws in accordance with this subsection does not render the bylaws or amendments to the bylaws ineffective.

(4) Unless otherwise provided in the bylaws, amendments to the bylaws may be proposed by a majority of the board of directors or by at least 30 percent of the owners of the planned community.

(5) Subject to subsection (6) of this section, an amendment is not effective unless the amendment is:

(a) Approved, unless otherwise provided in the bylaws, by a majority of the votes in a planned community present, in person or by proxy, at a duly constituted meeting, by written ballot in lieu of a meeting under ORS 94.647 or other procedure permitted under the declaration or bylaws;

(b) Certified by the president and secretary of the association as having been adopted in accordance with the bylaws and this section and acknowledged in the manner provided for acknowledgment of deeds if the amendment is required to be recorded under paragraph (c) of this subsection; and

(c) Recorded in the office of the recording officer if the bylaws to which the amendment relates were recorded.

(6) If a provision required to be in the declaration under ORS 94.580 is included in the bylaws, the voting requirements for amending the declaration shall also govern the amendment of the provision in the bylaws.

(7) Notwithstanding a provision in the bylaws, including bylaws adopted prior to July 14, 2003, that requires an amendment to be executed, or executed and acknowledged, by all owners approving the amendment, amendments to the bylaws under this section become effective after approval by the owners if executed and certified on behalf of the association by the president and secretary in accordance with subsection (5)(b) of this section.

(8) An amendment to the bylaws is conclusively presumed to have been regularly adopted in compliance with all applicable procedures relating to the amendment unless an action is brought within one year after the effective date of the amendment or the face of the amendment indicates that the amendment received the approval of fewer votes than required for approval. Nothing in this subsection prevents the further amendment of an amended bylaw.

(9) Failure to comply with subsection (1) of this section does not invalidate a conveyance from the declarant to an owner.

(10) The board of directors, by resolution and without the further approval of the owners, may cause restated bylaws to be

prepared and recorded to codify individual amendments that have been adopted in accordance with subsection (5) of this section. Bylaws restated under this subsection must:

(a) Include all previously adopted amendments that are in effect and may not include any other changes except to correct scriveners' errors or to conform format and style;

(b) Include a statement that the board of directors has adopted a resolution in accordance with this subsection and is causing the bylaws to be restated and recorded under this subsection;

(c) Include a reference to the recording index numbers and date of recording of the initial bylaws, if recorded, and all previously recorded amendments that are in effect and are being codified;

(d) Include a certification by the president and secretary of the association that the restated bylaws include all previously adopted amendments that are in effect and no other changes except, if applicable, to correct scriveners' errors or to conform form and style; and

(e) Be executed and acknowledged by the president and secretary of the association and recorded in the deed records of each county in which the planned community is located. [1981 c.782 §35; 2001 c.756 §12; 2003 c.569 §10; 2007 c.410 §2]

94.630 Powers of association. (1) Subject to subsection (2) of this section and except as otherwise provided in its declaration or bylaws, a homeowners association may:

(a) Adopt and amend bylaws, rules and regulations for the planned community;

(b) Adopt and amend budgets for revenues, expenditures and reserves, and collect assessments from owners for common expenses and the reserve account established under ORS 94.595;

(c) Hire and terminate managing agents and other employees, agents and independent contractors;

(d) Defend against any claims, proceedings or actions brought against it;

(e) Subject to subsection (4) of this section, initiate or intervene in litigation or administrative proceedings in its own name and without joining the individual owners in the following:

(A) Matters relating to the collection of assessments and the enforcement of governing documents;

(B) Matters arising out of contracts to which the association is a party;

(C) Actions seeking equitable or other nonmonetary relief regarding matters that affect the common interests of the owners, including but not limited to the abatement of nuisance;

(D) Matters, including but not limited to actions for damage, destruction, impairment or loss of use, relating to or affecting:

(i) Individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

(ii) Common property;

(E) Matters relating to or affecting the lots or interests of the owners including but not limited to damage, destruction, impairment or loss of use of a lot or portion thereof, if:

(i) Resulting from a nuisance or a defect in or damage to common property or individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

(ii) Required to facilitate repair to any common property; and

(F) Any other matter to which the association has standing under law or pursuant to the declaration or bylaws;

(f) Make contracts and incur liabilities;

(g) Regulate the use, maintenance, repair, replacement and modification of common property;

(h) Cause additional improvements to be made as a part of the common property;

(i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common property may be conveyed or subjected to a security interest only pursuant to ORS 94.665;

(j) Grant easements, leases, licenses and concessions through or over the common property;

(k) Modify, close, remove, eliminate or discontinue the use of common property, including any improvement or landscaping, regardless of whether the common property is mentioned in the declaration, provided that:

(A) Nothing in this paragraph is intended to limit the authority of the association to seek approval of the modification, closure, removal, elimination or discontinuance by the owners; and

(B) Modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreation or community building must be approved by at least a majority of owners voting on the matter at a meeting or by written ballot held in accordance with the declaration, bylaws or ORS 94.647;

(L) Impose and receive any payments, fees or charges for the use, rental or operation of the common property and services provided to owners;

(m) Adopt rules regarding the termination of utility services paid for out of assessments of the association and access to and use of recreational and service facilities available to owners. The rules must provide for written notice and an opportunity to be heard before the association may terminate the rights of any owners to receive the benefits or services until the correction of any violation covered by the rule has occurred;

(n) Impose charges for late payment of assessments and attorney fees related to the collection of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules and regulations of the association, provided that the charge imposed or the fine levied by the association is based:

(A) On a schedule contained in the declaration or bylaws, or an amendment to either that is delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing by the owners; or

(B) On a resolution of the association or its board of directors that is delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing by the owners;

(o) Impose reasonable charges for the preparation and recordation of amendments to the declaration;

(p) Provide for the indemnification of its officers and the board of directors and maintain liability insurance for directors and officers;

(q) Assign its right to future income, including the right to receive common expense assessments; and

(r) Exercise any other powers necessary and proper for the administration and operation of the association.

(2) Notwithstanding subsection (1) of this section, a declaration may not impose any limitation on the ability of the association to deal with a declarant that is more restrictive than the limitations imposed on the ability of the association to deal with any other person, except during the period of declarant control under ORS 94.600.

(3) A permit or authorization, or an amendment, modification, termination or other instrument affecting a permit or authorization, issued by the board of directors that is authorized by law, the declaration or bylaws may be recorded in the deed records of the county in which the planned community is located. A permit or authorization, or an amendment, modification, termination or other instrument affecting a permit or authorization, recorded under this subsection shall:

(a) Be executed by the president and secretary of the association and acknowledged in the manner provided for acknowledgment of instruments by the officers;

(b) Include the name of the planned community and a reference to where the declaration and any applicable supplemental declarations are recorded;

(c) Identify, by the designations stated or referenced in the declaration or applicable supplemental declaration, all affected lots and common property; and

(d) Include other information and signatures if required by law, the declaration, bylaws or the board of directors.

(4)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an administrative proceeding in which the association and an owner have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution program available within the county in which the planned community is located that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the association, for the other party.

(b) If the party receiving the offer does not accept the offer within 10 days after receipt by written notice hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the association, for the other party, the initiating party may commence the litigation or the administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(c) If a qualified dispute resolution program exists within the county in which the planned community is located and an offer to use the program is not made as required under paragraph (a) of this subsection, litigation or an administrative proceeding may be stayed for 30 days upon a motion of the noninitiating party. If the litigation or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(d) Unless a stay has been granted under paragraph (c) of this subsection, if the dis-

pute resolution process is not completed within 30 days after receipt of the initial offer, the initiating party may commence litigation or an administrative proceeding without regard to whether the dispute resolution is completed.

(e) Once made, the decision of the court or administrative body arising from litigation or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(f) The requirements of this subsection do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines. [1981 c.782 §36; 1999 c.677 §13; 2001 c.756 §13; 2003 c.569 §11; 2007 c.410 §2a]

94.635 Association bylaws. The bylaws of an association adopted under ORS 94.625, or amended or adopted under ORS 94.630, shall provide for the following:

(1) The organization of the association of owners in accordance with ORS 94.625 and 94.630, including when the initial meeting shall be held and the method of calling that meeting.

(2) If a Class I planned community, the formation of a transitional advisory committee in accordance with ORS 94.604.

(3) The turnover meeting required under ORS 94.609, including the time by which the meeting shall be called, the method of calling the meeting, the right of an owner under ORS 94.609 (3) to call the meeting and a statement of the purpose of the meeting.

(4)(a) The method of calling the annual meeting and all other meetings of the owners in accordance with ORS 94.650; and

(b) The percentage of votes that shall constitute a quorum.

(5)(a) The election of a board of directors from among the unit owners and the number of persons constituting the board;

(b) The powers and duties of the board;

(c) Any compensation of the directors; and

(d) The method of removing directors from office in accordance with ORS 94.640 (6).

(6) The terms of office of directors.

(7) The method of calling meetings of the board of directors in accordance with ORS 94.640 (8) and a statement that all meetings of the board of directors shall be open to owners.

(8) The offices of president, secretary and treasurer and any other offices of the association, and the method of selecting and removing officers and filling vacancies in the offices.

(9) The preparation and adoption of a budget in accordance with ORS 94.645.

(10)(a) The program for maintenance, upkeep, repair and replacement of the common property;

(b) The method of payment for the expense of the program and other expenses of the planned community; and

(c) The method of approving payment vouchers.

(11) The employment of personnel necessary for the administration of the planned community and maintenance, upkeep and repair of the common property.

(12) The manner of collecting assessments from the owners.

(13) Insurance coverage in accordance with ORS 94.675 and 94.685.

(14) The preparation and distribution of the annual financial statement required under ORS 94.670.

(15) The method of adopting administrative rules and regulations governing the details for the operation of the planned community and use of the common property.

(16) The method of amending the bylaws in accordance with ORS 94.630. The bylaws may require no greater than an affirmative majority of votes to amend any provision of the bylaws.

(17) If additional property is proposed to be annexed pursuant to ORS 94.580 (3), the method of apportioning common expenses if new lots are added during the fiscal year.

(18) Any other details regarding the planned community that the declarant or the association consider desirable. However, if a provision required to be in the declaration under ORS 94.580 is included in the bylaws, the voting requirements for amending the declaration shall govern the amendment of that provision of the bylaws. [1981 c.782 §37; 1999 c.677 §14; 2001 c.756 §14]

94.640 Association board of directors; powers and duties; removal of member; meetings; executive sessions. (1) The board of directors of an association may act on behalf of the association except as limited by the declaration and the bylaws. In the performance of their duties, officers and members of the board of directors are governed by this section and the applicable provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377, whether or not the association is incorporated under ORS chapter 65.

(2) Unless otherwise provided in the bylaws, the board of directors may fill vacan-

cies in its membership for the unexpired portion of any term.

(3) At least annually, the board of directors of an association shall review the insurance coverage of the association.

(4) The board of directors of the association annually shall cause to be filed the necessary income tax returns for the association.

(5) The board of directors of the association may record a statement of association information as provided in ORS 94.667.

(6) Unless otherwise provided in the declaration or bylaws:

(a) The owners may remove any member of the board of directors, other than members appointed by the declarant or persons who are ex officio directors, with or without cause, by a majority vote of all owners present and entitled to vote at any meeting of the owners at which a quorum is present.

(b) Removal of a director is not effective unless the matter of removal is an item on the agenda and stated in the notice for the meeting required under ORS 94.650.

(7)(a) All meetings of the board of directors of the association shall be open to owners, except that at the discretion of the board the following matters may be considered in executive session:

(A) Consultation with legal counsel concerning the rights and duties of the association regarding existing or potential litigation, or criminal matters;

(B) Personnel matters, including salary negotiations and employee discipline;

(C) Negotiation of contracts with third parties; and

(D) Collection of unpaid assessments.

(b) Except in the case of an emergency, the board of directors of an association shall vote in an open meeting whether to meet in executive session. If the board of directors votes to meet in executive session, the presiding officer of the board of directors shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

(c) A contract or an action considered in executive session does not become effective unless the board of directors, following the executive session, reconvenes in open meeting and votes on the contract or an action, which must be reasonably identified in the open meeting and included in the minutes.

(d) The meeting and notice requirements in this section may not be circumvented by chance or social meetings or by any other means.

(8) In a planned community in which the majority of the lots are the principal residences of the occupants, meetings of the board of directors must comply with the following:

(a) For other than emergency meetings, notice of board of directors′ meetings shall be posted at a place or places on the property at least three days prior to the meeting or notice shall be provided by a method otherwise reasonably calculated to inform lot owners of such meetings;

(b) Emergency meetings may be held without notice, if the reason for the emergency is stated in the minutes of the meeting; and

(c) Only emergency meetings of the board of directors may be conducted by telephonic communication or by the use of a means of communication that allows all members of the board of directors participating to hear each other simultaneously or otherwise to be able to communicate during the meeting. A member of the board of directors participating in a meeting by this means is deemed to be present in person at the meeting.

(9) The board of directors, in the name of the association, shall maintain a current mailing address of the association.

(10) The board of directors shall cause the information required to enable the association to comply with ORS 94.670 (7) to be maintained and kept current.

(11) As used in this section, "meeting" means a convening of a quorum of members of the board of directors where matters relating to association business are discussed, except a convening of a quorum of members of the board of directors for the purpose of participating in litigation, mediation or arbitration proceedings. [1981 c.782 §38; 1983 c.206 §4; 1999 c.677 §15; 2001 c.756 §15; 2003 c.569 §12]

94.641 Assent of director to board action. (1) A director of a homeowners association who is present at a meeting of the board of directors at which action is taken on any association matter is presumed to have assented to the action unless the director votes against the action or abstains from voting on the action because the director claims a conflict of interest.

(2) When action is taken on any matter at a meeting of the board of directors, the vote or abstention of each director present must be recorded in the minutes of the meeting.

(3) Directors may not vote by proxy or by secret ballot at meetings of the board of directors.

(4) Notwithstanding subsection (3) of this section, officers may be elected by secret ballot. [2007 c.409 §6]

94.642 Receivership for failure of homeowners association to fill vacancies on board of directors. (1) Subject to subsection (2) of this section, if a homeowners association fails to fill vacancies on the board of directors sufficient to constitute a quorum in accordance with the bylaws, an owner or a first mortgagee may request the circuit court of the county in which the planned community is located to appoint a receiver under ORCP 80 to manage the affairs of the association.

(2) At least 45 days before an owner or first mortgagee requests the circuit court to appoint a receiver under subsection (1) of this section, the owner or first mortgagee shall mail, by certified or registered mail, a notice to the association and shall post a copy of the notice at a conspicuous place or places on the property or provide notice by a method otherwise reasonably calculated to inform owners of the proposed action.

(3) The notice shall be signed by the owner or first mortgagee and include:

(a) A description of the intended action.

(b) A statement that the intended action is pursuant to this section.

(c) The date, not less than 30 days after mailing of the notice, by which the association must fill vacancies on the board sufficient to constitute a quorum.

(d) A statement that if the association fails to fill vacancies on the board by the specified date, the owner or first mortgagee may file a petition with the court under subsection (1) of this section.

(e) A statement that if a receiver is appointed, all expenses of the receivership will be common expenses of the association as provided in subsection (4) of this section.

(4) If a receiver is appointed, the salary of the receiver, court costs, attorney fees and all other expenses of the receivership shall be common expenses of the association.

(5) A receiver appointed under this section has all of the powers and duties of a duly constituted board of directors and shall serve until a sufficient number of vacancies on the board are filled to constitute a quorum.

(6) If at a turnover meeting held in accordance with ORS 94.616 the owners fail to elect the number of directors sufficient to constitute a quorum of the board of directors, in addition to the notice requirements specified in subsections (2) and (3) of this section, an owner shall give the notice to all other owners as provided in the bylaws.

(7) Notwithstanding subsections (2) and (3) of this section, in the case of an emergency, the court may waive the notice requirements of subsections (2) and (3) of this section. [2007 c.409 §2]

94.645 Adoption of annual budget. (1) The board of directors at least annually shall adopt a budget for the planned community.

(2) The budget shall include moneys to be allocated to the reserve account under ORS 94.595.

(3) Within 30 days after adopting the annual budget for the planned community, the board of directors shall provide a summary of the budget to all owners.

(4) If the board fails to adopt a budget, the last adopted annual budget shall continue in effect. [1981 c.782 §39; 1999 c.677 §16; 2007 c.409 §8a]

94.647 Use of written ballot for approving or rejecting matters subject to meeting of association members; procedures; exceptions. (1) Unless prohibited or limited by the declaration or bylaws, any action that may be taken at any annual, regular or special meeting of the homeowners association may be taken without a meeting if the association delivers a written ballot to every association member that is entitled to vote on the matter. Action by written ballot may not substitute for the following meetings:

(a) A turnover meeting required under ORS 94.616.

(b) An annual meeting of an association if more than a majority of the lots are the principal residences of the occupants.

(c) A meeting of the association if the agenda includes a proposal to remove a director from the board of directors.

(d) A special meeting of the association called at the request of owners under ORS 94.650 (2).

(2)(a) A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(b) The board of directors must provide owners with at least 10 days' notice before written ballots are mailed or otherwise delivered. If, at least three days before written ballots are scheduled to be mailed or otherwise distributed, at least 10 percent of the owners petition the board of directors requesting secrecy procedures, subject to paragraph (d) of this subsection, a written ballot must be accompanied by:

(A) A secrecy envelope;

(B) A return identification envelope to be signed by the owner; and

(C) Instructions for marking and returning the ballot.

(c) The notice required under paragraph (b) of this subsection shall state:

(A) The general subject matter of the vote by written ballot;

(B) The right of owners to request secrecy procedures specified in paragraph (b) of this subsection;

(C) The date after which ballots may be distributed;

(D) The date and time by which any petition requesting secrecy procedures must be received by the board; and

(E) The address where any petition must be delivered.

(d) The requirements of paragraph (b)(A) and (B) of this subsection do not apply to a written ballot of an owner if the consent or approval of that owner is required by the declaration or bylaws or ORS 94.550 to 94.783.

(3) Matters that may be voted on by written ballot shall be deemed approved or rejected as follows:

(a) If approval of a proposed action otherwise would require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal shall be deemed to be approved when the date for the return of ballots has passed, a quorum of owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected; or

(b) If approval of a proposed action otherwise would require a meeting at which a specified percentage of owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds the required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and the required percentage has not been met.

(4) All solicitations for votes by written ballot shall state the following:

(a) If approval of a proposal by written ballot requires that the total number of votes cast equal or exceed a certain quorum requirement, the number of responses needed to meet the quorum requirement;

(b) If approval of a proposal by written ballot requires that a certain percentage of total votes cast approve the proposal, the required percentage of total votes needed for approval; and

(c) The period during which the association will accept written ballots for counting in accordance with subsection (5) of this section.

(5)(a) The association shall accept written ballots for counting during the period specified in the solicitation under subsection (4) of this section. Except as provided in paragraph (b) of this subsection, the period shall end on the earliest of the following dates:

(A) If approval of a proposed action by written ballot requires that a certain percentage of the owners approve the proposal, the date on which the association has received a sufficient number of approving ballots;

(B) If approval of a proposed action by written ballot requires that a certain percentage of the owners approve the proposal, the date on which the association has received a sufficient number of disapproving ballots to render approval impossible; or

(C) In all cases, a specified date certain on which all ballots must be returned to be counted.

(b) If the vote is by secrecy procedure under subsection (2)(b) of this section, the period shall end on the date specified in the solicitation or any extension under paragraph (c) of this subsection.

(c) Except as otherwise provided in the declaration or bylaws, in the discretion of the board of directors, if a date certain is specified in the solicitation under subsection (4) of this section, the period may be extended by written notice of the extension given to all owners before the end of the specified date certain.

(6) Except as otherwise provided in the declaration or bylaws, unless the vote is by secrecy procedure under subsection (2)(b) of this section, a written ballot may be revoked before the final return date of the ballots.

(7) Unless otherwise prohibited by the declaration or bylaws, the votes may be counted from time to time before the final return date of the ballots to determine whether the proposal has passed or failed by the votes already cast on the date the ballots are counted.

(8) Notwithstanding subsection (7) of this section, written ballots that are returned in secrecy envelopes may not be examined or counted before the date certain specified in the solicitation or any extension under subsection (5)(c) of this section. [1999 c.677 §31; 2001 c.756 §16; 2003 c.569 §13; 2007 c.409 §9]

94.650 Meetings of lot owners; notice. (1) The homeowners association shall hold at least one meeting of the owners each calendar year.

(2)(a) Special meetings of the association may be called by the president of the board of directors, by a majority of the board of directors or by the president or secretary upon receipt of a written request of a percentage of owners specified in the bylaws of the association. However, the bylaws may not require a percentage greater than 50 percent or less than 10 percent of the votes of the planned community for the purpose of calling a meeting.

(b) If the bylaws do not specify a percentage of owners that may request the calling of a special meeting, a special meeting shall be called if 30 percent or more of the owners make the request in writing. Notice of the special meeting shall be given as specified in this section.

(c) Business transacted at a special meeting shall be confined to the purposes stated in the notice.

(3) If the owners request a special meeting under subsection (2) of this section and the notice is not given within 30 days after the date the written request is delivered to the president or the secretary, an owner who signed the request may set the time and place of the meeting and give notice as provided in subsection (4) of this section.

(4) Not less than 10 or more than 50 days before any meeting called under this section, the secretary or other officer specified in the bylaws shall cause the notice to be hand delivered or mailed to the mailing address of each owner or to the mailing address designated in writing by the owner, and to all mortgagees that have requested the notice.

(5) The notice of a meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes or any proposal to remove a director or officer.

(6) Mortgagees may designate a representative to attend a meeting called under this section. [1981 c.782 §40; 1999 c.677 §17; 2001 c.756 §17; 2007 c.409 §10]

94.652 Electronic notice to owner or director. (1) Subject to subsection (2) of this section and notwithstanding any requirement under the declaration or bylaws or ORS 94.550 to 94.783, in the discretion of the board of directors of the homeowners association, any notice, information or other written material required to be given to an owner or director under the declaration or bylaws or ORS 94.550 to 94.783, may be given by electronic mail, facsimile or other form of electronic communication.

(2) Notwithstanding subsection (1) of this section, electronic mail, facsimile or other form of electronic communication may not be used to give notice of:

(a) Failure to pay an assessment;

(b) Foreclosure of an association lien under ORS 94.709; or

(c) An action the association may take against an owner.

(3) An owner or director may decline to receive notice by electronic mail, facsimile or other form of electronic communication and may direct the board of directors to provide notice in the manner required under the declaration or bylaws or ORS 94.550 to 94.783. [2007 c.409 §4]

94.655 Quorum for association meetings. (1) Unless the declaration or bylaws of a homeowners association provide otherwise, a quorum for any meeting of the association consists of the number of persons who are entitled to cast 20 percent of the votes and who are present in person, by proxy or by absentee ballot, if absentee ballots are permitted by the board of directors, at the beginning of the meeting.

(2) If any meeting of the association cannot be organized because of a lack of a quorum, the owners who are present, either in person or by proxy, may adjourn the meeting. The quorum for a subsequent meeting is the greater of:

(a) One-half of the quorum required in the declaration or bylaws; or

(b) The quorum required in subsection (1) of this section. [1981 c.782 §41; 1999 c.677 §18; 2007 c.409 §11]

94.657 Rules of order. Unless other rules of order are required by the declaration or bylaws or by a resolution of the association or its board of directors:

(1) Meetings of the association and the board of directors shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association.

(2) A decision of the association or the board of directors may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(3) A decision of the association and the board of directors is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of

a written instrument memorializing the decision. [2001 c.756 §4]

94.658 Voting or granting consent. (1) Unless the declaration provides otherwise, each lot of a planned community shall be entitled to one vote.

(2) Unless the declaration or bylaws provide otherwise:

(a) An executor, administrator, guardian or trustee may vote or grant consent with respect to a lot owned or held in a fiduciary capacity if the fiduciary satisfies the secretary of the board of directors that the person is the executor, administrator, guardian or trustee holding the lot.

(b) When a lot is owned by two or more persons jointly, according to the records of the association:

(A) Except as provided in this paragraph, the vote of the lot may be exercised by a co-owner in the absence of protest by another co-owner. If the co-owners cannot agree upon the vote, the vote of the lot shall be disregarded completely in determining the proportion of votes given with respect to such matter.

(B) A valid court order may establish the right of co-owners' authority to vote. [2001 c.756 §2; 2007 c.409 §12]

94.660 Method of voting or consenting. (1) The vote or consent of a lot may be cast or given:

(a) In person at a meeting of the homeowners association.

(b) In the discretion of the board of directors, by absentee ballot in accordance with subsection (3) of this section.

(c) Unless the declaration or bylaws or ORS 94.550 to 94.783 provide otherwise, pursuant to a proxy in accordance with subsection (2) of this section.

(d) By written ballot in lieu of a meeting under ORS 94.647.

(e) By any other method specified by the declaration or bylaws or ORS 94.550 to 94.783.

(2)(a) A proxy:

(A) Must be dated and signed by the owner;

(B) Is not valid if it is undated or purports to be revocable without notice; and

(C) Terminates one year after its date unless the proxy specifies a shorter term.

(b) The board of directors may not require that a proxy be on a form prescribed by the board.

(c) An owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association or to the board of directors if a vote is being conducted by written ballot in lieu of a meeting pursuant to ORS 94.647.

(d) A copy of a proxy in compliance with paragraph (a) of this subsection provided to the association by facsimile, electronic mail or other means of electronic communication utilized by the board of directors is valid.

(3)(a) An absentee ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(b) All solicitations for votes by absentee ballot shall include:

(A) Instructions for delivery of the completed absentee ballot, including the delivery location; and

(B) Instructions about whether the ballot may be canceled if the ballot has been delivered according to the instructions.

(c) An absentee ballot shall be counted as an owner present for the purpose of establishing a quorum.

(d) Even if an absentee ballot has been delivered to an owner, the owner may vote in person at a meeting if the owner has:

(A) Returned the absentee ballot; and

(B) Canceled the absentee ballot, if cancellation is permitted in the instructions given under paragraph (b) of this subsection. [1981 c.782 §42; 1999 c.677 §19; 2003 c.569 §14; 2007 c.409 §13]

94.661 Electronic ballot. (1) As used in this section, "electronic ballot" means a ballot given by:

(a) Electronic mail;

(b) Facsimile transmission;

(c) Posting on a website; or

(d) Other means of electronic communication acceptable to the board of directors.

(2) Unless the declaration or bylaws prohibit or provide for other methods of electronic ballots, the board of directors of a homeowners association, in its discretion, may provide that a vote, approval or consent of an owner may be given by electronic ballot.

(3) An electronic ballot shall comply with the requirements of this section and the declaration or bylaws or ORS 94.550 to 94.783.

(4) An electronic ballot may be accompanied by or contained in an electronic notice in accordance with ORS 94.652.

(5) If an electronic ballot is posted on a website, a notice of the posting shall be sent to each owner and shall contain instructions on obtaining access to the posting on the website.

(6) A vote made by electronic ballot is effective when it is electronically transmitted to an address, location or system designated by the board of directors for that purpose.

(7) Unless otherwise provided in the declaration or bylaws or rules adopted by the board of directors, a vote by electronic ballot may not be revoked.

(8) The board of directors may not elect to use electronic ballots unless there are procedures to ensure:

(a) Compliance with ORS 94.647 if the vote conducted by written ballot under ORS 94.647 uses the procedures specified in ORS 94.647 (2)(b); and

(b) That the electronic ballot is secret, if the declaration or bylaws or rules adopted by the board require that electronic ballots be secret. [2007 c.409 §5]

94.662 Notice to lot owners of intent of association to commence judicial or administrative proceeding; contents of notice; right of lot owner to opt out. (1) At least 10 days prior to instituting any litigation or administrative proceeding to recover damages under ORS 94.630 (1)(e)(E), the homeowners association shall provide written notice to each affected owner of the association's intent to seek damages on behalf of the owner. The notice shall, at a minimum:

(a) Be mailed to the mailing address of each lot or to the mailing address designated in writing to the association by the owner;

(b) Inform each owner of the general nature of the litigation or proceeding;

(c) Describe the specific nature of the damages to be sought on the owner's behalf;

(d) Set forth the terms under which the association is willing to seek damages on the owner's behalf, including any mechanism proposed for the determination and distribution of any damages recovered;

(e) Inform each owner of the owner's right not to have the damages sought on the owner's behalf and specify the procedure for exercising the right; and

(f) Inform the owner that exercising the owner's right not to have damages sought on the owner's behalf:

(A) Relieves the association of its duty to reimburse or indemnify the owner for the damages;

(B) Does not relieve the owner from the owner's obligation to pay dues or assessments relating to the litigation or proceeding;

(C) Does not impair any easement owned or possessed by the association; and

(D) Does not interfere with the association's right to make repairs to common areas.

(2) Within 10 days of mailing the notice described in this section, any owner may request in writing that the association not seek damages on the owner's behalf. If an owner makes such a request, the association shall not make or continue any claim or action for damages with regard to the objecting owner's lot and shall be relieved of any duty to reimburse or indemnify the owner for damages under the litigation or proceeding. [1999 c.677 §37; 2001 c.756 §18]

94.665 Authority of association to sell or transfer common property. (1) Except as otherwise provided in the declaration, a homeowners association may sell, convey or subject to a security interest any portion of the common property if 80 percent or more of the votes in the homeowners association, including 80 percent of the votes of lots not owned by a declarant at the time of the vote, are cast in favor of that action. The association shall treat proceeds of any sale under this section as an asset of the association.

(2) A sale, transfer or encumbrance of the common property or any portion of the common property made pursuant to a right reserved in the declaration under this section may provide that the common property be released from any restriction imposed on the common property by the declaration. However, a sale, transfer or encumbrance may not deprive any lot of its right of access to or support for the lot without the consent of the owner of the lot. [1981 c.782 §47; 1987 c.447 §112; 1999 c.677 §20]

94.667 Recording association information with county clerk. (1) As used in this section, "association" means an association formed under ORS 94.625, 94.846 or 100.405, or any other association in which a person holds membership by virtue of owning or possessing a real estate interest subject to assessment and lien authority pursuant to a recorded instrument.

(2) The board of directors or managing agent of an association may record with the county clerk for the county where the subject property is located a statement of association information. Subject to subsection (3) of this section, the statement shall contain at least the following information:

(a) The name of the association as identified in the recorded declaration, conditions, covenants and restrictions or other governing instrument, and the current name of the association, if different;

(b) The name, address and daytime telephone number of a managing agent or treas-

urer of the association or other person authorized to receive:

(A) Assessments and fees imposed by the association; or

(B) Notice of a transfer of property;

(c) A list of the properties, as described for recordation in ORS 93.600, subject to assessment by the association;

(d) Information identifying the recorded declaration, conditions, covenants and restrictions or other governing instrument, and a reference to where the instruments are recorded; and

(e) If an amended statement is being recorded, information identifying prior recorded statements.

(3) The statement may not include information for a purpose that is not related to the identification of the person specified in subsection (2)(b) of this section.

(4) The county clerk may charge a fee for recording a statement under this section according to the provisions of ORS 205.320 (4). [1999 c.447 §1; 2001 c.756 §19]

Note: 94.667 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 94 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

94.670 Association duty to keep documents and records; payment of association expenses; review of financial statement by certified public accountant; examination of records by owner. (1) A homeowners association shall retain within this state the documents, information and records delivered to the association under ORS 94.616 and all other records of the association for not less than the period specified for the record in ORS 65.771 or any other applicable law except that:

(a) The documents specified in ORS 94.616 (3)(o), if received, must be retained as permanent records of the association.

(b) Proxies and ballots must be retained for one year from the date of determination of the vote.

(2) All assessments, including declarant subsidies, shall be deposited in the name of the association in a separate federally insured account at a financial institution, as defined in ORS 706.008, other than an extranational institution. All expenses of the association shall be paid from the association account.

(3) The association shall keep financial records sufficiently detailed for proper accounting purposes. Within 90 days after the end of the fiscal year, the board of directors shall:

(a) Prepare or cause to be prepared an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year; and

(b) Distribute to each owner and, upon written request, any mortgagee of a lot, a copy of the annual financial statement.

(4) Subject to section 24, chapter 803, Oregon Laws 2003, the association of a planned community that has annual assessments exceeding $75,000 shall cause the financial statement required under subsection (3) of this section to be reviewed within 180 days after the end of the fiscal year by an independent certified public accountant licensed in the State of Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

(5) The association of a planned community created on or after January 1, 2004, or the association of a planned community described in ORS 94.572 that has annual assessments of $75,000 or less shall cause the most recent financial statement required by subsection (3) of this section to be reviewed in the manner described in subsection (4) of this section within 180 days after the association receives a petition requesting review signed by at least a majority of the owners.

(6) An association subject to the requirements of subsection (4) of this section may elect, on an annual basis, not to comply with the requirements of subsection (4) of this section by an affirmative vote of at least 60 percent of the owners, not including the votes of the declarant with respect to lots owned by the declarant.

(7)(a) The association shall provide, within 10 business days of receipt of a written request from an owner, a written statement that provides:

(A) The amount of assessments due from the owner and unpaid at the time the request was received, including:

(i) Regular and special assessments;

(ii) Fines and other charges;

(iii) Accrued interest; and

(iv) Late payment charges.

(B) The percentage rate at which interest accrues on assessments that are not paid when due.

(C) The percentage rate used to calculate the charges for late payment or the amount of a fixed charge for late payment.

(b) The association is not required to comply with paragraph (a) of this subsection if the association has commenced litigation by filing a complaint against the owner and

the litigation is pending when the statement would otherwise be due.

(8) The association shall make the documents, information and records described in subsections (1) and (3) of this section and all other records of the association reasonably available for examination and, upon written request, available for duplication by an owner and any mortgagee of a lot that makes the request in good faith for a proper purpose, except that records kept by or on behalf of the association may be withheld from examination and duplication to the extent the records concern:

(a) Personnel matters relating to a specific identified person or a person's medical records.

(b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.

(c) Communications with legal counsel that relate to matters specified in paragraphs (a) and (b) of this subsection.

(d) Disclosure of information in violation of law.

(e) Documents, correspondence or management or board reports compiled for or on behalf of the association or the board of directors by its agents or committees for consideration by the board of directors in executive session held in accordance with ORS 94.640 (7).

(f) Documents, correspondence or other matters considered by the board of directors in executive session held in accordance with ORS 94.640 (7).

(g) Files of individual owners, other than those of a requesting owner or requesting mortgagee of an individual owner, including any individual owner's file kept by or on behalf of the association.

(9) The association shall maintain a copy, suitable for the purpose of duplication, of the following:

(a) The declaration and bylaws, including amendments or supplements in effect, the recorded plat, if feasible, and the association rules and regulations currently in effect.

(b) The most recent financial statement prepared pursuant to subsection (3) of this section.

(c) The current operating budget of the association.

(d) The reserve study, if any, described in ORS 94.595.

(e) Architectural standards and guidelines, if any.

(10) The association, within 10 business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under subsection (9) of this section.

(11) The board of directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs for furnishing the documents, information or records. [1981 c.782 §48; 1999 c.677 §21; 2001 c.756 §20; 2003 c.569 §15; 2003 c.803 §20a; 2007 c.340 §1]

Note: Section 24, chapter 803, Oregon Laws 2003, provides:

Sec. 24. The requirements of ORS 94.670 (4) first apply:

(1) Commencing with the fiscal year following the turnover meeting required by ORS 94.616 for the association of a planned community created under ORS 94.550 to 94.783 prior to January 1, 2004, if the turnover meeting has not yet occurred on January 1, 2004.

(2) Commencing with the fiscal year beginning in calendar year 2004 for the association of a planned community created under ORS 94.550 to 94.783 if the turnover meeting required by ORS 94.616 has occurred on or before January 1, 2004.

(3) Commencing with the fiscal year following the turnover meeting required by ORS 94.616 for the association of a planned community created under ORS 94.550 to 94.783 on or after January 1, 2004.

(4) Commencing with the fiscal year following the year in which owners assume responsibility for administration of a planned community described in ORS 94.572 if the owners have not assumed responsibility for administration of the planned community on January 1, 2004.

(5) Commencing with the fiscal year beginning in calendar year 2004 for the association of a planned community described in ORS 94.572 if the owners have assumed responsibility for administration of the planned community on or before January 1, 2004. [2003 c.803 §24]

94.673 When compliance with specified provisions of ORS 94.640 and 94.670 required. (1) The homeowners association of a subdivision that received preliminary plat approval before July 1, 1982, shall comply with the provisions of ORS 94.640 (1), (3), (4), (7), (8) and (9) and 94.670 if:

(a) An owner submits a written request to the homeowners association to comply with the provisions;

(b) The subdivision otherwise conforms to the description of a planned community under ORS 94.550; and

(c) The subdivision is not otherwise exempted under ORS 94.570.

(2) A homeowners association board of directors is not subject to ORS 94.780 unless the association fails to comply with subsection (1) of this section after receiving a written request from an owner. [1983 c.206 §6; 2001 c.756 §59]

94.675 Insurance for common property. (1) The board of directors of a homeowners association shall obtain and maintain:

(a) Insurance for all insurable improvements in the common property against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. The insurance shall cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable cost; and

(b) A public liability policy covering all common property and all damage or injury caused by the negligence of the association.

(2) Premiums for insurance obtained under this section shall be a common expense of the association.

(3) A policy may contain a deductible in the amount specified in the declaration or bylaws. The deductible amount shall be added to the face amount of the policy in determining whether the insurance equals at least the full replacement cost.

(4) Notwithstanding a provision in the declaration or bylaws that imposes a maximum deductible amount in an association insurance policy, if the board of directors determines that it is in the best interest of the association and owners as provided in subsection (5) of this section, the board may adopt a resolution authorizing the association to obtain and maintain an insurance policy with a deductible amount exceeding the specified maximum, but not in excess of the greater of:

(a) The maximum deductible acceptable to the Federal National Mortgage Association; or

(b) $10,000.

(5) In making the determination under subsection (4) of this section, the board of directors shall consider such factors as the availability and cost of insurance and the loss experience of the association.

(6) Not later than 10 days after adoption of a resolution under subsection (4) of this section, the board of directors shall ensure that a copy of the resolution and a notice described in ORS 94.676 are:

(a) Delivered to each owner; or

(b) Mailed to the mailing address of each owner or to the mailing address designated in writing by the owner. [1981 c.782 §51; 2007 c.409 §14]

94.676 Insurance deductible for certain planned communities. (1) If the declaration or bylaws of a planned community created under ORS 94.550 to 94.783 before September 27, 2007, or a planned community subject to ORS 94.572 do not assign the responsibility for payment of the amount of the deductible in an association insurance policy, the board of directors of the homeowners association may adopt a resolution that assigns the responsibility for payment of the amount of the deductible. The resolution must include, but need not be limited to:

(a) The circumstances under which the deductible will be charged against:

(A) An owner or the owners affected by a loss; or

(B) All owners;

(b) The allocation of the deductible charged under paragraph (a) of this subsection; and

(c) If an owner and the association have duplicate insurance coverage, the insurance policy that is primary, unless otherwise provided in the declaration or bylaws.

(2) If the board of directors adopts a resolution as described in subsection (1) of this section, the resolution may require that an owner, in addition to any other insurance required by the declaration or bylaws, obtain and maintain:

(a) An insurance policy that insures the owner's lot for not less than the amount of the deductible in the association's insurance policy for which the owner may be responsible and that insures the owner's personal property for any loss or damage; and

(b) Comprehensive liability insurance that includes, but is not limited to, coverage for negligent acts of owners and tenants, guests of owners and tenants and occupants of other lots for damage to the common property, to other lots and to the personal property of other persons that is located on other lots or the common property.

(3) Unless otherwise provided in the declaration or bylaws, the board of directors may adopt a resolution that:

(a) Prescribes a procedure for processing insurance claims. The procedure may require that all claims against the association's insurance policy be processed through and coordinated by the board of directors or the managing agent, if authorized by the board.

(b) Assigns the responsibility for payment of charges for handling claims, including any charges by a managing agent.

(4) Not later than 10 days after adoption of a resolution under subsection (1) or (3) of this section, the board of directors shall ensure that a copy of the resolution and a notice described in subsection (5) of this section are:

(a) Delivered to each lot; or

(b) Mailed to the mailing address of each owner or to the mailing address designated in writing by the owner.

(5) The notice required under subsection (4) of this section shall:

(a) Advise each owner to contact an insurance agent to determine the effect of the resolution on the owner's individual insurance coverage; and

(b) Be in a form and style reasonably calculated to inform the owner of the importance of the notice.

(6) Failure to provide a copy of a resolution or a notice required under this section does not affect the responsibility of an owner to comply with a resolution adopted under this section. [2007 c.409 §3]

94.677 Election to have ORS 94.645, 94.655 and 94.675 apply. Unless contrary to the covenants, conditions or restrictions of a recorded declaration or other similar instrument, or the bylaws of the association adopted in accordance with documents governing the association, the homeowners association board of directors of a subdivision described in ORS 94.673 (1) may elect to be governed by ORS 94.645, 94.655 and 94.675, without further action by the association. [1983 c.206 §7]

94.680 Blanket all-risk insurance. (1) If a declaration or bylaws provide that the homeowners association has the sole authority to decide whether to repair or reconstruct a unit that has suffered damage or whether a unit must be repaired or reconstructed, the board of directors shall obtain blanket all-risk insurance for the full replacement cost of all structures in the planned community. Cost of the coverage shall be a common expense to the association.

(2) If the declaration or bylaws contain a provision described in subsection (1) of this section, the declaration or bylaws also shall provide:

(a) Requirements of or limitations on repairing or reconstructing damaged or destroyed property;

(b) The time within which the repair or reconstruction must begin; and

(c) The actions the board of directors must take if:

(A) Damage or destruction is not repaired or replaced; or

(B) Insurance proceeds exceed or fall short of the costs of repair or reconstruction. [1981 c.782 §52; 1999 c.677 §22; 2007 c.409 §15]

94.685 Specification of insurance for individual lots. (1) Unless provided in the declaration, the bylaws shall specify:

(a) The insurance an owner must obtain, if any;

(b) The insurance, if any, an individual owner is precluded from obtaining;

(c) The responsibility for payment of the amount of the deductible in an association insurance policy; and

(d) Whether or not the insurance coverage obtained and maintained by the board of directors may be brought into contribution with insurance bought by owners or their mortgagees.

(2) The declaration or bylaws may provide that the responsibility for payment of the amount of the deductible may be prescribed by resolution adopted by the board of directors. [1981 c.782 §54; 1999 c.677 §23; 2007 c.409 §16]

94.690 Terms of insurance under ORS 94.680. The board of directors of a homeowners association shall obtain, if reasonably available, terms in insurance policies under ORS 94.680 which provide a waiver of subrogation by the insurer as to any claims against the board of directors of the association, any owner or any guest of an owner. [1981 c.782 §56; 1999 c.677 §24]

94.695 Authority to delegate association powers to master association. A declaration for a planned community may delegate any of the powers of the homeowners association under ORS 94.630 to a master association or provide that the master association may exercise any such power. [1981 c.782 §62]

94.700 Duration and termination of initial management agreements and service and employment contracts. (1) If entered into prior to the meeting called under ORS 94.609, no management agreement, service contract or employment contract which is directly made by or on behalf of the association, the board of directors or the owners as a group shall be in excess of three years.

(2) Any contract or agreement subject to subsection (1) of this section and entered into after July 1, 1982, may terminate without penalty to the declarant, the association or the board of directors elected under ORS 94.616 if the board of directors gives not less than 30 days written notice of termination to the other party not later than 60 days after the meeting called under ORS 94.609. [1981 c.782 §69]

(Assessments and Liens Against Lots; Easements)

94.704 Assessment and payment of common expenses. (1) Subject to subsection (2) of this section, the declarant of a planned community shall pay all common expenses of the planned community until the individual

lots subject to assessment are assessed for common expenses as specified in the declaration pursuant to ORS 94.580 (2).

(2) If the declaration expressly authorizes deferment, the declarant may defer payment of accrued assessments for reserves required under ORS 94.595 for a lot subject to assessment until the date the lot is conveyed. However, the declarant may not defer payment of accrued assessments for reserves:

(a) Beyond the date of the turnover meeting provided for in the bylaws in accordance with ORS 94.635 (3); or

(b) If a turnover meeting is not held, the date the owners assume administrative control of the association.

(3) Failure of the declarant to deposit the balance due within 30 days after the due date constitutes a violation of ORS 94.777.

(4) The books and records of the association shall reflect the amount the declarant owes for all reserve account assessments.

(5)(a) Except for assessments under subsections (6), (7) and (8) of this section, the board of directors shall assess all common expenses against all the lots that are subject to assessment according to the allocations stated in the declaration.

(b) Any assessment or any installment of the assessment past due shall bear interest at the rate established by resolution of the board of directors.

(c) Nothing in this section prohibits the board from making compromises on overdue assessments if the compromise benefits the association.

(6) Unless otherwise provided in the declaration or bylaws, any common expense or any part of a common expense benefiting fewer than all of the lots may be assessed exclusively against the lots or units benefited.

(7) Unless otherwise provided in the declaration or bylaws, assessments to pay a judgment against the association may be made only against the lots in proportion to their common expense liabilities.

(8) If the board of directors determines that any common expense is the fault of any owner, the homeowners association may assess the expense exclusively against the lot of the owner.

(9) If the homeowners association reallocates common expense liabilities, any common expense assessment and any installment of the assessment not yet due shall be recalculated according to the reallocated common expense liabilities.

(10)(a) A lot owner may not claim exemption from liability for contribution toward the common expenses by waiving the use or enjoyment of any of the common property or by abandoning the owner's lot.

(b) An owner may not claim to offset an assessment for failure of the association to perform the association's obligations.

(11)(a) During any period of declarant control, any special assessment for capital improvements or additions must be approved by not less than 50 percent of the voting rights, or such greater percentage as may be specified in the declaration, without regard to any weighted right or special voting right in favor of the declarant.

(b) Nothing in this subsection is intended to prohibit a declarant from reserving a special declarant right to approve any such assessment. [1981 c.782 §43; 1999 c.677 §25; 2001 c.756 §21; 2003 c.569 §16]

94.705 [Repealed by 1971 c.478 §1]

94.709 Liens against lots; priority; duration; record notice of claim of unpaid assessment; foreclosure procedure. (1) Whenever a homeowners association levies any assessment against a lot, the association shall have a lien upon the individual lot for any unpaid assessments. The lien includes interest, late charges, attorney fees, costs or other amounts imposed under the declaration or bylaws or other recorded governing document. The lien is prior to a homestead exemption and all other liens or encumbrances upon the lot except:

(a) Tax and assessment liens; and

(b) A first mortgage or trust deed of record.

(2) Recording of the declaration constitutes record notice and perfection of the lien for assessments. No further recording of a claim of lien for assessments or notice of a claim of lien under this section is required to perfect the association's lien. The association shall record a notice of claim of lien for assessments under this section in the deed records of the county in which a lot is located before any suit to foreclose may proceed under subsection (4) of this section. The notice shall contain:

(a) A true statement of the amount due for the unpaid assessments after deducting all just credits and offsets;

(b) The name of the owner of the lot, or reputed owner, if known;

(c) The name of the association;

(d) The description of the lot as provided in ORS 93.600; and

(e) A statement that if the owner of the lot thereafter fails to pay any assessments when due, as long as the original or any subsequent unpaid assessment remains unpaid, the unpaid amount of assessments au-

tomatically continue to accumulate with interest without the necessity of further recording.

(3) The notice shall be verified by the oath of some person having knowledge of the facts and shall be recorded by the county recording officer. The record shall be indexed as other liens are required by law to be indexed.

(4)(a) The proceedings to foreclose liens created by this section shall conform as nearly as possible to the proceedings to foreclose liens created by ORS 87.010 except, notwithstanding ORS 87.055, a lien may be continued in force for a period of time not to exceed six years from the date the assessment is due. For the purpose of determining the date the assessment is due in those cases when subsequent unpaid assessments have accumulated under a notice recorded as provided in subsection (2) of this section, the assessment and claim regarding each unpaid assessment shall be deemed to have been levied at the time the unpaid assessment became due.

(b) The lien may be enforced by the board of directors acting on behalf of the association.

(c) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the claim for unpaid assessments.

(5) Unless the declaration or bylaws provide otherwise, fees, late charges, fines and interest imposed pursuant to ORS 94.630 (1)(L), (n) and (o) are enforceable as assessments under this section.

(6) This section does not prohibit an association from pursuing an action to recover sums for which subsection (1) of this section creates a lien or from taking a deed in lieu of foreclosure in satisfaction of the lien.

(7) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien for unpaid assessments. However, recovery on the action operates to satisfy the lien, or the portion thereof, for which recovery is made. [1981 c.782 §44; 1999 c.677 §26; 2003 c.569 §17]

94.710 [Repealed by 1971 c.478 §1]

94.712 Lot owner personally liable for assessment; joint liability of grantor and grantee following conveyance; limitation. (1) An owner shall be personally liable for all assessments imposed on the owner or assessed against the owner's lot by the homeowners association.

(2)(a) Subject to paragraph (b) of this subsection, in a voluntary conveyance of a lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the lot to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

(b) Upon request of an owner or owner's agent, for the benefit of a prospective purchaser, the board of directors shall make and deliver a written statement of the unpaid assessments against the prospective grantor or the lot effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid assessments against the grantor not included in the written statement.

(3) An escrow agent or a title insurance company providing escrow services or issuing title insurance in conjunction with the conveyance:

(a) May rely on a written statement of unpaid assessments delivered pursuant to this section; and

(b) Is not liable for a failure to pay the association at closing any amount in excess of the amount set forth in the written statement. [1999 c.677 §32; 2003 c.569 §18]

94.715 [Repealed by 1971 c.478 §1]

94.716 Lien against two or more lots; release. If a lien against two or more lots of the planned community becomes due, whether the lien is perfected before or after establishment of the planned community, the owner of an affected lot may pay the lienholder the portion of the lien attributable to the lot. Upon receipt of payment, the lienholder promptly shall deliver to the owner a release of the lien as to that lot. The amount of the payment shall be proportionate to the ratio which that owner's common expense liability bears to the common expense liabilities of all owners whose lots are subject to the lien. After payment, the association may not assess or have a lien against that owner's lot for any portion of the common expense liability representing the lien. This section applies to all liens except a mortgage. [1981 c.782 §45]

94.719 Lien foreclosure; other legal action by declarant, association or owner; attorney fees. In any suit or action brought by a homeowners association to foreclose its lien or to collect delinquent assessments or in any suit or action brought by the declarant, the association or any owner or class of owners to enforce compliance with the terms and provisions of ORS 94.550 to 94.783 or the declaration or bylaws, including all amendments and supplements thereto or any rules or regulations adopted by the association, the prevailing party shall be entitled to recover reasonable attorney

fees therein and in any appeal therefrom. [1999 c.677 §33; 2001 c.756 §23; 2007 c.409 §17]

94.720 [Repealed by 1971 c.478 §1]

94.723 Common expenses; liability of first mortgagee. If a first mortgagee acquires a lot in a planned community by foreclosure or deed in lieu of foreclosure, the mortgagee and subsequent purchaser shall not be liable for any of the common expenses chargeable to the lot which became due before the mortgagee or purchaser acquired title to the lot. The unpaid expenses shall become a common expense of all lot owners including the mortgagee or purchaser. [1981 c.782 §46; 1999 c.677 §27]

94.725 [Repealed by 1971 c.478 §1]

94.728 Taxation of lots and common property. (1) Each lot in a planned community constitutes for all purposes a separate parcel of real estate and shall be separately taxed and assessed.

(2) No separate tax or assessment may be levied against any common property which a declarant has reserved no right to develop into additional lots.

(3) The declarant alone is liable for payment of taxes or assessments on any portion of the common property of a planned community in which the declarant has reserved the right to develop the property into additional lots, until the right terminates or expires, or is exercised, abandoned or relinquished.

(4) If the right described under subsection (3) of this section terminates or expires or is abandoned or relinquished before July 1 of any year, no tax or assessment shall be imposed against the portion of the common property so affected for the next tax year beginning on July 1. [1981 c.782 §34]

94.730 [Repealed by 1971 c.478 §1]

94.733 Easements held by owner of lot and by declarant. (1) Subject to ORS 94.665, each owner of a lot has an easement through the common property:

(a) For access to the owner's lot; and

(b) For use of the common property consistent with the declaration and the bylaws.

(2) Except as provided in the declaration, a declarant has an easement through the common property as may be necessary for discharging the declarant's obligations or exercising any special declarant right.

(3) If an encroachment results from construction, reconstruction, repair, shifting, settlement or movement of any portion of the planned community, an easement for the encroachment exists to the extent that any lot or common property encroaches on any other lot or common property. An easement continues for maintaining the encroachment so long as the encroachment exists. Nothing in this section relieves an owner of liability in case of the owner's willful misconduct or relieves a declarant or any other person of liability for failure to adhere to the plat of the planned community. [1981 c.782 §33]

94.740 [1981 c.782 §74; repealed by 1999 c.677 §72]

94.745 [1981 c.782 §78; repealed by 1999 c.677 §72]

94.750 [1981 c.782 §76; 1983 c.740 §8; repealed by 1999 c.677 §72]

94.755 [1981 c.782 §82; repealed by 1999 c.677 §72]

(Miscellaneous)

94.760 Promotional material showing possible improvements. If a declarant makes no commitment in the declaration to build an improvement or specifically states in the declaration that the declarant makes no commitment either to build or not to build the improvement, no person may display or deliver promotional material to prospective purchasers which describes or portrays the improvement unless the description or portrayal is conspicuously labeled "POSSIBLE Improvement." [1981 c.782 §79]

94.765 [1981 c.782 §81; repealed by 1999 c.677 §72]

94.770 Application of rule against perpetuities; conflict between declaration and bylaws; effect on title of declaration's noncompliance with Oregon Planned Community Act; conflict between Oregon Planned Community Act and ORS chapter 65. (1) The rule against perpetuities may not be applied to defeat any provision of the declaration, or any bylaws or rules adopted under ORS 94.630.

(2) In the event of a conflict between the declaration and the bylaws of a planned community or between the declaration and the articles of incorporation, the declaration shall prevail except to the extent the declaration is inconsistent with ORS 94.550 to 94.783.

(3) Title to a unit, lot and common property shall not be rendered unmarketable or otherwise affected by reason of a failure of the declarant or the declaration to comply with ORS 94.550 to 94.783.

(4) If the provisions of ORS 94.550 to 94.783 and the provisions of ORS chapter 65 apply to an association and the provisions conflict, the provisions of ORS 94.550 to 94.783 control. [1981 c.782 §86; 1999 c.677 §69; 2003 c.569 §19]

94.775 Judicial partition prohibited. (1) Unless the declaration expressly allows the division of lots in a planned community, judicial partition by division of a lot in a planned community is not allowed under ORS 105.205. The lot may be partitioned by

sale and division of the proceeds under ORS 105.245.

(2) The restriction specified in subsection (1) of this section does not apply if the homeowners association has removed the property from the provisions of the declaration. [1981 c.782 §87; 2003 c.569 §20]

94.777 Compliance with bylaws and other restrictions required; effect of noncompliance. Each owner and the declarant shall comply with the bylaws, and with the administrative rules and regulations adopted pursuant thereto, and with the covenants, conditions and restrictions in the declaration or in the deed to the lot. Failure to comply therewith shall be grounds for an action maintainable by the homeowners association or by an aggrieved owner. [1999 c.677 §36]

94.780 Remedies. (1) Failure of the declarant, association, any association member or any other person subject to ORS 94.550 to 94.783 to comply with applicable sections of ORS 94.550 to 94.785 shall be cause for suit or action to remedy the violation or to recover actual damages. The prevailing party is entitled to reasonable attorney fees and court costs.

(2) Failure of an association to accept administrative responsibility under ORS 94.616 shall be a defense for the declarant against an action brought under this section.

(3) A suit or action arising under this section must be commenced within one year after the discovery or identification of the alleged violation. [1981 c.782 §83; 1999 c.677 §67]

94.783 When certain administrative provisions apply. If a subdivision received preliminary plat approval before July 1, 1982, but the subdivision plat or the plat of the first phase is not filed under ORS 92.120 before January 1, 1984, the provisions of ORS 94.595, 94.604, 94.609, 94.616, 94.700, 94.760 and 94.780 shall apply to the planned community. [1983 c.206 §8; 1999 c.677 §68]

94.785 Short title. ORS 94.550 to 94.783 may be cited as the Oregon Planned Community Act. [1981 c.782 §1]

TIMESHARE ESTATES

(General Provisions)

94.803 Definitions for ORS 94.803 and 94.807 to 94.945. As used in this section and ORS 94.807 to 94.945:

(1) "Agency" means the Real Estate Agency.

(2) "Accommodation" means an apartment, condominium unit, cabin, house, lodge, hotel or motel room or other private or commercial structure situated on real property and designed for residential occupancy.

(3) "Assessment" means the pro rata share assessed from time to time against each owner of a timeshare by the managing entity to pay for common expenses.

(4) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than one timeshare, or an agreement affecting more than one timeshare by which the developer holds the timeshare property under an option, leasehold, contract to sell or trust agreement.

(5) "Commissioner" means the Real Estate Commissioner.

(6) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the accommodations and facilities of the timeshare plan;

(b) Expenses agreed upon as common by all the timeshare owners in the timeshare plan; and

(c) Expenses declared common by the timeshare instrument or bylaws of the timeshare plan.

(7) "Developer" means a person creating a timeshare plan and a seller of a timeshare plan.

(8) "Exchange program" means any opportunity for a purchaser to exchange timeshare periods among purchasers in the same or other timeshare plans.

(9) "Facility" means a structure, service, improvement or real property available for the owner's use.

(10) "Fractional interest" means any undivided fractional ownership of real property which gives each and every fractional owner full rights to unlimited use and possession of the real property subject only to such limitation as the fractional owners may agree to among themselves.

(11) "Managing entity" means the person designated in the timeshare instrument or selected by the owners' association board or by the owners to manage all or a portion of the timeshare plan.

(12) "Negotiate" means any activity preliminary to the execution of a binding agreement for the sale of a timeshare, including but not limited to advertising, solicitation and promotion of the sale of the timeshare.

(13) "Offering" means any advertisement, inducement, solicitation or attempt to encourage a person to acquire a timeshare, other than as a security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a

timeshare in property located outside this state is not an offering if the advertisement states that the offering is valid only if made in compliance with the law of the jurisdiction in which the offer is disseminated.

(14) "Owner" means a person, other than the developer, to whom a timeshare has been conveyed other than as security for an obligation.

(15) "Project" means real property subject to a timeshare instrument. A project may include accommodations that are not timeshare accommodations.

(16) "Purchaser" means any person, other than a developer, who by voluntary transfer acquires an interest in a timeshare other than as security for an obligation.

(17) "Sale" means a transaction that conveys a timeshare other than as security for an obligation, including, but not limited to a lease or assignment.

(18) "Seller" means a person who offers a timeshare for sale to the public. "Seller" does not include a person who acquired a timeshare for the person's own use and later offers it for resale.

(19) "Timeshare" means a timeshare estate or a timeshare license.

(20) "Timeshare agreement" means an agreement conferring the rights and obligations of the timeshare plan on a purchaser including but not limited to a deed, lease and vacation license.

(21) "Timeshare estate" means a right to occupy an accommodation during five or more separated timeshare periods over a period of at least five years, including renewal options, coupled with a freehold estate or an estate for years in the timeshare property.

(22) "Timeshare instrument" means a document creating or regulating timeshares.

(23) "Timeshare license" means a right to occupy an accommodation during five or more separated timeshare periods over a period of more than three years, including renewal options, not coupled with a freehold estate or an estate for years.

(24) "Timeshare period" means the period of time when an owner is entitled to possess and occupy accommodations or facilities of a timeshare plan.

(25) "Timeshare plan" means an arrangement, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement or otherwise, in which an owner receives a timeshare estate or a timeshare license and the right to use accommodations and facilities that are part of the timeshare property. A timeshare plan does not include an exchange program.

(26) "Timeshare property" means one or more accommodations subject to the same timeshare instrument and any other real estate or rights appurtenant to those accommodations. [1983 c.530 §2; 1987 c.414 §144b; 1991 c.64 §1]

94.805 [Repealed by 1971 c.478 §1]

94.806 Legislative finding. The Legislative Assembly finds and declares that there is a need to:

(1) Protect timeshare purchasers by requiring full and adequate disclosure of all pertinent facts about the timeshare plan; and

(2) Provide reasonable regulation of the timeshare industry while encouraging the growth and development of the industry in Oregon. [1983 c.530 §1]

94.807 Application. ORS 94.803, 94.806, 94.811 to 94.863 and 94.869 to 94.945 do not apply to:

(1) Any timeshare plan for which the developer has complied with the requirements of ORS 92.305 to 92.495 or 100.005 to 100.910 before July 28, 1983.

(2) Any timeshare plan for which the developer has complied with all applicable local regulations and has submitted a completed filing under ORS 92.305 to 92.495 or 100.005 to 100.910 before July 28, 1983.

(3) Any subsequent phase or stage of a timeshare plan described in subsection (1) or (2) of this section that has complied with the applicable requirements of ORS chapter 92 and this chapter in effect prior to July 28, 1983. However, the developer of the phase or stage must comply with the cancellation provisions of ORS 94.836 and 94.839.

(4) Subdivided land as defined by ORS 92.305, a planned community as defined by ORS 94.550 and a condominium subject to ORS 100.005 to 100.910 that does not involve a timeshare plan.

(5) Subdivided land as defined by ORS 92.305, a planned community as defined by ORS 94.550 and a condominium subject to ORS 100.005 to 100.910, that involves a timeshare plan to the extent of the nontimeshare aspects of the development. The developer of such a development must comply with the applicable requirements of ORS chapter 92 and this chapter in addition to ORS 94.803, 94.806 and 94.811 to 94.945.

(6) Any transaction normal and customary in the hotel and motel business involving the acceptance of advance reservations which are not entered into for the purpose of evading the provisions of ORS 92.325, 94.570, 94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490.

(7) The offering, sale or transfer of a fractional interest or a timeshare in a

timeshare plan comprised of 12 timeshares or less unless the Real Estate Commissioner determines that the developer is attempting by a common scheme or course of development to evade the provisions of ORS 92.325, 94.570, 94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490.

(8) The transfer of a timeshare by reason of a foreclosure action, by deed in lieu of foreclosure, by gift or by devise, descent or distribution or transfer to an inter vivos trust that is not made to evade ORS 94.803 and 94.807 to 94.945.

(9) The offering, sale or transfer of a membership or interest in a recreational vehicle park or campground that provides no right to use or occupy a residential dwelling structure in the project overnight.

(10) The offering, sale or transfer of a membership or interest entitling the purchaser to a timeshare in personal property, including but not limited to an airplane, boat or recreational vehicle.

(11) The offering, sale or transfer of a membership or interest entitling the purchaser to use real property and facilities without overnight use for dwelling purposes, including but not limited to commercial office, retail or similar space and golf, tennis or athletic clubs. [1983 c.530 §3; 1985 c.565 §9; 1991 c.64 §2; 1993 c.744 §245; 1999 c.677 §28]

94.808 Managing entity as taxpayer. (1) For the purposes of ad valorem taxation, the managing entity responsible for managing the timeshare plan shall be considered the taxpayer, as agent for the owners of the timeshare property.

(2) All of the timeshare property within each timeshare plan shall be listed on the assessment roll by code area and account number as a single entry stating as one value the real market value and assessed value of the land and improvements, except that recreational facilities shall be separately valued and taxed to the owner thereof, as provided in subsection (1) of this section.

(3) All rights and privileges afforded property owners by Oregon law as to appealing assessments shall apply only to the managing entity, as agent for the owners of the timeshare property.

(4) The managing entity, as agent of the timeshare owners, shall remit the taxes assessed on the timeshare property. [1987 c.424 §2; 1991 c.459 §337]

94.809 Valuation of timeshare property; exclusions from value. (1) The real market value of timeshare property shall not include any nonreal property components of timeshares, which nonreal property components include, without limitation, tangible personal property, exchange rights, club memberships, vacation convenience services such as hotel-type services and the management structure of the timeshare plan, and that portion of the legal, accounting, promotion and marketing costs in developing and selling the timeshares allocable to the nonreal property components. The real market value of timeshare property shall not be based upon the aggregate sales prices of timeshares, if such sales prices include nonreal property components.

(2) The real market value of timeshare property, other than the recreational facilities, shall be determined by taking the value of each individual living unit as if such living unit were owned by a single taxpayer, without having been timeshared, and adjusting such value by an amount necessary to reflect any increase or decrease in such value attributable to the fact that such timeshare property is marketed in increments of time. There shall be a rebuttable presumption that the value of such timeshare property is increased by 20 percent of its value under single ownership by virtue of being marketed in increments of time. If the managing entity or assessor contends that the adjustment due to such ability to market in increments of time is less than or greater than an increase of 20 percent of the single ownership value, then the burden of establishing such adjustment shall be upon the party so contending. [1987 c.424 §3; 1991 c.459 §338]

94.810 [Repealed by 1971 c.478 §1]

94.811 When owners of planned community, condominium or subdivision may prohibit timeshare plan. (1) The unit owners in a condominium subject to the Oregon Condominium Act and the owners in a planned community subject to the Oregon Planned Community Act may amend the declaration for the condominium or planned community to prohibit the creation of a timeshare plan involving any portion of the property of the condominium or planned community. Any amendment to a condominium declaration must comply with ORS 100.135 and any amendment to a planned community declaration must comply with ORS 94.590.

(2) The owners of land in a subdivision may amend the recorded declaration, bylaws or other governing document for the subdivision to prohibit the creation of a timeshare plan involving any portion of the property within the subdivision. The amendment must be approved by not less than 75 percent of the owners or by any larger percentage specified for the amendment in the recorded declaration, bylaws or other governing document for the subdivision. As used in this subsection, "subdivision" means a subdivision as defined by ORS 92.010, that:

(a) Was approved and for which a plat was recorded under ORS 92.120 before July 28, 1983;

(b) At the time of the subdivision's creation, would have met the definition of a planned community under ORS 94.550; and

(c) Is not, because of the time of its creation, a planned community subject to the Oregon Planned Community Act.

(3) The declaration for a condominium subject to the Oregon Condominium Act and created after July 28, 1983, and the declaration for a planned community, subject to the Oregon Planned Community Act and created after July 28, 1983, may include a provision prohibiting the creation of a timeshare plan involving any portion of the property of the condominium or planned community. [1983 c.530 §4; 1999 c.677 §29]

(Creation of Timeshare Estates)

94.813 Character of timeshare estates. (1) Except as expressly modified by ORS 92.325, 92.425, 94.570, 94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490, a timeshare estate is an estate in real property and has the character and incidents of an estate in fee simple at common law or estate for years if a leasehold. A timeshare license is an estate for years having the character and incidents of such an estate at common law.

(2) A document transferring or encumbering a timeshare may not be rejected for recordation because of the nature or duration of the interest.

(3) Neither a timeshare plan nor a timeshare, subject to regulation under ORS 94.803 and 94.807 to 94.945 is a "security," as defined in ORS 59.015. [1983 c.530 §§4a,5; 1985 c.349 §29; 1987 c.603 §25]

94.815 [Repealed by 1971 c.478 §1]

94.816 Partition prohibited; exception. (1) Except as otherwise provided in this section, no judicial action for partition of a timeshare property may be undertaken as long as the property remains subject to a timeshare plan.

(2) If any timeshare is owned by two or more persons as tenants in common, as tenants by the entirety or as tenants with rights of survivorship, nothing in this section shall prohibit the judicial sale of the timeshare in lieu of partition as between the cotenants.

(3) A court of competent jurisdiction, on petition of the developer of a timeshare plan or the developer's successor in interest, may grant a waiver of the prohibition against partition under subsection (1) of this section, if the court is satisfied that:

(a) The developer retains at least 50 percent of the timeshares created in the timeshare plan;

(b) The timeshare plan has failed and the continuation of the use of timeshare property by timeshare owners is no longer possible in the manner prescribed by the timeshare instruments;

(c) It is in the best interest of timeshare owners to terminate the timeshare plan and that no reasonable alternative to partition of the timeshare property exists;

(d) The petition has not been brought by the developer to avoid the developer's responsibilities under the timeshare instrument without good cause; and

(e) The holder of each blanket encumbrance consents to the proceeding under this section.

(4) Except as otherwise provided in subsection (5) of this section, upon a court declaration of timeshare plan failure under subsection (3) of this section, the court shall proceed to partition the timeshare property as otherwise provided by law.

(5) In the event of a court-ordered sale in connection with partition, proceeds of the sale shall be applied in the following order:

(a) Costs described in ORS 105.285 (1) and (2);

(b) Repayment to owners except the developer of down payments and payments of principal and interest paid by such owners for their timeshares less the value, as determined by the court, of the owners' use of their timeshares;

(c) Payments to satisfy and discharge the remaining timeshare purchase money obligations of all owners except the developer. If the developer or an entity closely related to the developer holds the beneficial interest in any of such purchase money obligations, funds shall first be applied to discharge the purchase money obligations held by other holders, and then to the credit of the developer and its related entity for purchase money obligations held by the developer or such entity. Funds paid to the developer or the related entity's credit shall be held by the court as proceeds available to lienholders and other claimants in such partition. If there are insufficient funds to fully discharge purchase money obligations of all owners except the developer, the balance of unsatisfied purchase money obligations of all owners except the developer shall be discharged by judgment of the court; and

(d) As otherwise provided by law. [1983 c.530 §6; 2003 c.576 §356]

94.818 Recording of timeshare instrument; payments required. (1) To submit property located within this state to the provisions of ORS 94.803 and 94.807 to 94.945, the developer shall record a timeshare instrument in the office of the recording officer of every county in which the timeshare property is located. To submit property located outside this state to the provisions of ORS 94.803 and 94.807 to 94.945, the developer shall satisfy the requirements of ORS 94.885 for the recording of a notice of timeshare plan. The timeshare instrument shall comply with ORS 94.821 and shall be executed in accordance with subsection (2) of this section and acknowledged in the manner provided for acknowledgment of a deed.

(2) If the developer is not the fee owner of the property, the fee owner and the vendor under any contract of sale and the lessor under any lease shall also execute the timeshare instrument for the purpose of consenting to the property being submitted to the provisions of ORS 94.803 and 94.807 to 94.945.

(3) No timeshare instrument shall be recorded unless all taxes, penalties, special assessments, fees and charges that would be required to be paid for subdivisions or partitions under ORS 92.095 have been paid in the same manner as provided in ORS 92.095. [1983 c.530 §7; 1993 c.19 §2]

94.820 [Repealed by 1971 c.478 §1]

94.821 Content of timeshare instrument. A timeshare instrument shall include:

(1) A legal description of the timeshare property;

(2) The name or other identification of the project;

(3) Identification of timeshare periods by letter, name, number or a combination of letters, names and numbers and a description of the timeshare;

(4) Identification of the accommodations;

(5) The method for determining the owner's liability for common expenses and real property taxes;

(6) The method for notice and appeal of property tax values;

(7) If additional accommodations may become part of the timeshare property or existing accommodations may be deleted from the timeshare property, the method for adding them to or deleting them from the property and the formula for allocation and reallocation of the liabilities for common expenses and of voting rights;

(8) Any restrictions on the use, occupancy or alteration of a timeshare accommodation and any specified procedure or method for amending existing rules or adopting additional rules and regulations;

(9) Any restriction on the alienation of a timeshare;

(10) The ownership interest of the owner in personal property and provisions for care and replacement of personal property;

(11) If the instrument creates timeshare licenses, the period the accommodations affected are committed to timeshare licenses and provisions for disposition of those accommodations at the end of the period, if the period is not infinite;

(12) Any requirement for or restriction on amending the timeshare instrument;

(13) The nature and duration of the owner's rights in the timeshare plan, the circumstances under which the timeshare plan could be terminated and the procedure for terminating the timeshare plan;

(14) A description of the form of conveyance or other instrument used by the developer to transfer a timeshare to a purchaser;

(15) The identity of any person that has the power to grant an easement in the timeshare property or otherwise affect the title to the timeshare property;

(16) How and by whom the timeshare plan will be managed, including but not limited to provisions for selecting a replacement or successor managing entity and provisions for continuity of management throughout the duration of the timeshare plan;

(17) A description of the voting rights of a timeshare owner and the developer and other participation rights, if any, of a timeshare owner and the method for determining and allocating the voting rights; and

(18) Provisions for notifying a timeshare owner of any authorized change in the owner's voting or participation rights. [1983 c.530 §8; 1987 c.424 §4]

94.823 Notice of intent to sell timeshares; form and content; rules. A developer shall submit a notice to the Real Estate Commissioner informing the commissioner of the developer's intent to sell timeshares in Oregon. The form and content of the notice shall be established by rule by the commissioner, but shall include at least:

(1) The name and business and residence addresses of:

(a) The developer;

(b) The developer's agent;

(c) The designated managing entity; and

(d) Any person selling the timeshare plan within Oregon.

(2) An explanation of the timeshare form of ownership to be offered under the timeshare plan.

(3) A general description of the timeshare plan, including the number of timeshares to be offered under the timeshare plan and the number and description of the accommodations and facilities.

(4) A complete description, including a copy of all necessary implementing documents, of the methods to be used by the developer to comply with the requirements of ORS 92.325, 92.425, 94.570, 94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490.

(5) A title report for the real property underlying the timeshare plan, acceptable to the commissioner and including a statement of any lien, defect, judgment or other encumbrance affecting title to the property.

(6) A copy of any judgment against the developer or managing entity, the status of any pending suit that is material to the timeshare plan to which the developer or managing entity is a party and the status of any other suit that is material to the timeshare plan of which the developer has actual knowledge.

(7) A description of any insurance coverage provided for the benefit of a purchaser or a statement that no insurance coverage is provided.

(8) The name and address of the accommodations and facilities and the schedule for completing any improvements not complete at the time of filing.

(9) The financial obligation of a purchaser, excluding the initial purchase price and including:

(a) Additional charges and common expenses to which the purchaser may be subject, whether or not in the form of an assessment; and

(b) An estimated operating budget and schedule of estimated common expenses.

(10) A copy of the timeshare instrument or notice of timeshare plan as required under ORS 94.818.

(11) A copy of any contract, lease or timeshare agreement to be signed by the purchaser.

(12) A copy of the rules, limitations or conditions on the use of accommodations or facilities available to purchasers.

(13) Any restriction on the transfer of any timeshare.

(14) If any portion of the timeshare property is located outside the state, proof that the developer has recorded the notice of timeshare plan as required under ORS 94.833 (1).

(15) Any other information the commissioner may determine is necessary. [1983 c.530 §19; 2003 c.14 §37]

94.825 [Repealed by 1971 c.478 §1]

94.826 Information on exchange program; content; rules. (1) A seller offering an exchange program to a purchaser in conjunction with a timeshare plan shall provide written information to the purchaser about the exchange program.

(2) The exchange program information to be provided to the purchaser shall be established by rule by the Real Estate Commissioner and shall include at least:

(a) The name and address of the exchange company;

(b) Whether or not the purchaser's participation in the exchange program is dependent upon the timeshare plan's continued affiliation with the exchange program;

(c) Whether or not the purchaser's participation in the exchange program is voluntary;

(d) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program, and the procedure for modifying the exchange program contract;

(e) The procedure to qualify for and effectuate an exchange;

(f) A description of any limitation, restriction or priority system employed in the operation of the exchange program;

(g) The circumstances under which a purchaser may lose the use and occupancy of the purchaser's accommodation in any properly applied for exchange through the exchange program;

(h) Any fee for participation in the exchange program; and

(i) Any other information material to the exchange program which, by omission, tends to make the information otherwise disclosed misleading.

(3) The exchange program information shall be in addition to the information found in the public report required under ORS 94.828 (1), (2) and (4) and must be provided to the purchaser before a contract may be executed between the purchaser and the company offering the exchange program.

(4) An exchange company offering an exchange program to purchasers in Oregon shall file the information required in subsection (2) of this section annually with the commissioner.

(5) Only a timeshare owner and a developer other than a seller may participate in an exchange program. [1983 c.530 §21]

94.828 Public report on plan. (1) After the Real Estate Commissioner receives a completed notice under ORS 94.823 the commissioner shall prepare a public report on the timeshare plan. In lieu of preparing a report, the commissioner may accept a report prepared by the developer and issue the report with any changes the commissioner considers necessary.

(2) Whether or not the commissioner issues a public report on a timeshare plan the developer shall report to the commissioner any material change in the timeshare plan or in the marketing program for the timeshare plan within 10 days after the change occurs.

(3) The commissioner may examine a timeshare plan subject to ORS 94.803 and 94.807 to 94.945 to be offered for sale and make a public report of the findings. If a timeshare plan is located within this state and no report is made within 45 days after the commissioner receives a completed timeshare filing, the report shall be considered waived.

(4) As used in this section, "material change" includes, but is not limited to:

(a) The addition or deletion of a timeshare accommodation or facility.

(b) A change in the method of marketing or conveyancing the timeshare plan.

(c) A change in the purchase money handling procedure previously approved by the commissioner, including but not limited to:

(A) A change in the escrow depository; or

(B) A change in or creation of an encumbrance affecting more than one timeshare.

(d) A change in the developer or, if the developer is an entity, a change in the name, form of organization or status of the developer.

(e) A revision of the timeshare plan's annual budget that will require a regular annual assessment against the owners that is more than 25 percent greater than the regular annual assessment indicated in the current public report for the timeshare plan.

(f) Any legal or physical condition rendering a timeshare accommodation or facility unusable by an owner. [1983 c.530 §§20,39]

94.829 Sale not allowed before issuance of public report; distribution and uses of report. (1) No developer or agent of the developer shall sell a timeshare in a timeshare plan before the issuance of a public report for the timeshare plan, unless the public report has been waived under ORS 94.828 (3).

(2) A copy of the public report, when issued, shall be given to the prospective purchaser of a timeshare by the developer or agent of the developer prior to the execution of a binding contract or agreement for the sale of the timeshare. The developer or the developer's agent shall take a receipt from the prospective purchaser upon delivery of a copy of the Real Estate Commissioner's public report. Each such receipt shall be kept on file by the developer within this state subject to inspection by the commissioner or the commissioner's authorized representative for a period of three years from the date the receipt is taken.

(3) The commissioner's public report shall not be used for advertising purposes unless the report is used in its entirety. No portion of the public report shall be underscored, italicized or printed in larger or heavier type than the balance of the public report unless the true copy of the report emphasizes the portion.

(4) The commissioner may furnish, at cost, copies of a public report for the use of a developer.

(5) The requirements of this section extend to timeshares sold by the developer after repossession.

(6) Remedies and sanctions available for violation of ORS 646.605 to 646.656 are available for violation of this section, in addition to any other remedies or sanctions provided by law. [1985 c.76 §2]

94.830 [Repealed by 1971 c.478 §1]

94.831 Filing fees; inspection advance payment; disposition of moneys. (1) The notice required under ORS 94.823 shall be accompanied by a filing fee as follows:

(a) For a timeshare plan developed in a single phase, $500 plus $10 for each timeshare but in no case shall the fee exceed $3,000.

(b) For a timeshare plan developed in two or more phases, $500 plus $10 for each timeshare in the first phase, and $5 for each additional timeshare developed in a subsequent phase of the same development, but in no case shall the fee exceed $3,000 for each phase.

(2) For a material change notice submitted under ORS 94.828 (1), (2) and (4), the Real Estate Commissioner may charge a fee not to exceed $100 for each page of the public report that must be revised, but in no case shall the fee for a material change exceed $500.

(3) When an examination is to be made of timeshare property located in the State of Oregon, or timeshare property located outside Oregon that will be offered for sale to

persons within Oregon, the commissioner, in addition to the filing fee provided in subsections (1) and (2) of this section, may require the developer to advance payment of an amount estimated by the commissioner to be the expense incurred in going to and returning from the timeshare property, and an amount estimated to be necessary to cover the additional expense of the examination not to exceed $200 a day for each day consumed in the examination of the timeshare property. The amounts estimated by the commissioner under this subsection shall be based upon any applicable limits established and regulated by the Oregon Department of Administrative Services under ORS 292.220.

(4) The moneys received under subsections (1) to (3) of this section shall be paid into the State Treasury and placed in the General Fund to the credit of the Real Estate Account established under ORS 696.490. [1983 c.530 §§22,23,24]

94.833 Sale of timeshare plan located out-of-state. (1) Before negotiating within this state for the sale of a timeshare in a timeshare plan composed wholly or partially of timeshare property located outside this state, the developer of the timeshare plan must:

(a) Comply with ORS 94.803 and 94.807 to 94.945; and

(b) Record, in the real property records of each county or other appropriate jurisdiction of each state in which the timeshare property is located for use of a timeshare owner, the notice of timeshare plan, as defined in ORS 94.885 for the timeshare plan. This recording requirement does not apply to timeshare property located in foreign countries.

(2) Before the sale of a timeshare in a timeshare plan composed wholly of timeshare property located within this state, the developer of the timeshare plan must comply with the applicable provisions of ORS 94.803 and 94.807 to 94.945. [1983 c.530 §18]

94.835 [Repealed by 1971 c.478 §1]

(Purchaser's Rights)

94.836 Cancellation of purchase within five days. (1) A purchaser from a developer may cancel, for any reason, any contract, agreement or other evidence of indebtedness associated with the sale of the timeshare within five calendar days from the date the purchaser signs the first written offer or contract to purchase.

(2) Cancellation, under subsection (1) of this section, occurs when the purchaser gives written notice to the developer at the developer's address. The cancellation period in subsection (1) of this section does not begin until the developer provides the purchaser with developer's address for cancellation purposes.

(3) A notice of cancellation given by a purchaser need not take a particular form and is sufficient if it indicates in writing the purchaser's intent not to be bound by the contract or evidence of indebtedness.

(4) Notice of cancellation, if given by mail, shall be given by certified mail, return receipt requested, and is effective on the date that the notice is deposited with the United States Postal Service, properly addressed and postage prepaid.

(5) Upon receipt of a timely notice of cancellation, the developer shall immediately return any payment received from the purchaser. If the payment was made by check, the developer shall not be required to return the payment to the purchaser until the check is finally paid as provided in ORS 74.2130. Upon return of all payments the purchaser shall immediately transfer any rights the purchaser may have acquired in the timeshare to the developer, not subject to any encumbrance created or suffered by the purchaser. In the case of cancellation by a purchaser of any evidence of indebtedness, the purchaser shall return the purchaser's copy of the executed evidence of indebtedness to the developer, and the developer shall cancel the evidence of indebtedness. Any encumbrance against the purchaser's interest in the timeshare arising by operation of law from an obligation of the purchaser existing before transfer of the interest to the purchaser shall be extinguished by the reconveyance.

(6) No act of a purchaser shall be effective to waive the right of cancellation granted by subsection (1) of this section. After the expiration of the five-day cancellation period, a developer may require a purchaser to execute and deliver to the developer a signed statement disclaiming any notice of cancellation timely and properly made by the purchaser before the five-day cancellation period expired under subsection (1) of this section, that has not been received by the developer. A disclaimer statement executed by the purchaser shall rescind the notice of cancellation. [1983 c.530 §26]

94.839 Notice of cancellation right. (1) The first written agreement for the sale of a timeshare to a purchaser signed by the purchaser shall contain, either upon the first page of the agreement or on a separate sheet attached to the first page, the following notice in at least 8-point type:

_____

NOTICE TO PURCHASER

BY SIGNING THIS AGREEMENT YOU ARE INCURRING A CONTRACTUAL OBLIGATION TO PURCHASE A TIMESHARE. HOWEVER, YOU HAVE FIVE CALENDAR DAYS AFTER SIGNING THIS AGREEMENT TO CANCEL THE AGREEMENT BY WRITTEN NOTICE TO THE DEVELOPER OR THE DEVELOPER'S AGENT AT THE FOLLOWING ADDRESS:

_____

_____

_____

_____

_____

BEFORE EXECUTING THIS AGREEMENT, OR BEFORE THE FIVE-DAY CANCELLATION PERIOD ENDS, YOU SHOULD CAREFULLY EXAMINE THE PUBLIC REPORT ON THE TIMESHARE PLAN AND ANY ACCOMPANYING INFORMATION DELIVERED BY THE DEVELOPER.

_____

(2) A copy of the notice set forth in subsection (1) of this section shall be given to each purchaser under an agreement described in subsection (1) of this section at the time or immediately after the purchaser signs the agreement. [1983 c.530 §27]

94.840 [Repealed by 1971 c.478 §1]

94.841 Waiver of rights void. Any condition, stipulation or provision in a sales agreement, lease or other legal document, that binds a purchaser to waive legal rights granted to the purchaser under ORS 94.803 and 94.807 to 94.945 against the developer shall be considered to be contrary to public policy and void. [1983 c.530 §28]

94.843 Limits on developer right to transfer. (1) A developer may not transfer the developer's interest in accommodations or facilities of a timeshare plan unless the transferee, as to each owner whose interest is involved in the transfer, agrees to:

(a) Honor the right of each owner to occupy and use the accommodations and facilities;

(b) Honor the right of a purchaser to cancel a contract and receive an appropriate refund, as provided in ORS 94.836;

(c) Comply with ORS 94.803 and 94.807 to 94.945 as long as the transferee continues to sell the timeshare plan, or as long as the owner is entitled to occupy the accommodations or use the facilities; and

(d) Assume all of the developer's obligations to the owners under the timeshare instrument.

(2) Within 30 days after the transfer of the developer's interest, notice of the transfer shall be mailed to each owner.

(3) A person holding a blanket encumbrance on the property constituting timeshare property is not a transferee for purposes of this section, if the person has executed and recorded a nondisturbance agreement in accordance with ORS 94.885. [1983 c.530 §17]

94.845 [Repealed by 1971 c.478 §1]

(Association of Owners; Management)

94.846 Designation of managing entity; duties and powers of entity. (1) Before the closing of the first timeshare sale the developer shall designate a managing entity, which may be the developer, the owners' association, a trust, a management firm or an individual.

(2) The managing entity shall act as a fiduciary to each timeshare owner.

(3) The managing entity shall be responsible for:

(a) Managing and maintaining all accommodations and facilities of the timeshare plan.

(b) Collecting any assessment for common expenses.

(c) Providing each owner with an itemized annual budget including all receipts and expenditures.

(d) Maintaining all books and records concerning the timeshare plan on the timeshare property and making the books and records available for inspection by an owner.

(e) Making the books and records of the timeshare plan available for inspection by the Real Estate Agency.

(f) Scheduling occupancy of accommodations if each owner does not acquire a specific timeshare period so that each owner receives the use of the timeshare plan's accommodations and facilities to which the owner is entitled.

(g) Performing all other duties necessary to maintain the accommodations or facilities as provided in any management contract or other agreement.

(h) Acting as agent for the owners for purposes of real property taxation, including collection and payment of real property taxes.

(i) Hiring and supervising an employee or agent to perform a function described in paragraphs (a) to (h) of this subsection.

(4) After giving the managing entity reasonable notice, a timeshare owner may require the managing entity to provide the names and addresses of all other timeshare owners in the timeshare plan. The managing entity may require the payment of a reasonable fee for reproduction costs.

(5) Unless expressly prohibited by the timeshare instrument, the managing entity shall have the authority to execute, acknowledge, deliver and record on behalf of the timeshare owners, an easement, right of way, license and any other similar interest affecting the timeshare property if the interest is beneficial and not materially detrimental to the timeshare plan.

(6) The instrument granting an interest under subsection (5) of this section shall be executed by the managing entity and acknowledged in the manner provided for acknowledgment of deeds under ORS 93.410.

(7) For the purpose of transferring or otherwise disposing of all or any portion of the accommodations and facilities in the timeshare plan upon termination of the plan, the managing entity shall be the attorney-in-fact for each owner. Any transfer or disposition will be effective if the managing entity executes and acknowledges the written transfer instrument. [1983 c.530 §9; 1987 c.424 §5; 2003 c.14 §38]

94.848 How managing entity of developer terminated. A timeshare instrument that provides for the developer or an agent selected by the developer to manage the timeshare property until an owners' association, a trust or the owners assume the role of managing entity shall include provisions for:

(1) Termination of developer management or developer selected management by the association, trust or owners;

(2) Termination of contracts for goods and services for the timeshare property entered into during the period the developer served as the managing entity;

(3) A regular accounting at least annually by the developer to the association, trust or owners as to all matters affecting the timeshare property; and

(4) Immediate termination of the developer as managing entity by the association, trust or owners and assumption of management functions by an association or trust in the case of abandonment or substantial breakdown of management services for the timeshare plan. [1983 c.530 §10]

94.850 [Repealed by 1971 c.478 §1]

94.853 Payment of common expenses. (1) Until the closing of the first timeshare sale the developer shall pay all common expenses.

(2) After the closing of the first timeshare sale, the managing entity shall charge an annual assessment for the payment of common expenses based on the projected annual budget. The assessment shall be against:

(a) Each owner in the proportion specified in the timeshare instrument and the developer for the share allocated to all timeshare periods still owned by the developer at the time the assessment is made;

(b) As provided in paragraph (a) of this subsection, except that the developer shall also pay that portion of the total assessment not paid by any owner, if the developer guarantees payment of all common expenses of the timeshare plan under the provisions of the timeshare instrument; or

(c) The developer for the total assessment if the developer agrees to pay all common expenses of the timeshare plan under the provisions of the timeshare instrument.

(3) Unless otherwise specified in the timeshare instrument, past due assessments shall bear interest at the legal rate. [1983 c.530 §11; 2003 c.14 §39]

94.855 [Repealed by 1971 c.478 §1]

94.856 Assessment of common expenses as lien; recording; foreclosure; fees; remedies; exception. (1) Whenever a managing entity levies an assessment for common expenses against a timeshare estate, the managing entity, upon complying with subsection (2) of this section, shall have a lien upon the timeshare estate for the reasonable value of the expenses, for any unpaid assessment and interest as provided in subsection (2)(b) of this section and for any late charges, fines and costs of collection, including but not limited to attorney fees and court costs. The lien shall be prior to any other lien or encumbrance upon the timeshare estate except:

(a) Blanket encumbrances of record;

(b) Tax and assessment liens; and

(c) A purchase money mortgage of record, a purchase money trust deed of record or a purchase agreement of record.

(2)(a) A managing entity claiming a lien under subsection (1) of this section shall record in the county in which the timeshare estate or some part thereof is located a claim containing:

(A) A true statement of the account due for common expenses after deducting all just credits and offsets;

(B) The name of the owner of the timeshare estate, or reputed owner, if known; and

(C) The designation of the timeshare estate, sufficient for identification.

(b) If a claim is filed and recorded under this section and the owner of the timeshare estate subject to the claim thereafter fails to pay any assessment chargeable to the timeshare estate, then so long as the original or any subsequent unpaid assessment remains unpaid the claim shall automatically accumulate the subsequent unpaid assessment and interest thereon without the necessity of further filings under this section.

(3) The claim shall be verified by the oath of a person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under ORS 87.035. The record shall be indexed in the same manner that a deed or other conveyance is required by ORS 93.630 to be indexed.

(4) The proceeding to foreclose a lien created by this section shall conform as nearly as possible to the proceeding to foreclose a lien created by ORS 87.010, except that notwithstanding ORS 87.055, a lien may be continued in force for a period of time not to exceed six years from the date the claim is filed under subsection (3) of this section. For the purpose of determining the date the claim is filed in those cases where subsequent unpaid assessments have accumulated under the claim as provided in subsection (2)(b) of this section, the claim regarding each unpaid assessment shall be considered to have been filed at the time the unpaid assessment became due. The lien may be enforced by the managing entity. An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.

(5) Unless the timeshare instrument provides otherwise, a fee, late charge, fine and interest imposed under ORS 94.858 (4)(i) is enforceable as an assessment under this section.

(6) In addition to seeking a money judgment for the unpaid assessment if the timeshare plan conveys only a timeshare license, the managing entity may bring an action for breach of contract.

(7) A construction lien under ORS 87.001 to 87.093 for labor performed or materials furnished to timeshare property, if properly incurred by the association or managing entity for the benefit of all timeshare owners with interests in the timeshare property shall, if effective, attach to each timeshare with interests in the timeshare property. The owner of a timeshare subject to the lien shall have the right to have the timeshare released from the lien by payment of the amount of the lien attributable to the timeshare. The amount of the lien attributable to the timeshare and the payment required to satisfy the lien, in the absence of agreement, shall be determined by application of the allocation of common expenses established in the timeshare instrument.

(8) Except as provided in subsection (7) of this section, a construction lien under ORS 87.001 to 87.093 for labor performed or materials furnished to a unit shall not be filed against the timeshare of any timeshare owner who did not expressly consent to or request the labor or materials. Consent shall be considered given under this subsection by the owner of a timeshare in the case of emergency repairs to the timeshare property done with the consent or at the request of the managing entity. [1983 c.530 §12]

94.858 Owners′ association; powers and duties. (1) The timeshare instrument may provide that an association of timeshare owners be organized to serve as a means through which the timeshare owners may take action with regard to the administration, management and operation of the timeshare plan and the timeshare property. The association shall be organized as a corporation for profit or nonprofit corporation. The name of the association shall include the complete name of the timeshare plan.

(2) Membership in the association shall be limited to timeshare owners.

(3) The affairs of the association shall be governed by a board of directors or other governing body as provided for in the bylaws adopted under the applicable incorporation requirements.

(4) Subject to the provisions of the timeshare instrument and bylaws, the association may:

(a) Assume the role of managing entity;

(b) Adopt and amend bylaws, rules and regulations;

(c) Adopt and amend budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from timeshare owners;

(d) Hire and terminate a managing agent, other employees, agents and independent contractors;

(e) Institute, defend or intervene in litigation or an administrative proceeding in the association′s own name on behalf of the association or on behalf of two or more timeshare owners on any matter affecting the timeshare property;

(f) Make contracts and incur liabilities;

(g) Regulate the use, maintenance, repair, replacement and modification of timeshare property;

(h) Acquire by purchase, lease, devise, gift or voluntary grant real property or any interest therein and take, hold, possess and convey real property or any interest therein;

(i) Impose a charge for the late payment of an assessment and, after giving notice and an opportunity to be heard, levy a reasonable fine for violation of the timeshare instrument, bylaws and rules and regulations of the association;

(j) Provide for the indemnification of the association's officers and governing board and maintain adequate liability insurance for the association's officers and governing board;

(k) Exercise any other power conferred by a timeshare instrument or bylaws; and

(L) Exercise any other power determined by the association to be necessary and proper for the governance and operation of the association.

(5) If an association of timeshare owners is formed under this section, the public report issued for the timeshare plan under ORS 94.828 (1), (2) and (4) shall include a disclosure of the powers of the association and the manner in which the association will be governed. [1983 c.530 §13; 2007 c.410 §21]

94.863 Developer's duty to managing entity. The developer shall deliver to the designated managing entity before the closing of the first timeshare sale, the following:

(1) The original or a photocopy of the recorded timeshare instrument for the timeshare plan and any supplements and amendments thereto.

(2) A copy of any other document creating the managing entity.

(3) Any rules and regulations that have been promulgated.

(4) A report of the present financial condition of the timeshare plan. The report shall consist of a balance sheet and an income and expense statement for the preceding 12-month period or the period following the recording of the timeshare instrument whichever period is less.

(5) All funds of the timeshare plan, or control thereof, including, but not limited to, any bank signature card.

(6) All tangible personal property that is the property of the timeshare plan and an inventory of such property.

(7) A copy of the following, if available:

(a) The as-built architectural, structural, engineering, mechanical, electrical and plumbing plans.

(b) The original specifications indicating all material changes.

(c) The plans for any underground site service, site grading, drainage and landscaping.

(d) Any other plans and information relevant to future repair or maintenance of the timeshare property.

(8) Insurance policies.

(9) A roster of timeshare owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(10) Leases of the timeshare facilities and accommodations and any other leases to which the managing entity is a party.

(11) Any employment or service contract to which the managing entity is a party and any service contract under which the managing entity has an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service.

(12) Any other contract to which the managing entity is a party. [1983 c.530 §14]

94.867 Judicial declaration of failure in management. (1) A court of competent jurisdiction, upon petition by timeshare owners constituting at least 10 percent of the total number of timeshare owners in a timeshare plan, may declare a failure in the management of the timeshare plan and timeshare property and appoint a trustee to assume the duties of a managing entity for the timeshare plan, if the court finds that:

(a) The management of the timeshare plan and timeshare property has failed to carry out the duties of a managing entity under the timeshare instrument and ORS 94.846 to 94.858;

(b) The rights of the timeshare owners under the timeshare instrument will be substantially impaired if a trustee is not appointed; and

(c) No reasonable alternative exists to appointment of a trustee to perform the functions of a managing entity.

(2) The court may attach such conditions and terms to its appointment of a trustee under subsection (1) of this section as the court considers necessary to protect the rights of timeshare owners under the timeshare instrument.

(3) The trustee shall send a copy of the court's decision to the Real Estate Commissioner. [1983 c.530 §15; 1991 c.64 §3]

94.869 Insurance coverage. (1) If the managing entity has the sole authority to decide whether to repair or reconstruct an accommodation or facility that has suffered damage or that an accommodation or facility

must be repaired or reconstructed, the managing entity shall obtain and maintain at all times and shall pay for out of the funds for payment of common expenses, insurance covering the accommodations and facilities which may include reasonable deductible amounts reflecting self-insurance by the owners as a common expense and which shall include:

(a) Insurance for all insurable improvements in the timeshare property against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. The insurance shall cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable cost; and

(b) Insurance covering the legal liability of the association, the timeshare owners individually and the managing entity including, but not limited to, the board of directors, to the public and to the timeshare owners and their invitees or tenants, incident to ownership, supervision, control or use of the property. There may be excluded from the policy required under this paragraph, coverage of a timeshare owner, other than coverage as a member of an association or board of directors, for liability arising out of acts or omissions of that owner and liability incident to the ownership or use of the part of the property as to which that owner has the exclusive use or occupancy. Liability insurance required under this paragraph shall be issued on a comprehensive liability basis.

(2) If an individual timeshare owner is required to obtain insurance for the owner's individual legal liability, the association or managing entity shall obtain insurance covering the accommodations and facilities which may include reasonable deductible amounts reflecting self-insurance by the owners as a common expense and which shall include:

(a) Insurance for all insurable improvements in the timeshare property against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. The insurance shall cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable cost; and

(b) Insurance covering the legal liability of the association and the managing entity including, but not limited to, the board of directors, to the public or the timeshare owners and their invitees or tenants, incident to supervision, control or use of the property. [1983 c.530 §16]

(Escrow)

94.871 When purchase money agreement prohibited; escrow requirements. (1) Unless a lien payment trust is established under ORS 94.890, no timeshare estate shall be sold by a developer by means of a purchase money agreement as defined in ORS 94.890 unless a collection escrow is established within this state with a person or firm authorized to receive escrows under the laws of this state and all of the following are deposited in the escrow:

(a) A copy of the title report or abstract, as it relates to the timeshare estate being sold.

(b) The original or an executed copy of the sales document relating to the purchase of the timeshare estate clearly setting forth the legal description of the interest being purchased, the principal amount of any blanket encumbrance outstanding on the date of the sales document and the terms of the sales document.

(c) A commitment in a form satisfactory to the Real Estate Commissioner to give a partial release for the interest being sold from the terms and provisions of any blanket encumbrance on or before full payment of the purchase price by the purchaser.

(d) A commitment in a form satisfactory to the commissioner to give a release of any other lien or encumbrance existing against the timeshare estate being sold.

(e) A warranty or bargain and sale deed in good and sufficient form conveying to the purchaser merchantable and marketable title to the timeshare estate.

(2) The developer shall submit written authorization allowing the commissioner to inspect any escrow deposit established under subsection (1) of this section.

(3) In lieu of the procedures provided in subsection (1) of this section, the developer shall conform to an alternative requirement or method if the commissioner finds that the alternative requirement or method carries out the intent and provisions of this section. [1983 c.530 §25]

94.873 Escrow account; closing; release. (1) All funds, negotiable instruments, purchase money agreements and credit card authorizations and proceeds thereof received in this state by a developer from or on behalf of a purchaser or prospective purchaser in connection with the purchase or reservation of a timeshare must be placed in an escrow account with an escrow agent authorized under ORS 94.881 or the trustee of a lien payment trust established under ORS 94.890.

(2) The establishment of an escrow account under subsection (1) of this section

shall be by written agreement between the developer and the escrow agent. The escrow agreement must provide for the handling of a purchaser's funds, negotiable instruments, purchase money agreements and credit card authorizations and proceeds as required by ORS 94.873 to 94.905.

(3) A purchaser's funds, negotiable instruments, purchase money agreements, credit card authorizations and any proceeds may be released from escrow without a closing only as follows:

(a) If the purchaser gives a valid notice of cancellation under ORS 94.836, to the purchaser within 15 days after the notice of cancellation is received.

(b) If the purchaser or developer properly terminates a sales agreement under its terms or terminates a reservation agreement, to the purchaser or developer according to the terms of the sales agreement or reservation agreement.

(c) If the purchaser or developer defaults in performing an obligation under the sales agreement, to the purchaser or developer according to the terms of the sales agreement.

(4) After an escrow closing for the sale of a timeshare, a purchaser's funds, negotiable instruments, purchase money agreements and credit card authorizations and proceeds shall be delivered by the escrow agent:

(a) To the trustee of a lien payment trust established under ORS 94.890 to protect the purchaser from any blanket encumbrance.

(b) As provided by an alternative arrangement approved by the Real Estate Commissioner under ORS 94.900.

(c) To the seller if the timeshare is conveyed to the purchaser free and clear of any blanket encumbrance or as provided in ORS 94.876.

(5) Under no circumstances may the escrow agent release a purchaser's funds, negotiable instruments, purchase money agreements or credit card authorizations or proceeds from the escrow account to anyone except the purchaser until:

(a) The five-day cancellation period under ORS 94.836 expires as to the purchaser whose funds, instruments, agreements, authorizations or proceeds are being released;

(b) The escrow agent receives a written statement from the developer that no valid cancellation notice under ORS 94.836 has been received from the purchaser involved or from the purchaser that the purchaser has not given such a notice; and

(c) The escrow agent receives a written statement from the developer that no other cancellation notice was received during the five-day cancellation period from the purchaser involved.

(6) The purpose of any escrow established under this section shall be to protect a purchaser's right to a refund if the purchaser cancels the timeshare sales agreement during the five-day cancellation period under ORS 94.836, or if a prospective purchaser cancels a reservation agreement for the purchase of a timeshare.

(7) As used in this section "reservation agreement" means an agreement relating to the future sale of a timeshare that is not binding on the purchaser which grants the purchaser the right to cancel the agreement for any reason without penalty and to obtain a refund of any funds deposited at any time until the purchaser executes a timeshare sales agreement. [1983 c.530 §29]

94.876 Requirements for closing escrow. (1) Subject to the requirements of ORS 94.871 and 94.873, an escrow for the sale of a timeshare estate may close only if one of the following alternatives for protecting the purchaser is satisfied:

(a) The timeshare estate is conveyed to the purchaser free and clear of any blanket encumbrance;

(b) The timeshare property in which the timeshare estate is granted is conveyed to a trustee under a lien payment trust established under ORS 94.890 and every person holding an interest in a blanket encumbrance against the timeshare property executes and records a nondisturbance agreement;

(c) The timeshare estate is conveyed to the purchaser subject only to a blanket encumbrance in which every person holding an interest in the blanket encumbrance executes and records a nondisturbance agreement or the Real Estate Commissioner accepts a surety bond as an alternative arrangement under ORS 94.900 in an amount that is sufficient to satisfy the blanket encumbrance; or

(d) All requirements of an alternative arrangement approved by the commissioner under ORS 94.900 are satisfied.

(2) Subject to the requirements of ORS 94.873, an escrow for the sale of a timeshare license may close only if one of the following alternatives for protecting the purchaser is satisfied:

(a) The timeshare property is conveyed to a trustee free and clear of any blanket encumbrance;

(b) The timeshare property is conveyed to a trustee under a lien payment trust established under ORS 94.890 and every person holding an interest in a blanket encumbrance against the timeshare property executes and records a nondisturbance agreement;

(c) Every person holding an interest in a blanket encumbrance against the timeshare property executes and records a nondisturbance agreement and the commissioner accepts a recorded surety bond in an amount that is sufficient to satisfy the blanket encumbrance; or

(d) The requirements of an alternative arrangement approved by the commissioner under ORS 94.900 are satisfied. [1983 c.530 §30]

94.878 Duties of escrow agent. An escrow agent holding funds under ORS 94.873:

(1) May invest the escrowed funds in securities of the federal government or any agency thereof or in savings or time deposits in institutions insured by an agency of the federal government according to the terms of the agreement between the escrow agent and the developer.

(2) Shall maintain separate books and records for each timeshare plan in accordance with generally accepted accounting methods. [1983 c.530 §36]

94.881 Who may serve as escrow agent. (1) Funds placed into escrow under ORS 94.873 shall be placed into an escrow account established solely for that purpose with one of the following acting as an escrow agent:

(a) An attorney who is a member of the Oregon State Bar;

(b) An insured institution, as defined in ORS 706.008, that is authorized to accept deposits in this state;

(c) A trust company, as defined in ORS 706.008, that is authorized to transact trust business in this state; or

(d) An escrow agent licensed under ORS 696.505 to 696.590.

(2) In connection with sales of timeshares made outside of this state for the use of timeshare property located within this state, the escrow agent required under ORS 94.871 and 94.873 may be located in and the purchasers' funds, negotiable instruments, purchase money contracts and credit card authorizations may be held by the out-of-state escrow agent, if the law of the state in which the sales are made requires impoundment in that state and the out-of-state escrow agent is approved by the Real Estate Commissioner. [1983 c.530 §37; 1997 c.631 §393]

(Lien Payment)

94.885 Rights of lienholder. (1) When a nondisturbance agreement has been executed by the lienholder and recorded, the lienholder, its successors and anyone who acquires the property through foreclosure, by deed, assignment or transfer in lieu of foreclosure, shall take the property subject to the rights of the owners under the timeshare plan.

(2) When a notice of timeshare plan is recorded, any claim by the developer's creditors and any claim upon or by a successor to the interest of the titleholder who executed the notice shall be subordinate to the interest of the timeshare owners if the sale is closed after the notice is recorded. The recording of notice shall not affect:

(a) The rights or lien of a lienholder whose lien was recorded before the notice of timeshare plan;

(b) The rights of a person holding an option in the timeshare property if the option was recorded before the notice of timeshare plan; and

(c) The rights or lien of a lienholder having a recorded purchase money mortgage, recorded purchase money trust deed or recorded purchase agreement on the timeshare.

(3) As used in ORS 94.873, 94.876 and 94.885 to 94.905:

(a) "Nondisturbance agreement" means an instrument by which the holder of a blanket encumbrance agrees that the holder's rights in the timeshare property shall be subordinate to the rights of any timeshare owner. Every nondisturbance agreement shall contain a covenant by the lienholder that the lienholder, its successors, and anyone who acquires the timeshare property through the blanket lien shall not use, or cause or permit the property to be used in a manner that prevents a timeshare owner from using the timeshare property in the manner contemplated by the timeshare plan. The lienholder's agreement not to disturb an owner may require as a continuing condition that the owner perform all obligations and make all payments due under any purchase money agreement for the owner's timeshare and, if the timeshare is held as a leasehold, under the lease for the owner's timeshare.

(b) "Notice of timeshare plan" means an instrument executed by the holder of the legal and equitable title to the fee or long-term leasehold interest in a timeshare property which provides notice of the existence of the timeshare plan and of the rights of timeshare owners. The notice of timeshare plan must identify the timeshare period for each timeshare. For a timeshare property located wholly within this state, recording of the timeshare instrument for the property under ORS 94.818 shall be considered the recording of a notice of timeshare plan for the property. If the timeshare property is located outside the state, the notice may be contained in a declaration of covenants, conditions and restrictions that provides that as a

matter of covenant, the notice shall have the effects described in subsection (2) of this section. The notice must be prepared to constitute a covenant running with an equitable servitude upon the timeshare property for the duration of the timeshare plan and to have the effects described in subsection (2) of this section.

(4) If the developer proposes use of a nondisturbance agreement, the public report issued for the timeshare plan under ORS 94.828 (1), (2) and (4) shall include disclosure of the nature and limitations of nondisturbance agreements, the nature and amount of outstanding blanket encumbrances and the potential impact upon timeshare purchasers of failure to pay off the outstanding blanket encumbrances. [1983 c.530 §31]

94.890 Lien payment trust; payments; delinquencies. (1) A lien payment trust may be established with a trust company as defined in ORS 706.008 that is authorized to transact trust business in this state, for the conveyance of timeshare property to the trustee under ORS 94.876 if the trust instrument provides for at least the following:

(a) Title to the timeshare property must be transferred to the trustee before the purchaser's funds, negotiable instruments, purchase money agreements or credit card authorizations or proceeds are disbursed by the escrow agent.

(b) The trustee shall not convey or transfer all or any portion of the timeshare property except for an accommodation in which no owner has any further right of occupancy or as permitted at termination of the trust.

(c) The trustee shall not encumber the timeshare property without the consent of the Real Estate Commissioner.

(d) The association, if any, and all timeshare owners are made third party beneficiaries of the trust.

(e) Notice of the trustee's intention to resign must be given to the commissioner at least 90 days before the resignation takes effect.

(f) The trust instrument may not be amended to adversely affect the interests or rights of a timeshare owner without the written approval of the association or, if no association, a majority of the timeshare owners.

(g) Require the deposit into trust of a lien payment deposit, as required by subsection (3) of this section, before the closing of the first timeshare sale.

(h) Require the deposit into trust before closing the first timeshare sale, and the intention to maintain for the duration of the trust, an installment payment reserve consisting of funds in an amount sufficient at all times:

(A) To pay the total of three successive monthly installments of debt service on each blanket encumbrance or, if installments of debt services are not payable monthly or in equal installments, such funds as the commissioner determines reasonably necessary to assure that the trustee will have sufficient cash to make any payment under the blanket encumbrances when due; and

(B) To create a sinking fund to extinguish the debt at its maturity if the blanket encumbrance against the trust property is an interest only loan, contains a balloon payment provision or is otherwise not fully amortized under the terms for repayment.

(i) Authorize the trustee to sell, transfer, hypothecate, encumber, or otherwise dispose of the purchase money agreement or any other asset composing the lien payment deposit or any portion thereof if, in the trustee's judgment, such action is necessary to enable the trustee to make all payments required under the blanket encumbrances to prevent foreclosure of the blanket encumbrance.

(j) Require the developer to replenish the funds and assets in the trust whenever the lien payment deposit or the funds in the installment payment reserve fail to meet the requirements set forth in this subsection.

(k) Provide that the trustee periodically shall disburse funds in the trust as follows: First, to pay real property taxes, governmental assessments, and lease rent, if any; second, to pay current payments due on the blanket encumbrances, in their order of priority; third, to any sinking fund established for the payment of blanket encumbrances, including any prepayment penalties and release prices; fourth, to pay any service charge and cost payable to the trustee and its collection agent, if any, under the trust instrument; and fifth, to the developer or as directed by the developer.

(L) Contain any other provisions required by the commissioner under rules adopted under ORS 94.915 (2) and (3).

(2) Every purchase money agreement delivered to the trustee of a lien payment trust must contain a notice to the holder that the trustee may make demand of the holder to deliver to the trustee all payments made by the owner after the trustee mails notice that the funds and other assets in the trust are inadequate to meet the lien payment deposit requirements. Following such demand, the holder must immediately deliver all subsequent payments of the owner to the trustee

and continue to deliver the payments until the lien payment deposit is replenished.

(3)(a) The lien payment deposit shall consist of either nondelinquent purchase money agreements from timeshare owners in the timeshare plan or other assets deposited into the trust by the developer and approved by the commissioner. The purchase money agreements must have an aggregate remaining principal balance of not less than, and any other assets deposited must have a liquidated value of not less than, 110 percent of the difference between the aggregate remaining balance owing under blanket encumbrances against the timeshare property, including any prepayment penalties, release prices or similar charges, and the amount of money or its equivalent in the trust and available at any time to be applied to the reduction of the principal balance of the blanket encumbrance. The developer shall have the burden of establishing the liquidated value of assets other than purchase money agreements from timeshare owners in the timeshare plan.

(b) If the blanket encumbrance payment deposit consists of purchase money agreements, the payments required to be made by owners under the agreements shall:

(A) Be due on or before the date payments become due on the blanket encumbrances;

(B) If paid when due as provided in subsection (4) of this section, be equal to at least 110 percent of the amount required to be paid on the blanket encumbrances on such date; and

(C) Be sufficient to pay, in full, during the term of the purchase money agreements all amounts secured by the blanket encumbrances, including prepayment penalties and release prices, if any, and all service charges payable to the trustee, any collection agent, and any other servicing agent under the trust agreement.

(c) If the developer proposes to deposit into trust assets other than purchase money agreements, the assets must be sufficient to pay debt service installments on the blanket encumbrance as they become due and to create a sinking fund or other arrangement adequate to extinguish the debt secured by the blanket encumbrance at its maturity.

(4) For the purposes of this section, "purchase money agreement" means and includes a purchase money mortgage, a purchase money trust deed and a purchase contract.

(5) For the purpose of this section, a purchase money agreement is considered delinquent when an installment payment is more than 59 days past due. [1983 c.530 §32; 1997 c.631 §394]

94.895 Trust irrevocable without alternative arrangement. (1) Except as provided in subsection (2) of this section:

(a) If a trust is established for timeshare property subject to timeshare licenses, the trust for the timeshare property shall be irrevocable during the time that any purchaser of a timeshare license has a right to the use of the timeshare property.

(b) If a trust is established for timeshare property subject to timeshare estates, the trust for the timeshare property shall be irrevocable until all blanket encumbrances are extinguished.

(2) The Real Estate Commissioner may approve an alternative arrangement that permits termination of the trust. [1983 c.530 §33]

94.900 Alternative to lien payment trust. (1) If it is impossible or impractical for a developer to satisfy any of the requirements of ORS 94.890 because of factors over which the developer has little or no control, the Real Estate Commissioner may accept arrangements other than those prescribed by ORS 94.890 which in the commissioner's judgment will give rights and remedies affording equivalent benefits and protection to timeshare owners and which are at least comparable in scope though not necessarily in nature to those afforded by ORS 94.890.

(2) If the commissioner is asked to accept alternative arrangements under this section, the commissioner may contract with an attorney and with any other private consultant the commissioner considers necessary or advisable, in connection with the review of the proposed arrangements for protecting purchasers. The attorney shall thoroughly review the timeshare plan for the purpose of examining the purchaser protections, including the documentation used in the timeshare plan and the disclosure thereof in the developer's public report. After completing the review the attorney shall provide a written analysis of the nature and extent of the protection that the proposal affords a purchaser against blanket encumbrances. The cost of retaining the attorneys and other consultants shall be paid by the developer. [1983 c.530 §34]

94.905 Surety bond. Any surety bond furnished to the Real Estate Commissioner under ORS 94.890 must be in an amount which is not less than 110 percent of the remaining principal balance of every indebtedness secured by a blanket encumbrance affecting the timeshare property. The surety bond must be issued by a surety authorized to do business in Oregon and having sufficient net worth to be acceptable to the com-

missioner. The bond shall provide for payment, up to the limit of the bond, of all amounts secured by the blanket encumbrance, including costs, expenses and legal fees of the lienholder, if for any reason the blanket encumbrance is enforced. The obligee of the surety bond shall be the commissioner on behalf of the timeshare owners. The bond may be reduced periodically in proportion to the reduction of the remaining principal balance of the indebtedness secured by the blanket encumbrances. Upon being furnished with a surety bond satisfying the foregoing requirements, the developer shall prepare and the commissioner shall execute and acknowledge a document in recordable form accepting the surety bond and identifying the timeshare property to which it applies. [1983 c.530 §35]

(Enforcement)

94.915 Inspection of records; rules; uniform standards. (1) Records of the sale of timeshares in a timeshare plan shall be subject to inspection by the Real Estate Commissioner.

(2) The Real Estate Agency shall adopt rules necessary to carry out ORS 94.803 and 94.807 to 94.945.

(3) The agency may cooperate with agencies performing similar functions in other jurisdictions to develop uniform filing procedures, forms, disclosure standards and administrative practices. [1983 c.530 §§38,40]

94.920 Consent to service by out-of-state developer. (1) Every nonresident developer, at the time of filing the notice required by ORS 94.823, also shall file with the Real Estate Commissioner an irrevocable consent that if, in any suit or action commenced against the nonresident developer in this state arising out of a violation of ORS 94.803 and 94.807 to 94.945, personal service of summons or process cannot be made upon the developer in this state after the exercise of due diligence, a valid service may be made upon the developer by service on the commissioner.

(2) The consent required under subsection (1) of this section shall be in writing executed and verified by an officer of a corporation or association, a general partner of a partnership or by a developer and shall set forth:

(a) The name of the developer.

(b) The address to which documents served upon the commissioner are to be forwarded.

(c) If the developer is a corporation or unincorporated association, that the officer exercising the consent was authorized by resolution duly adopted by the board of directors.

(3) The address for forwarding documents served under this section may be changed by filing a new consent in the form prescribed in subsection (2) of this section.

(4) Service of process on the commissioner under this section shall be made by delivering to the commissioner or a clerk on duty in any office of the commissioner, duplicate copies of the process, with duplicate copies of any papers required by law to be delivered in connection with the service.

(5) When the commissioner is served with process under the provisions of this section, the commissioner shall immediately forward by registered mail or by certified mail with return receipt one of the copies with any accompanying papers, to the developer at the address set forth in the consent.

(6) The commissioner shall keep a record of each process, notice and demand served under this section, and shall record the time of each service and the action taken by the commissioner on each service. [1983 c.530 §43; 1991 c.249 §10]

94.925 Civil penalty. (1) In addition to any other penalty provided by law, the Real Estate Commissioner may impose a civil penalty for violation of the provisions of ORS 94.803 and 94.807 to 94.945. No civil penalty shall exceed $1,000 per violation.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745. [1983 c.530 §44; 1989 c.706 §8; 1991 c.734 §5]

94.930 Commissioner order; injunctive relief. (1) If the Real Estate Commissioner finds that an owner, developer or other person is violating any of the provisions of ORS 94.803 and 94.807 to 94.945, the commissioner may order the person to desist and refrain from violating the provisions or requirements, or from the further sale of interests in the timeshare plan.

(2) If the commissioner finds that a developer or other person is violating, has violated or is about to violate, any of the provisions of ORS 94.803 and 94.807 to 94.945, the commissioner may bring an action in the circuit court of the county where the violation or threatened violation has occurred or is about to occur, or in the county where the person resides or carries on business, in the name of and on behalf of the people of the State of Oregon against the person participating in the violation, to enjoin the person from continuing or engaging in the violation or doing any act in furtherance of the violation, and to apply for the appointment of a receiver or conservator of the assets of the defendant if appropriate. [1983 c.530 §45]

(Prohibited Practices)

94.940 False practices prohibited. No person shall, in connection with an offering, sale or lease of an interest in a timeshare plan:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a material fact;

(3) Fail to state a material fact necessary to make a statement clear;

(4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet or other literature containing an untrue statement of a material fact or that fails to state a material fact necessary to make the statements made in the literature not misleading;

(5) Issue, circulate or publish any advertising matter or make any written representation, unless the name of the person issuing, circulating or publishing the matter or making the representation is clearly indicated; or

(6) Make any statement or representation, or issue, circulate or publish any advertising matter containing any statement that the timeshare plan has been in any way approved or indorsed by the Real Estate Commissioner except in conjunction with a public report issued by the commissioner under ORS 94.828 (1), (2) and (4). [1983 c.530 §41]

94.945 Advertising regulation. It shall be unlawful for any developer or the agent or employee of a developer with intent to sell or lease a timeshare in a timeshare plan, to authorize, use, direct or aid in the publication, distribution or circularization of any advertisement, radio broadcast or telecast concerning a timeshare plan, that contains any false or misleading statement, pictorial representation or sketch. Nothing in this section shall be construed to hold the publisher or employee of any newspaper, any job printer, broadcaster or telecaster liable for any publication referred to in ORS 94.940 unless the publisher, employee, printer, broadcaster or telecaster has actual knowledge that the material is false or has an interest in the timeshare plan advertised. [1983 c.530 §42]

MEMBERSHIP CAMPGROUNDS

94.953 Definitions for ORS 94.953 to 94.989. As used in ORS 94.953 to 94.989:

(1) "Blanket encumbrance" means any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, or other material financing lien or encumbrance which secures or evidences the obligation to pay money or to sell or convey on any campgrounds offered for sale, made available to purchasers by the membership camping operator or any portion thereof, and which authorizes, permits or requires the foreclosure or other disposition of the campground affected.

(2) "Campground" means real property owned or operated by a membership camping operator which is available for camping by purchasers of membership camping contracts.

(3) "Camping site" means a space:

(a) Designed and promoted for the purpose of locating a trailer, tent, tent trailer, recreational vehicle, pickup camper or other similar device used for camping; and

(b) With no permanent dwelling on it.

(4) "Commissioner" means the Real Estate Commissioner.

(5) "Facilities" means any of the following amenities provided and located on property owned or operated by a membership camping operator: Camping sites, rental trailers, swimming pools, sport courts, recreation buildings and trading posts or grocery stores.

(6) "Membership camping contract" means an agreement offered or sold within this state granting the purchaser the right or license to use for more than 30 days the campgrounds and facilities of a membership camping operator and includes a membership which provides for such use.

(7) "Membership camping contract broker" means a person who resells a membership camping contract to a new purchaser on behalf of the prior purchaser, but does not include a membership camping operator or its agents.

(8) "Membership camping operator" means any person, other than an entity that is tax exempt under section 501 (c)(3) of the Internal Revenue Code of 1954, as amended, that solicits membership camping contracts paid for by a fee or periodic payments and has as one purpose camping or outdoor recreation, including use of camping sites primarily by purchasers. "Membership camping operator" does not include:

(a) Mobile home and manufactured dwelling parks or camping or recreational vehicle parks which are open to the general public and do not solicit purchases of membership camping contracts, but rather contain only camping sites rented for per use fee; or

(b) Any person who engages in the business of arranging and selling reciprocal programs and who does not own campgrounds and facilities.

(9) "Offer" means any solicitation reasonably designed to result in the entering into of a membership camping contract.

(10) "Purchaser" means a person who enters into a membership camping contract and obtains the right to use campgrounds and outdoor facilities of a membership camping operator.

(11) "Sale" or "sell" means entering into, or other disposition of, a membership camping contract for value; however, the term "value" does not include a fee to offset the reasonable costs of transfer of a membership camping contract.

(12) "Salesperson" means any individual, other than a membership camping operator, who offers to sell or sells membership camping contracts by making a direct sales presentation to prospective purchasers, but does not include individuals engaged in the referral of persons without making any representations about the camping program or a direct sales presentation to prospective purchasers. "Salesperson" does not include a campground manager who is authorized in writing to act on behalf of a membership camping operator in the operation of a campground and in the supervision of campground employees and salespersons and who does not offer to sell or sell membership camping contracts by making a direct sales presentation to prospective purchasers. [1985 c.639 §1; 1991 c.377 §6]

94.956 Registration required to sell membership camping contract. Except as provided in ORS 94.959, and except for transactions pursuant to ORS 94.962, no person shall offer to sell or sell a membership camping contract in this state unless the membership camping contract is registered under ORS 94.953 to 94.989. [1985 c.639 §2]

94.959 Application for registration. (1) A membership camping operator wishing to offer to sell or sell a membership camping contract in this state shall register the contract with the Real Estate Commissioner. The application for registration shall include all of the following if it is applicable to the membership camping operator:

(a) Written disclosures, in any format the commissioner is satisfied accurately and clearly communicates the required information, which include:

(A) The name and address of the membership camping operator and any person who, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the membership camping operator;

(B) A brief description of the membership camping operator's experience in the camping club business;

(C) A brief description of the nature of the purchaser's right or license to use the campground or facilities;

(D) The location and a brief description of the significant facilities and recreation services then available for use by purchasers and those which are represented to purchasers as being planned, together with a brief description of any significant facilities or recreation services that are or will be available to nonpurchasers and the price to nonpurchasers therefor;

(E) A brief description of the membership camping operator's ownership of or other right to use the campground facilities represented to be available for use by purchasers, together with a brief description of the duration of any lease, real estate contract, license franchise or other agreement entitling the membership camping operator to use the property, and any material provisions of the agreements which restrict a purchaser's use;

(F) A brief description of any material encumbrance, including any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, or other material financing lien or encumbrance that secures or evidences the obligation to pay money or to sell or convey, or which authorizes or requires the foreclosure or other disposition of the campground affected;

(G) A brief description of any reciprocal agreement allowing purchasers to use camping sites, facilities or other properties owned or operated by any person other than the membership camping operator with whom the purchaser has entered into a membership camping contract;

(H) A summary or copy of the articles, bylaws, rules, restrictions or covenants regulating the purchaser's use of each campground, the facilities located on each property, and any recreation services provided, including a statement of whether and how the articles, bylaws, rules, restrictions or covenants may be changed;

(I) A brief description of all payments of a purchaser under a membership camping contract, including initial fees and any further fees, charges or assessments, together with any provisions for changing the payments;

(J) A description of any restraints on the transfer of membership camping contracts;

(K) A brief description of the policies relating to the availability of camping sites and whether reservations are required;

(L) A brief description of the membership camping operator's right to change or withdraw from use all or a portion of the campgrounds or facilities and the extent to which

the membership camping operator is obliged to replace facilities or campgrounds withdrawn;

(M) A brief description of any grounds for forfeiture of a purchaser's membership camping contract; and

(N) A copy of the membership camping contract form;

(b) A statement of the total number of membership camping contracts then in effect, both within and without this state; and a statement of the total number of membership camping contracts intended to be sold, both within and without this state, together with a commitment that the total number will not be exceeded unless disclosed by amendment to the registration;

(c) If the campground or campgrounds owned or being purchased by the membership camping operator at the time of registration are campgrounds on which the membership camping operator or another membership camping operator previously registered a membership camping contract with the State of Oregon and sold memberships under the registered contract and thereafter went out of business or filed for bankruptcy, the new membership camping operator shall file with the commissioner at the time of registration a detailed plan whereunder all membership purchasers from the prior membership camping operator or operators for the campground or campgrounds will be offered memberships by the new membership camping operator despite any rejection or cancellation of the previous contracts during bankruptcy proceedings of the prior membership camping operator or operators. Procedures for written notice to the purchasers and the material terms and conditions of membership offered by the new campground operator shall be included in the detailed plan filed with the commissioner. The material terms and conditions including but not limited to price and terms of payment offered by the new campground operator or operators shall not be materially less favorable than the material terms and conditions offered to new purchasers; and

(d) Any other material information the commissioner may, by rule or order, require for the protection of the purchasers.

(2) The application shall be signed by the membership camping operator, an officer or general partner of the membership camping operator or by another person holding a power of attorney for such purpose from the membership camping operator. If the application is signed pursuant to a power of attorney, a copy of the power of attorney shall be included with the application.

(3) The application shall be submitted with the registration fee.

(4) An application for registration to offer or sell membership camping contracts shall be amended when a material change from the information previously filed occurs. Such amendment shall be filed with the commissioner within 10 days after the membership camping operator knows of such change.

(5) In place of the disclosures required with the application for registration, the commissioner may accept a public report or other disclosure from another state in which the membership camping operator has registered. [1985 c.639 §3; 1991 c.377 §7]

94.962 Exemptions from registration. The following transactions are exempt from registration:

(1) An offer, sale or transfer by any one person of not more than one membership camping contract for any membership camping operator in any 12-month period, unless the person receives a commission or similar payment for the sale or transfer.

(2) An offer or sale by a government, government agency or other subdivision of a government.

(3) Granting a security interest in a membership camping contract.

(4) An offer, sale or transfer by a membership camping operator of a membership camping contract previously registered by the operator if the offer, sale or transfer constitutes a resale to another owner. [1985 c.639 §4]

94.965 Effective date of registration. The application for registration shall automatically become effective upon the expiration of 45 calendar days following filing of a completed application with the Real Estate Commissioner unless:

(1) The application for registration is denied under ORS 94.968;

(2) The commissioner grants the registration effective as of an earlier date; or

(3) The applicant consents to a delay of the effective date. [1985 c.639 §5]

94.968 Denial, suspension and revocation of registration; other sanctions. (1) The Real Estate Commissioner may order that a registration of an offer or sale of membership camping contracts be denied, suspended or revoked if the commissioner makes findings pursuant to ORS 183.430 that any of the following is true:

(a) The membership camping operator has failed to comply with any provisions of ORS 94.953 to 94.989 which materially affect

the rights of purchasers or prospective purchasers of membership camping contracts.

(b) The membership camping operator is representing to purchasers in connection with the offer or sale of a membership camping contract that any campground or facilities are planned without reasonable grounds to believe that the campground or facilities will be completed within a reasonable time.

(c) The membership camping operator's offering of membership camping contracts works a fraud on purchasers or owners of membership camping contracts.

(2) Proceedings for suspending, revoking or denying a registration shall be governed by ORS chapter 183.

(3) If the commissioner finds that immediate suspension of a registration is necessary to protect purchasers or owners from fraud, the commissioner may order any person subject to ORS 94.953 to 94.989 to desist from such conduct and may suspend the registration immediately. Affected persons shall be entitled to a hearing as in the case of license suspension under ORS 183.430.

(4) If the commissioner finds that a membership camping operator or other person is violating any of the provisions of ORS 94.953 to 94.989, the commissioner may order the person to desist and refrain from violating the provisions and from the further offering and sale of membership camping contracts.

(5) If the commissioner finds that a membership camping operator or other person is violating, has violated or is about to violate, any of the provisions of ORS 94.953 to 94.989, the commissioner may bring an action in the circuit court of the county where the violation or threatened violation has occurred or is about to occur, or in the county where the person resides or carries on business, in the name of and on behalf of the people of the State of Oregon against the person participating in the violation, to enjoin the person from continuing or engaging in the violation or doing any act in furtherance of the violation, and to apply for the appointment of a receiver or conservator of the assets of the defendant if appropriate. [1985 c.639 §6; 1991 c.377 §8]

94.971 Fee for registration or amendment of an offer or sale of membership camping contract. (1) The fee for registration or amendment of an offer or sale of a membership camping contract shall be an amount sufficient to recover any administrative expenses in staff review and action upon the registration or amendment. The fee is subject to the review of the Oregon Department of Administrative Services. The Real Estate Commissioner shall set an estimated fee to be paid with the application. The final fee shall be paid before final registration becomes effective.

(2) No fee shall be required for an amendment unless additional work is required by Real Estate Agency staff on disclosures.

(3) The fee for registration or renewal of an existing registration of a broker or salesperson is $50. [1985 c.639 §7; 1991 c.377 §9; 1993 c.18 §18]

94.974 Written disclosures required; procedures; inspection of records. (1) Except in a transaction exempt under ORS 94.962, any person who sells a membership camping contract shall provide the prospective purchaser with those written disclosures required under ORS 94.959. Disclosures shall be substantially accurate and complete and made to a prospective purchaser before the prospective purchaser signs a membership camping contract or gives any consideration for the purchase of such contract. The person shall take a receipt from the prospective purchaser upon delivery of the disclosures. Each receipt shall be kept on file by the membership camping operator within this state subject to inspection by the Real Estate Commissioner or the commissioner's authorized representative for a period of three years from the date the receipt is taken.

(2) Records of the sale of membership camping contracts shall be subject to inspection by the commissioner or the commissioner's authorized representative. Any list identifying campground members obtained by the commissioner or the commissioner's authorized representative shall be exempt from disclosure, as trade secrets, to any person, public body or state agency, under ORS 192.501. [1985 c.639 §8; 1991 c.377 §10]

94.975 False practices prohibited. No person shall, in connection with an offering or sale of a membership camping contract:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a material fact;

(3) Fail to state a material fact necessary to make a statement clear;

(4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet or other literature containing an untrue statement of a material fact or that fails to state a material fact necessary to make the statements made in the literature not misleading;

(5) Issue, circulate or publish any advertising matter or make any written representation, unless the name of the person issuing,

circulating or publishing the matter or making the representation is clearly indicated; or

(6) Make any statement or representation, or issue, circulate or publish any advertising matter containing any statement that the membership camping contract has been in any way approved or indorsed by the Real Estate Commissioner. [1991 c.377 §2]

Note: 94.975 and 94.976 were added to and made a part of 94.953 to 94.989 by legislative action but were not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

94.976 Advertising regulation. It shall be unlawful for any membership camping operator or the agent or employee of any membership camping operator with intent to sell a membership camping contract, to authorize, use, direct or aid in the publication, distribution or circularization of any advertisement, radio broadcast or telecast concerning a membership camping contract, that contains any materially false or misleading statement, pictorial representation or sketch. Nothing in this section shall be construed to hold the publisher or employee of any newspaper, any job printer, broadcaster or telecaster liable for any publication referred to in this chapter, unless the publisher, employee, printer, broadcaster or telecaster has actual knowledge that the material is false or has an interest in the membership camping contract being advertised. [1991 c.377 §3]

Note: See note under 94.975.

94.977 Registration as salesperson or broker. (1) Unless the transaction is exempt under ORS 94.962, it is unlawful for any person to act as a salesperson or membership camping contract broker in this state without first registering as a salesperson or membership camping contract broker as provided in ORS 94.980. Individuals licensed as real estate brokers or principal real estate brokers under ORS chapter 696 are exempt from registration under this section.

(2) A violation of this section is a Class A misdemeanor. [1985 c.639 §9; 2001 c.300 §54; 2007 c.319 §26]

94.980 Application for registration; fee. (1) A salesperson or membership camping contract broker may apply for registration by filing with the Real Estate Commissioner an application which includes the following information:

(a) A statement whether or not the applicant has been convicted of any misdemeanor or felony involving theft, fraud or dishonesty or whether or not the applicant has been enjoined from, had any civil penalty assessed for, or been found to have engaged in any violation of any act designed to protect consumers; and

(b) A statement describing the applicant's employment history for the past five years and whether or not any termination of employment during the last five years was occasioned by any theft, fraud or act of dishonesty.

(2) Each applicant for initial registration shall submit to fingerprinting and provide to the commissioner as part of the application a recent photograph of the applicant. The registration must be accompanied by a written acceptance of the applicant as a salesperson signed by the membership camping operator with whom the salesperson will be associated.

(3) The commissioner may deny, suspend or revoke a salesperson's or membership camping contract broker's application for registration or the salesperson's or membership camping contract broker's registration if the commissioner finds that the order is necessary for the protection of purchasers or owners of membership camping contracts and that the applicant or registrant:

(a) Has been convicted of any misdemeanor or felony or has been enjoined from, had any civil penalty assessed for, or been found to have engaged in any violation of any act designed to protect consumers;

(b) Has violated any material provision of ORS 94.925 to 94.983; or

(c) Has engaged in fraudulent or deceitful practices in any industry involving sales to consumers.

(4) Registration shall be effective for a period of one year. Registration shall be renewed annually by the filing of a form prescribed by the commissioner for that purpose. The completed application for registration or renewal shall automatically become effective upon the expiration of 30 business days following filing with the commissioner, unless:

(a) The application has been denied under subsection (3) of this section;

(b) The commissioner grants the registration effective as of an earlier date; or

(c) The applicant or registrant consents to delay of the effective date.

(5) During the effective period of a salesperson's registration, the salesperson may transfer to a new membership camping operator by requesting the operator to return the salesperson's registration to the commissioner and filing with the commissioner a written acceptance of the salesperson's transfer signed by the membership camping operator with whom the salesperson will be associated following the transfer. Upon receipt of the salesperson's registration and payment to the commissioner of a $10 transfer fee, the commissioner may issue a regis-

tration for the salesperson to the new membership camping operator. Upon the request of a salesperson, a membership camping operator shall promptly return the registration of the salesperson to the commissioner.

(6) A salesperson's registration granted under this section shall be issued to a membership camping operator who signed the written acceptance accompanying the initial registration application or transfer request. A salesperson's registration entitles the salesperson to sell membership camping contracts only for any campground operated by the membership camping operator under the supervision of the operator. If the salesperson terminates sales activity for any reason, the membership camping operator shall return the registration of the salesperson to the commissioner without delay.

(7) If an applicant for registration has an active real estate license outstanding, the applicant must place the real estate license on inactive status before issuance of the registration by the commissioner. A salesperson or membership camping contract broker may not reactivate an inactive real estate license during any term of registration as a salesperson or membership camping contract broker. [1985 c.639 §10; 1991 c.377 §11]

94.983 Cancellation of contract by purchaser; notice of right to cancel. (1) Any membership camping contract may be canceled at the option of the purchaser, if:

(a) The purchaser sends notice of the cancellation by certified mail, return receipt requested, to the membership camping operator; and

(b) The notice is posted not later than midnight of the third business day following the day on which the membership camping contract is signed.

(2) In addition to the cancellation right established in subsection (1) of this section, any purchaser who signs a membership camping contract without inspecting a campground or facility with camping sites or proposed camping sites may, after making an inspection, cancel the membership camping contract by posting a notice by certified mail, return receipt requested, not later than midnight of the sixth business day following the day on which the membership camping contract is signed. In computing the number of business days, the day on which the membership camping contract was signed, Saturdays, Sundays and legal holidays shall not be included as a "business day." The membership camping operator shall promptly refund any money or other consideration paid by the purchaser upon receipt of timely notice of cancellation by the purchaser.

(3) Every membership camping contract shall include the following statement in at least 10-point type immediately before the space for the purchaser's signature:

_____

Purchaser's Right To Cancel: You may cancel this membership camping contract without any cancellation fee or other penalty by sending notice of cancellation by certified mail, return receipt requested, to _____ (insert name and mailing address of membership camping operator). The notice must be postmarked by midnight of the third business day following the day on which the membership camping contract is signed. In computing the three business days, the day on which the membership camping contract is signed shall not be included as a "business day," nor shall Saturday, Sunday or legal holidays be included.

_____

(4) If the purchaser has not inspected a campground or facility at which camping sites are located or planned, the notice must contain the following additional language:

_____

If you sign this membership camping contract without having first inspected the property at which camping sites are located or planned, you may also cancel this membership camping contract by giving this notice within six business days following the day on which you signed if you inspect such a property prior to sending the notice.

_____

(5) No act of a purchaser shall be effective to waive the right of cancellation granted by subsection (1) or (2) of this section. [1985 c.639 §11]

94.986 Requirements for sale of membership camping contract; nondisturbance agreements. With respect to any campground offered for sale in this state and acquired and put into operation by a membership camping operator after September 1, 1985, the membership camping operator shall not sell membership camping contracts in this state granting the right to use such campground until one of the following requirements has been satisfied:

(1) Each person holding an interest in a blanket encumbrance executes and delivers to the Real Estate Commissioner a nondisturbance agreement and records such agreement in the real estate records of the county in which the campground is located. "Nondisturbance agreement" means an instrument by which the holder of a blanket encum-

brance agrees that the holder's rights in the campground shall be subordinate to the rights of any membership camping contract purchaser. Every nondisturbance agreement must contain a covenant by the lienholder that the lienholder, its successors, and anyone who acquires the campground property through the blanket lien shall not use, or cause or permit the property to be used in a manner that prevents a membership camping contract purchaser from using, the campground property in the manner contemplated by the membership camping contract. The lienholder's agreement not to disturb a membership camping contract purchaser may require as a continuing condition that the purchaser perform all obligations and make all payments due under any membership camping contract for the purchaser's campground interest and, if the membership camping contract is held as a leasehold, under the lease for the purchaser's campground interest. The nondisturbance agreement shall also contain provisions setting forth each of the following:

(a) The nondisturbance agreement may be enforced by purchasers of membership camping contracts. If the membership camping operator is not in default under its obligations to the holder of the blanket encumbrance, the agreement may be enforced by both the membership camping operator and the purchasers.

(b) The nondisturbance agreement is effective as between each purchaser and the holder of the blanket encumbrance despite any rejection or cancellation of the purchaser's contract during bankruptcy proceedings of the membership camping operator.

(c) The agreement is binding upon the successors in interest of both the membership camping operator and the holder of the blanket encumbrance.

(d) A holder of the blanket encumbrance who obtains title or possession, or who causes a change in title or possession in a campground by foreclosure or otherwise, and who does not continue to operate the campground upon conditions no less favorable to members than existed prior to the change of title or possession shall:

(A) Offer the title or possession of the campground to an association of members to operate the campground; or

(B) Obtain a commitment from another entity that obtains title or possession to undertake the responsibility for operation of the campground.

(2) If a financial institution, acting as hypothecation lender and providing the major hypothecation loan to the membership camping operator, has a lien on, or security interest in, the membership camping operator's interest in the campground, the financial institution shall execute and deliver to the commissioner a nondisturbance agreement and record such agreement in the real estate records of the county in which the campground is located. In addition, each person holding an interest in any blanket encumbrance superior to the interest held by the financial institution shall execute, deliver and record an instrument stating that such person shall give the financial institution notice of, and at least 30 days to cure, any default under the blanket encumbrance before such person commences any foreclosure action affecting the campground. For the purposes of this provision, a major hypothecation loan to a membership camping operator is a loan or line of credit secured by substantially all of the contracts receivable arising from the membership camping operator's sale of membership camping contracts.

(3) There shall have been delivered to and accepted by the commissioner a surety bond or letter of credit with the commissioner as obligee for the benefit of purchasers. The bond or letter of credit must be in an amount which is not less than 105 percent of the remaining principal balance of every indebtedness secured by the blanket encumbrance affecting the campground. Any such bond must be issued by a surety authorized to do business in this state and having sufficient net worth to satisfy the indebtedness. Any such letter of credit must be irrevocable and must be drawn upon a bank, savings and loan association or other financial institution acceptable to the commissioner. The bond or letter of credit shall provide for payment of all amounts secured by the blanket encumbrance, including costs, expenses and legal fees of the lienholder, if for any reason the blanket encumbrance is enforced. The bond or letter of credit may be reduced periodically in proportion to the reduction of the amounts secured by the blanket encumbrance.

(4) There have been delivered to and accepted by the commissioner other financial assurances which the commissioner finds are acceptable to carry into effect the intent and provisions of this section. [1985 c.639 §11a; 1991 c.377 §5]

94.987 Judicial declaration of failure in management. (1)(a) Upon petition by the Real Estate Commissioner or a majority of active purchasers not then in default under their membership camping contracts, a court of competent jurisdiction may declare a failure of management of the membership camping operator and appoint a trustee to assume the membership camping operator's duties

under the membership camping contracts, if the court finds that:

(A) Irreparable injury to the rights of the purchasers is likely to occur unless a trustee is appointed; and

(B) There is no reasonable alternative to appointment of a trustee.

(b) For purposes of this subsection, "active purchaser" means a current, dues-paying member of the membership camping operator.

(2) The court may attach such conditions and terms to its appointment of a trustee under subsection (1) of this section as the court considers necessary to protect the rights of the purchasers under the membership camping contract. The trustee shall provide a copy of the court's decision in such a case to the commissioner.

(3) If the court petitioned under subsection (1) of this section finds that there is a reasonable alternative to the appointment of a trustee, the court may order the membership camping operator to carry out the reasonable alternative and may attach to its order such terms and conditions as it considers necessary to protect the rights of the purchasers under the membership camping contracts. [1991 c.377 §4]

94.989 Interpretation of membership camping contracts; application of Unlawful Trade Practices Act. (1) Membership camping contracts, campgrounds and facilities are not subdivisions or series partitions under ORS chapter 92, are not condominiums under ORS chapter 100, are not timeshare properties under ORS chapter 94, and are not securities under ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995.

(2) Membership camping contracts covered by ORS 94.925 to 94.983 are retail installment contracts under ORS 83.010 to 83.190.

(3) The Attorney General shall protect the rights of purchasers through the application of ORS 646.605 to 646.652. [1985 c.639 §12]

94.990 [Repealed by 1971 c.478 §1]

94.991 [Formerly 91.990; 1987 c.320 §15; renumbered 100.990 in 1989]