

# Senate Bill 906

Sponsored by Senator B STARR (at the request of Condominium-HOA Working Group)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Revises provisions governing condominiums and planned communities.  
Allows electronic notices and electronic ballots under specified circumstances.

## A BILL FOR AN ACT

Relating to properties governed by declarations; creating new provisions; amending ORS 94.550, 94.572, 94.580, 94.585, 94.590, 94.616, 94.625, 94.630, 94.647, 94.650, 94.655, 94.660, 94.670, 94.719, 100.005, 100.020, 100.102, 100.105, 100.110, 100.115, 100.130, 100.135, 100.155, 100.200, 100.210, 100.275, 100.405, 100.407, 100.408, 100.410, 100.425, 100.427, 100.450, 100.470, 100.480, 100.510, 100.515, 100.530, 100.535, 100.540, 100.550, 100.600, 100.625 and 100.655 and section 29, chapter 569, Oregon Laws 2003; and repealing ORS 94.695.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Sections 2, 3, 4 and 5 of this 2005 Act are added to and made a part of ORS 94.550 to 94.783.**

**SECTION 2. (1) As used in this section, "electronic notice" means a notice given by:**

**(a) Electronic mail;**

**(b) Facsimile transmission; or**

**(c) Posting on a website.**

**(2) Unless the declaration or bylaws prohibit or require electronic notice, the board of directors of a homeowners association may, in its discretion, give electronic notice to consenting owners or directors for any notice required or permitted to be given under the declaration or bylaws or ORS 94.550 to 94.783.**

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

**(4) Electronic notice under this section may be given only to owners or directors who have consented to receive electronic notice. The consent of an owner or director shall comply with section 4 of this 2005 Act.**

**(5) If an electronic notice to an owner or director under this section is posted on a website, an electronic mail shall also be sent to the owner or director that contains instructions on obtaining access to the posting on the website.**

**(6) Electronic notice under this section is effective when it:**

**(a) Is electronically transmitted to an address, location or system designated by the owner or director for that purpose; or**

**(b) Has been posted on a website and a separate electronic mail has been delivered to the owner or director that contains instructions on obtaining access to the posting on the**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 website.

2 (7) Electronic notice to owners and directors may include material that the declaration  
3 or bylaws or ORS 94.550 to 94.783 require or permit to accompany the electronic notice.

4 (8) The board shall designate in rules to adopted under subsection (9) of this section the  
5 message format of electronic notices.

6 (9) If the board of directors elects to give notices electronically, board shall adopt rules  
7 to implement this section.

8 **SECTION 3.** (1) As used in this section, "electronic ballot" means a ballot given by:

9 (a) Electronic mail;

10 (b) Facsimile transmission; or

11 (c) Posting on a website.

12 (2) Unless the declaration or bylaws prohibit or provide other methods for electronic  
13 ballots, the board of directors of a homeowners association, in its discretion, may provide  
14 that a vote, approval or consent of an owner or director may be given by an electronic ballot  
15 if the owner or director consents under section 4 of this 2005 Act.

16 (3) An electronic ballot shall comply with the requirements of this section and the re-  
17 quirements of the declaration and bylaws and ORS 94.550 to 94.783.

18 (4) An electronic ballot may be accompanied by or contained in an electronic notice sent  
19 in accordance with section 2 of this 2005 Act.

20 (5) If an electronic ballot is posted on a website, an electronic mail shall also be sent to  
21 the owner or director that contains instructions on obtaining access to the posting on the  
22 website.

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

25 (7) Unless otherwise provided in the declaration, bylaws or rules adopted under sub-  
26 section (9) of this section, a vote by an electronic ballot may be revoked.

27 (8) The board of directors shall designate in rules adopted under subsection (9) of this  
28 section the message format of electronic ballots.

29 (9) If the board of directors elects to use electronic ballots, the board shall adopt rules  
30 to implement this section. The rules adopted by the board under this subsection for elec-  
31 tronic ballots shall include procedures to ensure:

32 (a) The authentication of the owner or director voting by an electronic ballot;

33 (b) If a vote conducted by written ballot under ORS 94.647 utilizes the procedure specified  
34 in ORS 94.647 (2)(b), compliance with ORS 94.647; and

35 (c) That the electronic ballot of owners is secret if the declaration, bylaws or rules of the  
36 board of directors requires the electronic ballot to be secret.

37 **SECTION 4.** (1) If the board of directors of a homeowners association offers electronic  
38 notices and balloting under sections 2 and 3 of this 2005 Act, and an owner or director wishes  
39 to use those electronic methods, the owner or director must consent to receive both elec-  
40 tronic notices and electronic ballots. The owner or director may not elect to receive only  
41 electronic notices or only electronic ballots.

42 (2) Consent to receive electronic notices and electronic ballots shall designate the ad-  
43 dress, location or system to which the electronic notices and electronic ballots may be  
44 transmitted. Unless otherwise provided in rules adopted under sections 2 and 3 of this 2005  
45 Act, consent is a general consent to receive all notices and ballots electronically.

(3) An owner or director who has consented to receive electronic notices and electronic ballots under this section may revoke the consent by delivering a revocation to the association in the form of an electronic mail or in accordance with rules adopted by the board of directors.

(4) The consent of any owner or director is revoked if the association is unable to transmit two consecutive electronic notices or electronic ballots in accordance with the consent, and the secretary of the association or other person responsible for sending electronic notices or electronic ballots has knowledge of the inability.

(5) The inadvertent failure by the association to treat the inability to electronically transmit two consecutive electronic notices or electronic ballots as a revocation under subsection (4) of this section does not invalidate any meeting or other action.

**SECTION 5.** (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 may file the 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 a common expense 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 a common expense 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 the owners fail to elect the number of directors sufficient to constitute a quorum of the board of directors at the turnover meeting, 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 in the manner prescribed 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.

**SECTION 6.** ORS 94.550 is amended to read:

94.550. 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 *[as defined in ORS 94.550]* 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, *[and]* bylaws **or other governing document** as of January 1, 2002.

(4) "Class II planned community" means a planned community *[as defined in ORS 94.550]* 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, *[and]* bylaws **or other governing document** as of January 1, 2002.

(5) "Class III planned community" means a planned community *[as defined in ORS 94.550]* 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

1 association or board of directors of the association.

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

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

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

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

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

13 (a) A mortgagee under a mortgage;

14 (b) A beneficiary under a trust deed; or

15 (c) The vendor under a land sale contract.

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

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

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

26 (b) "Planned community" does not mean:

27 (A) A condominium under ORS chapter 100;

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

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

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

32 (20) "Purchaser for resale" means any person who purchases from the declarant more than two  
33 lots for the purpose of resale whether or not the purchaser for resale makes improvements to the  
34 lots before reselling them.

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

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

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

42 (c) Converting lots into common property; **or**

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

44 *[(e)]* **(d)** Exercising any right of declarant control reserved under ORS 94.600.

45 (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).

**SECTION 7.** ORS 94.580 is amended to read:

94.580. (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*] **revenues** 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 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.

**SECTION 8.** ORS 94.616 is amended to read:

94.616. (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 is present**, the owners shall elect **not less than the number of directors sufficient to constitute a quorum of the** [a] board of directors in accordance with the 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

1 articles of incorporation, if any, of the planned community and any supplements and amendments to  
2 the articles or bylaws;

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

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

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

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

10 (f) A financial statement. The financial statement:

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

14 (B) Must be reviewed, in accordance with the Statements on Standards for Accounting and Re-  
15 view Services issued by the American Institute of Certified Public Accountants, by an independent  
16 certified public accountant licensed in the State of Oregon if the annual assessments of an associ-  
17 ation exceed \$75,000;

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

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

21 (i) Records of all property tax payments for the common property to be administered by the as-  
22 sociation;

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

25 (k) All bank signature cards;

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

27 (m) The reserve study described in ORS 94.595, including all updates and other sources of in-  
28 formation that serve as a basis for calculating reserves in accordance with ORS 94.595;

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

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

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

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

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

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

38 (E) A list of the general contractor and the electrical, heating and plumbing subcontractors re-  
39 sponsible for construction or installation of common property;

40 (p) Insurance policies;

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

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

45 (s) A list of any written warranties on the common property that are in effect and the names



1 of the contractor, subcontractor or supplier who made the installation for which the warranty is in  
2 effect;

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

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

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

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

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

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

21 **(6) If the owners fail to elect the number of directors sufficient to constitute a quorum**  
22 **of the board of directors at the turnover meeting held in accordance with this section:**

23 **(a) Until the election of the number of directors sufficient to constitute a quorum, a**  
24 **special meeting for the purpose of election of directors may be called and notice given by an**  
25 **owner or any first mortgagee in accordance with the notice requirements in the bylaws for**  
26 **special meetings. The owners present at the special meeting shall select a person to preside**  
27 **over the meeting.**

28 **(b) An owner or first mortgagee may request the court to appoint a receiver as provided**  
29 **in section 5 of this 2005 Act.**

30 **SECTION 9.** ORS 94.625 is amended to read:

31 94.625. (1) **Except as provided in subsection (2) of this section**, not later than the date on  
32 which the first lot in the planned community is conveyed, the declarant shall:

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

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

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

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

41 *[(2)(a)]* **(3)(a)** The board of directors of an association of a planned community created under  
42 ORS 94.550 to 94.783 before January 1, 2002, or a planned community described in ORS 94.572 shall  
43 cause the bylaws of the association and amendments to the bylaws in effect but not codified in the  
44 bylaws to be certified as provided in this subsection and recorded in the office of the recording of-  
45 ficer of each county in which the planned community is located within 180 days of receipt of a

1 written request from an owner that the bylaws be recorded.

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

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

5 (B) Each amendment to the bylaws was duly adopted in accordance with the bylaws of the as-  
6 sociation.

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

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

11 [(3)] (4) Unless otherwise provided in the bylaws, amendments to the bylaws may be proposed  
12 by a majority of the board of directors or by at least 30 percent of the owners of the planned com-  
13 munity.

14 [(4)] (5) Subject to subsection [(5)] (6) of this section, an amendment is not effective unless the  
15 amendment is:

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

19 (b) Certified by the president and secretary of the association as having been adopted in ac-  
20 cordance with the bylaws and this section and acknowledged in the manner provided for acknowl-  
21 edgment of deeds if the amendment is required to be recorded under paragraph (c) of this subsection;  
22 and

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

25 [(5)] (6) If a provision required to be in the declaration under ORS 94.580 is included in the  
26 bylaws, the voting requirements for amending the declaration shall also govern the amendment of  
27 the provision in the bylaws.

28 [(6)] (7) Notwithstanding a provision in the bylaws, including bylaws adopted prior to July 14,  
29 2003, that requires an amendment to be executed, or executed and acknowledged, by all owners ap-  
30 proving the amendment, amendments to the bylaws under this section become effective after ap-  
31 proval by the owners if executed and certified on behalf of the association by the president and  
32 secretary in accordance with subsection [(4)(b)] (5)(b) of this section.

33 [(7)] (8) An amendment to the bylaws is conclusively presumed to have been regularly adopted  
34 in compliance with all applicable procedures relating to the amendment unless an action is brought  
35 within one year after the effective date of the amendment or the face of the amendment indicates  
36 that the amendment received the approval of fewer votes than required for approval. Nothing in this  
37 subsection prevents the further amendment of an amended bylaw.

38 [(8)] (9) Failure to comply with subsection (1) of this section does not invalidate a conveyance  
39 from the declarant to an owner.

40 [(9)] (10) The board of directors, by resolution and without the further approval of the owners,  
41 may cause restated bylaws to be prepared and recorded to codify individual amendments that have  
42 been adopted in accordance with subsection [(4)] (5) of this section. Bylaws restated under this  
43 subsection must:

44 (a) Include all previously adopted amendments that are in effect and may not include any other  
45 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.

**SECTION 10.** ORS 94.630 is amended to read:

94.630. (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 relating to or affecting **real property individually owned, for which the association is responsible for the maintenance, repair and replacement, insurance or other expenses** or common property, including but not limited to actions for damage, destruction, impairment or loss of use of *[any]* **the individually owned real property** or 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

(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:

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

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

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

9 (m) Adopt rules regarding the termination of utility services paid for out of assessments of the  
 10 association and access to and use of recreational and service facilities available to owners [*and,*  
 11 *after giving*], **which must provide for** written notice and an opportunity to be heard[,] **before the**  
 12 **association may** terminate the rights of any owners to receive [*such*] **the** benefits or services until  
 13 the correction of any violation covered by [*such*] **the** rule has occurred;

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

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

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

24 (o) Impose reasonable charges for the preparation and recordation of amendments to the decla-  
 25 ration;

26 (p) Provide for the indemnification of its officers and the board of directors and maintain li-  
 27 ability insurance for directors and officers;

28 (q) Assign its right to future income, including the right to receive common expense assess-  
 29 ments; and

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

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

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

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

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

45 (c) Identify, by the designations stated or referenced in the declaration or applicable supple-

1 mental declaration, all affected lots and common property; and

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

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

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

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

22 (d) Unless a stay has been granted under paragraph (c) of this subsection, if the dispute resol-  
23 ution process is not completed within 30 days after receipt of the initial offer, the initiating party  
24 may commence litigation or an administrative proceeding without regard to whether the dispute  
25 resolution is completed.

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

29 (f) The requirements of this subsection do not apply to circumstances in which irreparable harm  
30 to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect  
31 assessments, other than assessments attributable to fines.

32 **SECTION 11.** ORS 94.647 is amended to read:

33 94.647. (1) Unless prohibited or limited by the declaration or bylaws, any action that may be  
34 taken at any annual, regular or special meeting of the homeowners association may be taken with-  
35 out a meeting if the association delivers a written ballot to every association member that is entitled  
36 to vote on the matter. Action by written ballot may not substitute for the following meetings:

37 (a) A turnover meeting required under ORS 94.616.

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

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

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

1 must be accompanied by:

2 (A) A secrecy envelope;

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

4 (C) Instructions for marking and returning the ballot.

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

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

7 (B) The right of owners to request secrecy procedures specified in paragraph (b) of this sub-  
8 section;

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

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

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

13 *[(d) Notwithstanding the applicable provisions of subsection (3) or (4) of this section, written ballots  
14 that are returned in secrecy envelopes may not be examined or counted before the deadline for returning  
15 ballots has passed.]*

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

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

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

26 (b) If approval of a proposed action otherwise would require a meeting at which a specified  
27 percentage of owners must authorize the action, the proposal shall be deemed to be approved when  
28 the percentage of total votes cast in favor of the proposal equals or exceeds *[such]* **the** required  
29 percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition  
30 renders approval impossible or when both the date for return of ballots has passed and *[such]* **the**  
31 required percentage has not been met. *[Unless otherwise prohibited by the declaration or bylaws, the  
32 votes may be counted from time to time before the final return date to determine whether the proposal  
33 has passed or failed by the votes already cast on the date they are counted.]*

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

35 (a) If approval of a proposal by written ballot requires that the total number of votes cast equal  
36 or exceed a certain quorum requirement, the number of responses needed to meet *[such]* **the** quorum  
37 requirement; *[and]*

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

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

42 **(5)(a)** *[All solicitations for votes by written ballot shall specify the period during which]* The as-  
43 sociation shall accept written ballots for counting **during the period specified in the solicitation**  
44 **under subsection (4) of this section.***[, which]* **Except as provided in paragraph (b) of this sub-**  
45 **section, the period shall end on the earliest of the following dates:**

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

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

7        [(c)] (C) In all cases, *[the]* **a specified** date certain on which all ballots must be returned to be  
 8 counted.

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

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

16        (6) Except as otherwise provided in the declaration or bylaws, **unless the vote is by secrecy**  
 17 **procedure under subsection (2)(b) of this section,** a written ballot may *[not]* be revoked **before**  
 18 **the final return date of ballots.**

19        (7) Unless otherwise prohibited by the declaration, articles of incorporation or bylaws,  
 20 the votes may be counted from time to time before the final return date of the ballots to  
 21 determine whether the proposal has passed or failed by the votes already cast on the date  
 22 the ballots are counted. Ballots that are returned in secrecy envelopes may not be examined  
 23 or counted before the date certain specified in the solicitation or any extension.

24        **SECTION 12.** ORS 94.650 is amended to read:

25        94.650. (1) The homeowners association shall hold at least one meeting of the owners each cal-  
 26 endar year.

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

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

36        (c) Business transacted at a special meeting shall be confined to the purposes stated in the no-  
 37 tice.

38        **(3) If the owners request a special meeting under subsection (2) of this section and the**  
 39 **notice is not given within 30 days after the date the written request is delivered to the**  
 40 **president or the secretary, a person signing the request may set the time and place of the**  
 41 **meeting and give notice as provided in subsection (4) of this section.**

42        [(3)] (4) Not less than 10 or more than 50 days before any meeting called under this section, the  
 43 secretary or other officer specified in the bylaws shall cause **the** notice to be hand delivered or  
 44 mailed to the mailing address of each lot or to the mailing address designated in writing by the  
 45 owner, and to all mortgagees that have requested *[such]* **the** notice. *[Mortgagees may designate a*

1 *representative to attend a meeting called under this section.]*

2 [(4)] (5) The notice of a meeting shall state the time and place of the meeting and the items on  
3 the agenda, including the general nature of any proposed amendment to the declaration or bylaws,  
4 any budget changes or any proposal to remove a director or officer.

5 (6) **Mortgagees may designate a representative to attend a meeting called under this**  
6 **section.**

7 **SECTION 13.** ORS 94.655 is amended to read:

8 94.655. (1) [Unless] **If the bylaws or the declaration** of a homeowners association [*provide oth-*  
9 *erwise,*] **does not specify a quorum for any meeting of the association,** a quorum [*for any meet-*  
10 *ing of the association*] shall consist of the number of persons who are entitled to cast 20 percent of  
11 the votes and who are present in person or by proxy at the beginning of the meeting.

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

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

16 (b) **The quorum required in subsection (1) of this section.**

17 **SECTION 14.** ORS 94.660 is amended to read:

18 94.660. (1) Unless the bylaws provide otherwise, the vote or votes of a lot may be cast [*by ab-*  
19 *sentee ballot or*] pursuant to a proxy executed by the owner **or, in the discretion of the board of**  
20 **directors, by absentee ballot. An absentee ballot shall be treated as a proxy for the purpose**  
21 **of establishing a quorum.**

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

26 (3) A proxy is not valid if it is undated or purports to be revocable without notice. A proxy shall  
27 terminate one year after its date unless the proxy specifies a shorter term.

28 **SECTION 15.** ORS 94.670 is amended to read:

29 94.670. (1) A homeowners association shall retain within this state the documents, information  
30 and records delivered to the association under ORS 94.616 and all other records of the association  
31 for not less than the period specified for the record in ORS 65.771 or any other applicable law ex-  
32 cept that:

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

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

36 (2) All assessments, including declarant subsidies, shall be deposited in a separate bank  
37 account[, *located within*] **in a financial institution authorized to do business in** this state, in the  
38 name of the association. All expenses of the association shall be paid from the association bank  
39 account.

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

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

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



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

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

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

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

18 (A) The amount of assessments due from the owner and unpaid at the time the request was re-  
19 ceived, including:

20 (i) Regular and special assessments;

21 (ii) Fines and other charges;

22 (iii) Accrued interest; and

23 (iv) Late payment charges.

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

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

27 (b) The association is not required to comply with paragraph (a) of this subsection if the asso-  
28 ciation has commenced litigation by filing a complaint against the owner and the litigation is  
29 pending when the statement would otherwise be due.

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

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

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

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

41 (d) Disclosure of information in violation of law.

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

45 (f) Documents, correspondence or other matters considered by the board of directors in execu-

tive 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.

**SECTION 16.** ORS 94.719 is amended to read:

94.719. [*Unless otherwise provided in the declaration or bylaws,*] 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.

**SECTION 17. Sections 18, 19, 20, 21 and 22 of this 2005 Act are added to and made a part of ORS chapter 100.**

**SECTION 18. (1) As used in this section, "electronic notice" means a notice given by:**

**(a) Electronic mail;**

**(b) Facsimile transmission; or**

**(c) Posting on a website.**

**(2) Unless the declaration or bylaws prohibit or require electronic notice, the board of directors of an association of unit owners may, in its discretion, give electronic notice to consenting unit owners or directors for any notice required or permitted to be given under the declaration or bylaws or this chapter.**

**(3) An electronic notice shall comply with the requirements of this section and the requirements of the declaration and bylaws and this chapter.**

**(4) Electronic notice under this section may be given only to unit owners or directors who have consented to receive electronic notice. The consent of a unit owner or director shall comply with section 20 of this 2005 Act.**

**(5) If an electronic notice to a unit owner or director under this section is posted on a website, an electronic mail shall also be sent to the unit owner or director that contains instructions on obtaining access to the posting on the website.**

(6) Electronic notice under this section is effective when it:

(a) Is electronically transmitted to an address, location or system designated by the unit owner or director for that purpose; or

(b) Has been posted on a website and a separate electronic mail has been delivered to the unit owner or director that contains instructions on obtaining access to the posting on the website.

(7) Electronic notice to unit owners and directors may include material that the declaration or bylaws or this chapter requires or permits to accompany the electronic notice.

(8) The board of directors shall designate in rules adopted under subsection (9) of this section the message format of electronic notices.

(9) If the board of directors elects to give notices electronically, the board of directors shall adopt rules that implement this section.

**SECTION 19.** (1) As used in this section, "electronic ballot" means a ballot given by:

(a) Electronic mail;

(b) Facsimile transmission; or

(c) Posting on a website.

(2) Unless the declaration or bylaws prohibit or provide other methods for electronic ballots, the board of directors of an association of unit owners, in its discretion, may provide that a vote, approval or consent of a unit owner or director may be given by an electronic ballot if the unit owner or director consents under section 20 of this 2005 Act.

(3) An electronic ballot shall comply with the requirements of this section and the requirements of the declaration and bylaws and this chapter.

(4) An electronic ballot may be accompanied by or contained in an electronic notice sent in accordance with section 18 of this 2005 Act.

(5) If an electronic ballot is posted on a website, an electronic mail shall also be sent to the unit owner or director that contains 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, bylaws or rules adopted under subsection (9) of this section, a vote by an electronic ballot may be revoked.

(8) The board of directors shall designate in rules adopted under subsection (9) of this section the message format of electronic ballots.

(9) If the board of directors elects to use electronic ballots, the board shall adopt rules to implement this section. The rules adopted by the board under this subsection for electronic ballots shall include procedures to ensure:

(a) The authentication of the unit owner or director voting by an electronic ballot;

(b) If a vote conducted by written ballot under ORS 100.425 utilizes the procedure specified in ORS 100.425 (2)(b), compliance with ORS 100.425; and

(c) That the electronic ballot of unit owners is secret if the declaration, bylaws or rules of the board of directors requires the electronic ballot to be secret.

**SECTION 20.** (1) If the board of directors of an association of unit owners offers electronic notices and balloting under sections 18 and 19 of this 2005 Act, and a unit owner or director wishes to use those electronic methods, the unit owner or director must consent to receive both electronic notices and electronic ballots. The unit owner or director may not

1 elect to receive only electronic notices or only electronic ballots.

2 (2) Consent to receive electronic notices and electronic ballots shall designate the ad-  
3 dress, location or system to which the electronic notice and electronic ballot may be trans-  
4 mitted. Unless otherwise provided in rules adopted under sections 18 and 19 of this 2005 Act,  
5 consent is a general consent to receive all notices and ballots electronically.

6 (3) A unit owner or director who has consented to receive electronic notices and elec-  
7 tronic ballots under this section may revoke the consent by delivering a revocation to the  
8 association in the form of an electronic mail or in accordance with rules adopted by the  
9 board of directors.

10 (4) The consent of any unit owner or director is revoked if the association is unable to  
11 electronically transmit two consecutive electronic notices or ballots in accordance with the  
12 consent, and the secretary of the association or other person responsible for sending elec-  
13 tronic notices or electronic ballots has knowledge of the inability.

14 (5) The inadvertent failure by the association to treat the inability to electronically  
15 transit two consecutive electronic notices or electronic ballots as a revocation under sub-  
16 section (4) of this section does not invalidate any meeting or other action.

17 **SECTION 21.** (1) Subject to subsection (2) of this section, if an association of unit owners  
18 fails to fill vacancies on the board of directors sufficient to constitute a quorum in accord-  
19 ance with the bylaws, a unit owner or a first mortgagee of a unit may request the circuit  
20 court of the county in which the condominium is located to appoint a receiver under ORCP  
21 80 to manage the affairs of the association.

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

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

28 (a) A description of the intended action.

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

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

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

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

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

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

41 (6) If the unit owners fail to elect the number of directors sufficient to constitute a  
42 quorum of the board of directors at the turnover meeting, in addition to the notice require-  
43 ments specified in subsections (2) and (3) of this section, a unit owner shall give the notice  
44 to all other unit owners in the manner prescribed in the bylaws.

45 (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.

**SECTION 22.** (1) A declarant may amend the declaration or bylaws in order to comply with requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the federal Rural Housing Service, 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 condominium or units in a condominium.

(2) If the need to amend the declaration or the bylaws occurs after turnover to the association of unit owners has occurred, the amendment must be approved by the association in accordance with the approval provisions of the declaration or bylaws and this chapter.

**SECTION 23.** ORS 100.005 is amended to read:

100.005. As used in this chapter, unless the context requires otherwise:

(1) "Assessment" means any charge imposed or levied by the association of unit owners on or against a unit owner or unit pursuant to provisions of the declaration or the bylaws of the condominium or provisions of ORS 100.005 to 100.910.

(2) "Association of unit owners" means the association provided for under ORS 100.405.

(3) "Association property" means any real property or interest in real property acquired, held or possessed by the association under ORS 100.405.

(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 unit in a condominium, or an agreement affecting more than one such unit by which the developer holds such condominium under an option, contract to sell or trust agreement.

(5) "Building" means a multiple-unit building or single-unit buildings, or any combination thereof, comprising a part of the property. "Building" also includes a floating structure described in ORS 100.020 (3)(b)(D).

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

(7) "Common elements" means the general common elements and the limited common elements.

(8) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the common elements;

(b) Expenses agreed upon as common by all the unit owners; and

(c) Expenses declared common by ORS 100.005 to 100.625 or by the declaration or the bylaws of the particular condominium.

(9) "Condominium" means:

(a) With respect to property located within this state:

(A) The land, if any, whether fee simple, leasehold, easement or other interest or combination thereof, and whether contiguous or noncontiguous;

(B) Any buildings, improvements and structures on the property; and

(C) Any easements, rights and appurtenances belonging to the property submitted to the provisions of ORS 100.005 to 100.625; and

(b) With respect to property located outside this state, the property that has been committed to the condominium form of ownership in accordance with the jurisdiction within which the property is located.

(10) "Conversion condominium" means a condominium in which there is a building, improvement

or structure that was occupied prior to any negotiation and that is:

(a) Residential in nature, at least in part; and

(b) Not wholly commercial or industrial, or commercial and industrial, in nature.

(11) "Declarant" means a person who records a declaration under ORS 100.100 or a supplemental declaration under ORS 100.110.

(12) "Declaration" means the instrument described in ORS 100.100 by which the condominium is created and as modified by any amendment recorded in accordance with ORS 100.135 or supplemental declaration recorded in accordance with ORS 100.120.

(13) "Developer" means a declarant or any person who purchases an interest in a condominium from declarant, successor declarant or subsequent developer for the primary purpose of resale.

*[(14) "Dwelling unit," "premises," "rental agreement" and "tenant" mean those terms as defined in ORS 90.100.]*

*[(15)]* (14) "Flexible condominium" means a condominium containing property that may be reclassified or withdrawn from the condominium pursuant to ORS 100.150 (1).

*[(16)]* (15) "General common elements," unless otherwise provided in a declaration, means all portions of the condominium that are not part of a unit or a limited common element, including but not limited to the following:

(a) The land, whether fee simple, leasehold, easement, other interest or combination thereof, together with any rights and appurtenances;

(b) The foundations, columns, girders, beams, supports, bearing and shear walls, **windows, except glazing and screening, unit access doors, except glazing and screening**, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of a building;

(c) The basements, yards, gardens, parking areas and outside storage spaces;

(d) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal and incinerating;

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

(f) The premises for the lodging of janitors or caretakers of the property; and

(g) All other elements of a building and the condominium necessary or convenient to their existence, maintenance and safety, or normally in common use.

*[(17)]* (16) "Leasehold" means the interest of a person, firm or corporation who is the lessee under a lease from the owner in fee and who files a declaration creating a condominium under ORS 100.100.

*[(18)]* (17) "Limited common elements" means those common elements designated in the declaration, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

*[(19)]* (18) "Majority" or "majority of unit owners" means more than 50 percent of the voting rights allocated to the units by the declaration.

**(19) "Mortgagee" has the meaning given that term in ORS 94.550.**

(20) "Negotiation" means any activity preliminary to the execution by either developer or purchaser of a unit sales agreement, including but not limited to advertising, solicitation and promotion of the sale of a unit.

(21) "Nonwithdrawable property" means property which pursuant to ORS 100.150 (1)(b):

(a) Is designated nonwithdrawable in the declaration and on the plat; and

(b) Which may not be withdrawn from the condominium without the consent of all of the unit

1 owners.

2 (22) "Percent of owners" or "percentage of owners" means the percent of the voting rights de-  
3 termined under ORS 100.525.

4 (23) "Purchaser" means an actual or prospective purchaser of a condominium unit pursuant to  
5 a sale.

6 (24) "Recording officer" means the county officer charged with the duty of filing and recording  
7 deeds and mortgages or any other instruments or documents affecting the title to real property.

8 (25) "Reservation agreement" means an agreement relating to the future sale of a unit which is  
9 not binding on the purchaser and which grants purchaser the right to cancel the agreement without  
10 penalty and obtain a refund of any funds deposited at any time until purchaser executes a unit sales  
11 agreement.

12 (26) "Sale" includes every disposition or transfer of a condominium unit, or an interest or estate  
13 therein, by a developer, including the offering of the property as a prize or gift when a monetary  
14 charge or consideration for whatever purpose is required by the developer. "Interest or estate" in-  
15 cludes a lessee's interest in a unit for more than three years or less than three years if the interest  
16 may be renewed under the terms of the lease for a total period of more than three years. "Interest  
17 or estate" does not include any interest held for security purposes or a timeshare regulated or  
18 otherwise exempt under ORS 94.803 and 94.807 to 94.945.

19 (27) "Special declarant right" means any right, in addition to the regular rights of the declarant  
20 as a unit owner, reserved for the benefit of or created by the declarant under the declaration, by-  
21 laws or the provisions of this chapter.

22 (28) "Staged condominium" means a condominium which provides for annexation of additional  
23 property pursuant to ORS 100.115 and 100.120.

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

25 (30) "Termination date" means that date described in ORS 100.105 (2)(b) or (7)(d).

26 (31) "Transitional committee" means the committee provided for under ORS 100.205.

27 (32) "Turnover meeting" means the meeting provided for under ORS 100.210.

28 (33) "Unit" or "condominium unit" means a part of the property which:

29 (a) Is described in ORS 100.020 (3);

30 (b) Is intended for any type of independent ownership; and

31 (c) The boundaries of which are described pursuant to ORS 100.105 (1)(d).

32 (34) "Unit designation" means the number, letter or combination thereof designating a unit in  
33 the declaration and on the plat.

34 (35) "Unit owner" means, except to the extent the declaration or bylaws provide otherwise, the  
35 person owning fee simple interest in a unit, the holder of a vendee's interest in a unit under a re-  
36 corded installment contract of sale and, in the case of a leasehold condominium, the holder of the  
37 leasehold estate in a unit.

38 (36) "Unit sales agreement" means a written offer or agreement for the sale of a condominium  
39 unit which when fully executed will be binding on all parties. "Unit sales agreement" includes but  
40 is not limited to an earnest money receipt and agreement to purchase and other such agreements  
41 which serve as an agreement of sale for a cash transaction or which are preliminary to the exe-  
42 cution of an installment contract of sale, but does not include a reservation agreement.

43 (37) "Variable property" means property described in ORS 100.150 (2) and designated as variable  
44 property in the declaration and on the plat.

45 (38) "Voting rights" means the portion of the votes allocated to a unit by the declaration in

accordance with ORS 100.105 [(1)(i)] (1)(j).

**SECTION 24.** ORS 100.020 is amended to read:

100.020. (1) Except as otherwise provided in subsections (2) and (3) of this section, ORS 100.100 to 100.625 apply only to property located within this state which a person elects to submit to the condominium form of ownership as provided in ORS 100.005 to 100.625.

(2) Unless the declarant elects otherwise, ORS 100.175, 100.185, 100.200 (2), 100.205, 100.210, 100.300, 100.305, 100.310, 100.315 and 100.320 apply only to condominiums that include units to be used for residential purposes.

(3) Property may not be submitted to the condominium form of ownership under ORS 100.005 to 100.625 unless:

(a) Each unit has legal access to a public street or highway or, if the unit has such access only by virtue of common ownership with other units, the declaration executed under ORS 100.110 prohibits conveyance of the unit unless after conveyance the unit will continue to have legal access to a public street or highway;

(b) Subject to paragraph (c) of this subsection, each unit consists of:

(A) A building or part of a building;

(B) A space used for the parking or storage of automobiles, trucks, boats, campers or other vehicles or equipment;

(C) A space for the moorage of a watercraft, floating home or other structure; or

(D) A floating structure, including a structure formerly used as a ship or other vessel that:

(i) Is permanently moored to structures in a river, lake or other waterway pursuant to a long-term lease with a remaining term at the time the declaration and plat are recorded of not less than 15 years;

(ii) Contains two or more residential units with a combined floor space of not less than 2,000 square feet; and

(iii) Has upland common elements owned in fee or by leasehold having a remaining term of not less than the remaining term of the leasehold on the submerged or submersible land. The units in a condominium described in this subparagraph shall be considered real property for purposes of the Oregon Condominium Act; and

(c) Each unit has an interest in the common elements in accordance with ORS 100.515. However, a unit may not include any portion of the land. A declaration may not provide that there are no common elements.

(4)(a) Except as otherwise provided in subsection (5) of this section, ORS 100.015 and 100.635 to 100.910 apply to condominiums having units to be used for residential purposes which are not offered for sale as a security pursuant to ORS 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995.

**(b) ORS 100.635 (2), 100.640 (8) to (12), 100.655, 100.705, 100.720, 100.725, 100.730, 100.735, 100.740 and 100.745 do not apply to the sale of units to be used for nonresidential purposes unless the units, including units used for parking or storage, are ancillary to the sale of units to be used for residential purposes.**

(5) ORS 100.650, 100.660, 100.670, 100.675, 100.750, 100.770, 100.775, 100.780, 100.900, 100.905 and 100.990 apply to *[the sale of condominium units]* **a condominium located in this state that consists exclusively of units to be used for nonresidential purposes or that consists of units to be offered for sale as a security under ORS 59.005 to 59.451 or 59.710 to 59.830.**

(6) The units in a condominium described in subsection (3)(b)(C) and (D) of this section shall be considered real property for purposes of this chapter.



(7) Unless the declaration or bylaws provide otherwise, a condominium unit may be submitted to the condominium form of ownership under ORS 100.005 to 100.625.

**SECTION 25.** ORS 100.102 is amended to read:

100.102. (1) The owner of fee title interest in the real property underlying a leasehold condominium may submit the fee title to the provisions of this chapter by the procedures set forth in this section. Submission has the effect set forth in ORS 100.103.

(2) The fee title interest of a leasehold condominium may be submitted to the provisions of this chapter by an amendment to the declaration. The amendment must:

(a) Include a reference to the recording index numbers and date of recording of the initial declaration, supplemental declarations recorded pursuant to ORS 100.120 and the lease;

(b) State that the fee title interest in the real property subject to the leasehold is submitted to the provisions of this chapter pursuant to this section;

(c) State that the submission of the fee title interest in the real property subject to the leasehold to the provisions of this chapter has the effect set forth in ORS 100.103;

(d) State that there are no encumbrances against the fee title interest securing payment of moneys except for the assessments of the owners association that are not yet due;

(e) Be approved by at least 75 percent of the unit owners [*or, if a larger percentage is specified in the declaration to effect amendments to the declaration, the larger percentage*], **notwithstanding that the declaration may require approval by a larger percentage of owners or the consent of another person to amend the declaration;**

(f) Be executed by the fee title holder and the chairperson and secretary of the association and acknowledged in the manner provided for acknowledgment of instruments;

(g) Be certified by the chairperson and secretary as being adopted in accordance with this section;

(h) Be approved as required by ORS 100.110; and

(i) Be recorded in the office of the recording officer of each county in which the condominium is located.

(3) At the time of submission, the fee title interest being submitted may not be subject to an encumbrance securing payment of money except for the assessments of an association that are not yet due.

(4) Nothing in this section precludes the declarant of a leasehold condominium, all unit owners and the association from agreeing to other procedures for submitting the fee title interest to the provisions of this chapter, provided the procedures are set forth in:

(a) The declaration; or

(b) An amendment to the declaration approved by at least 75 percent of the unit owners or, if a larger percentage is specified in the declaration to effect amendments to the declaration, the larger percentage, and 75 percent of the lenders holding a first-priority security position in any unit in the condominium.

**SECTION 26.** ORS 100.105 is amended to read:

100.105. (1) A declaration shall contain:

(a) A description of the property, including property on which a unit or a limited common element is located, whether held in fee simple, leasehold, easement or other interest or combination thereof, that is being submitted to the condominium form of ownership and that conforms to the description in the surveyor's certificate provided under ORS 100.115 (2).

(b) Subject to subsection (11) of this section, a statement of the interest in the property being

submitted to the condominium form of ownership, whether fee simple, leasehold, easement or other interest or combination thereof.

(c) Subject to subsection (5) of this section, the name by which the property shall be known and a general description of each unit and the building or buildings, including the number of stories and basements of each building, the total number of units and the principal materials of which they are constructed.

(d) The unit designation, a statement that the location of each unit is shown on the plat, a description of the boundaries and area in square feet of each unit and any other data necessary for proper identification. The area of a unit shall be the same as shown for that unit on the plat described in ORS 100.115 (2).

**(e) A notice in substantially the following form in at least 12-point type that is either all capitals or boldface:**

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**NOTICE**

**THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION ARE BASED ON THE BOUNDARIES OF THE UNITS AS DESCRIBED IN THIS DECLARATION AND MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PURPOSES SUCH AS AN ASSESSMENT.**

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[(e)] (f) A description of the general common elements.

[(f)] (g) An allocation to each unit of an undivided interest in the common elements in accordance with ORS 100.515 and the method used to establish the allocation.

[(g)] (h) The designation of any limited common elements including:

(A) A general statement of the nature of the limited common element;

(B) A statement of the unit to which the use of each limited common element is reserved, provided the statement is not a reference to an assignment of use specified on the plat; and

(C) The allocation of use of any limited common element appertaining to more than one unit.

[(h)] (i) The method of determining liability for common expenses and right to common *[profits]* **revenues** in accordance with ORS 100.530.

[(i)] (j) The voting rights allocated to each unit in accordance with ORS 100.525 or in the case of condominium units committed as property in a timeshare plan defined in ORS 94.803, the voting rights allocated in the timeshare instrument.

[(j)] (k) A statement of the use, residential or otherwise, for which the building or buildings and each of the units is intended.

[(k)] (L) A statement that the designated agent to receive service of process in cases provided in ORS 100.550 (1) is named in the Condominium Information Report which will be filed with the Real Estate Agency in accordance with ORS 100.250 (1)(a).

[(L)] (m) The method of amending the declaration and the percentage of voting rights required to approve an amendment of the declaration in accordance with ORS 100.135.

[(m)] (n) A statement as to whether or not the association of unit owners pursuant to ORS 100.405 (5) and (8) has authority to grant leases, easements, rights of way, licenses and other similar interests affecting the general and limited common elements of the condominium and consent to

vacation of roadways within and adjacent to the condominium.

[(n)] (o) If the condominium contains a floating structure described in ORS 100.020 (3), a statement regarding the authority of the board of directors of the association, subject to ORS 100.410, to temporarily relocate the floating structure without a majority vote of affected unit owners.

[(o)] (p) Any restrictions on alienation of units. Any such restrictions created by documents other than the declaration may be incorporated by reference in the declaration to the official records of the county in which the property is located.

[(p)] (q) Any other details regarding the property that the person executing the declaration considers desirable. However, if a provision required to be in the bylaws under ORS 100.415 is included in the declaration, the voting requirements for amending the bylaws shall also govern the amendment of the provision in the declaration.

(2) In the event the declarant proposes to annex additional property to the condominium under ORS 100.125, the declaration shall also contain a general description of the plan of development, including:

(a) The maximum number of units to be included in the condominium.

(b) The date after which any right to annex additional property will terminate.

(c) A general description of the nature and proposed use of any additional common elements which declarant proposes to annex to the condominium, if such common elements might substantially increase the proportionate amount of the common expenses payable by existing unit owners.

(d) A statement that the method used to establish the allocation of undivided interest in the common elements, the method used to determine liability for common expenses and right to common [profits] **revenues** and the method used to allocate voting rights for each unit annexed shall be as stated in the declaration in accordance with subsection [(1)(f), (h) and (i)] **(1)(g), (i) and (j)** of this section.

(e) Such other information as the Real Estate Commissioner shall require in order to carry out the purposes of ORS 100.015, 100.635 to 100.730 and 100.740 to 100.910.

(3) Except where expressly prohibited by the declaration and subject to the requirements of ORS 100.135 (2) and subsections (9) and (10) of this section:

(a) Not later than two years following the termination dates specified in subsections (2)(b) and (7)(d) of this section, such termination dates may be extended for a period not exceeding two years; and

(b) The general description under subsection (2)(c) of this section and the information included in the declaration in accordance with subsection (7)(c), (g) and (h) of this section may be changed by an amendment to the declaration.

(4) The information included in the declaration in accordance with subsection (2)(a) and (d) of this section and subsection (7)(a), (b), (e), (f) and (k) of this section may not be changed unless all owners agree to the change and record an amendment to the declaration in accordance with this chapter.

(5) The name of the property shall include the word "condominium" or "condominiums" or the words "a condominium."

(6) A condominium may not bear a name which is the same as or deceptively similar to the name of any other condominium located in the same county.

(7) If the condominium is a flexible condominium containing variable property, the declaration shall also contain a general description of the plan of development, including:

(a) A statement that the rights provided for under ORS 100.150 (1) are being reserved.

(b) A statement:

(A) Of any limitations on rights reserved under ORS 100.150 (1), including whether the consent of any unit owner shall be required, and if so, a statement of the method by which the consent shall be ascertained; or

(B) That there are no limitations on rights reserved under ORS 100.150 (1).

(c) A statement of the total number of tracts of variable property within the condominium, including:

(A) A designation of each tract as withdrawable or nonwithdrawable variable property;

(B) Identification of each variable tract by a label in accordance with ORS 100.115 (2)(i);

(C) A statement of the method of labeling each tract depicted on the plat in accordance with ORS 100.115 (2)(i); and

(D) A statement of the total number of tracts of each type of variable property.

(d) The termination date, which is the date or time period after which any right reserved under ORS 100.150 (1) will terminate, and a statement of the circumstances, if any, that will terminate any right on or before the date or time period specified. The date or time period may not exceed seven years from the recording of the conveyance of the first unit in the condominium to a person other than the declarant. Recording shall be in the county in which the property is located.

(e) The maximum number of units that may be created.

(f) A statement that the method used to establish the allocations of undivided interest in the common elements, the method used to determine liability for common expenses and right to common *[profits]* **revenues** and the method used to allocate voting rights as additional units are created shall be the same as stated in the declaration in accordance with subsection [(1)(f), (h) and (i)] (1)(g), (i) **and (j)** of this section.

(g) A general description of all existing improvements and the nature and proposed use of any improvements that may be made on variable property if the improvements might substantially increase the proportionate amount of the common expenses payable by existing unit owners.

(h) A statement of whether or not the declarant reserves the right to create limited common elements within any variable property, and if so, a general description of the types that may be created.

(i) A statement that the plat shows the location and dimensions of all withdrawable variable property that is labeled "WITHDRAWABLE VARIABLE PROPERTY."

(j) A statement that if by the termination date all or a portion of the withdrawable variable property has not been withdrawn or reclassified, the withdrawable property shall automatically be withdrawn from the condominium as of the termination date.

(k) A statement of the rights of the association under ORS 100.155 (2).

(L) A statement of whether or not all or any portion of the variable property may not be withdrawn from the condominium and, if so, with respect to the nonwithdrawable variable property:

(A) A statement that the plat shows the location and dimensions of all nonwithdrawable property that is labeled "NONWITHDRAWABLE VARIABLE PROPERTY."

(B) A description of all improvements that may be made and a statement of the intended use of each improvement.

(C) A statement that, if by the termination date all or a portion of the variable property designated as "nonwithdrawable variable property" has not been reclassified, the property shall automatically be reclassified as of the termination date as a general common element of the condominium and any interest in such property held for security purposes shall be automatically

1 extinguished by such classification.

2 (D) A statement of the rights of the association under ORS 100.155 (3).

3 (m) A statement by the local governing body or appropriate department thereof that the with-  
4 drawal of any variable property designated as “withdrawable variable property” in the declaration  
5 in accordance with paragraph (L) of this subsection, will not violate any applicable planning or  
6 zoning regulation or ordinance. The statement may be attached as an exhibit to the declaration.

7 (8) The plan of development for any variable property included in the declaration or any sup-  
8 plemental declaration of any stage in accordance with subsection (7) of this section shall be subject  
9 to any plan of development included in the declaration in accordance with subsection (2) of this  
10 section, except that the time limitation specified in subsection (7)(d) of this section shall govern any  
11 right reserved under ORS 100.150 (1) with respect to any variable property.

12 (9) The information included in the declaration in accordance with subsection (7)(j), (k) and (m)  
13 of this section may not be deleted by amendment.

14 (10) Approval by the unit owners shall not be required to redesignate variable property as  
15 “nonwithdrawable variable property” by supplemental declaration or amendment if such redesis-  
16 nation is required by the local governing body or appropriate department thereof to comply with  
17 any planning or zoning regulation or ordinance. If as a result of such redesignation the information  
18 required to be included in the supplemental declaration or an amendment under subsection (7)(L)(B)  
19 of this section is inconsistent with the information included in the declaration or supplemental  
20 declaration in accordance with subsection (7)(g) of this section, an amendment to the declaration  
21 approved by at least 75 percent of owners shall be required.

22 (11) The statement of an interest in property other than fee simple submitted to the condomin-  
23 ium form of ownership and any easements, rights or appurtenances belonging to property submitted  
24 to the condominium form of ownership, whether leasehold or fee simple, shall include:

25 (a) A reference to the recording index numbers and date of recording of the instrument creating  
26 the interest; or

27 (b) A reference to the law, administrative rule, ordinance or regulation that creates the interest  
28 if the interest is created under law, administrative rule, ordinance or regulation and not recorded  
29 in the office of the recording officer of the county in which the property is located.

30 **SECTION 27.** ORS 100.115 is amended to read:

31 100.115. (1) When a declaration or a supplemental declaration under ORS 100.125 is made and  
32 approved as required, it shall, upon the payment of the fees provided by law, be recorded by the  
33 recording officer. The fact of recording and the date thereof shall be entered thereon. At the time  
34 of recording the declaration or supplemental declaration, the person offering it for record shall also  
35 file an exact copy, certified by the recording officer to be a true copy thereof, with the county  
36 assessor.

37 (2) A plat of the land described in the declaration or a supplemental plat described in a sup-  
38 plemental declaration, complying with ORS 92.050, 92.060 (1) and (2), 92.080 and 92.120, shall be re-  
39 corded simultaneously with the declaration or supplemental declaration. Upon request, the person  
40 offering the plat or supplemental plat for recording shall also file an exact copy, certified by the  
41 surveyor who made the plat to be an exact copy of the plat, with the county assessor and the county  
42 surveyor. The exact copy shall be made on suitable drafting material having the characteristics of  
43 strength, stability and transparency required by the county surveyor. The plat or supplemental plat,  
44 titled in accordance with subsection (4) of this section, shall:

45 (a) Show the location of:

(A) All buildings and public roads. The location shall be referenced to a point on the boundary of the property; and

(B) For a condominium containing units described in ORS 100.020 (3)(b)(C) or (D), the moorage space or floating structure. The location shall be referenced to a point on the boundary of the upland property regardless of a change in the location resulting from a fluctuation in the water level or flow.

(b) Show the designation, location, dimensions and area in square feet of each unit including:

(A) For units in a building described in ORS 100.020 (3)(b)(A), the horizontal and vertical boundaries of each unit and the common elements to which each unit has access. The vertical boundaries shall be referenced to a known benchmark elevation or other reference point as approved by the city or county surveyor;

(B) For a space described in ORS 100.020 (3)(b)(B), the horizontal boundaries of each unit and the common elements to which each unit has access. If the space is located within a structure, the vertical boundaries also shall be shown and referenced to a known benchmark elevation or other reference point as approved by the city or county surveyor;

(C) For a moorage space described in ORS 100.020 (3)(b)(C), the horizontal boundaries of each unit and the common elements to which each unit has access; and

(D) For a floating structure described in ORS 100.020 (3)(b)(D), the horizontal and vertical boundaries of each unit and the common elements to which each unit has access. The vertical boundaries shall be referenced to an assumed elevation of an identified point on the floating structure even though the assumed elevation may change with the fluctuation of the water level where the floating structure is moored.

(c) Identify and show, to the extent feasible, the location and dimensions of all limited common elements described in the declaration. The plat may not include any statement indicating to which unit the use of any noncontiguous limited common element is reserved.

(d) Include a statement, including signature and official seal, of a registered architect, registered professional land surveyor or registered professional engineer certifying that the plat fully and accurately depicts the boundaries of the units of the building and that construction of the units and buildings as depicted on the plat has been completed, except that the professional land surveyor who prepared the plat need not affix a seal to the statement.

(e) Include a surveyor's certificate, complying with ORS 92.070, that includes information in the declaration in accordance with ORS 100.105 (1)(a) and a metes and bounds description or other description approved by the city or county surveyor.

(f) Include a statement by the declarant that the property and improvements described and depicted on the plat are subject to the provisions of ORS 100.005 to 100.625.

(g) Include such signatures of approval as may be required by local ordinance or regulation.

(h) Include any other information or data not inconsistent with the declaration that the declarant desires to include.

(i) If the condominium is a flexible condominium, show the location and dimensions of all variable property identified in the declaration and label the variable property as "WITHDRAWABLE VARIABLE PROPERTY" or "NONWITHDRAWABLE VARIABLE PROPERTY," with a letter different from those designating a unit, building or other tract of variable property. If there is more than one tract, each tract shall be labeled in the same manner.

(3) The supplemental plat required under ORS 100.150 (1) shall be recorded simultaneously with the supplemental declaration. Upon request, the person offering the supplemental plat for recording

shall also file an exact copy, certified by the surveyor who made the plat to be an exact copy of the plat, with the county assessor and the county surveyor. The exact copy shall be made on suitable drafting material having the characteristics of strength, stability and transparency required by the county surveyor. The supplemental plat, titled in accordance with subsection (4) of this section, shall:

(a) Comply with ORS 92.050, 92.060 (1), (2) and (4), 92.080, 92.120 and subsections (4) and (5) of this section.

(b) If any property is withdrawn:

(A) Show the resulting perimeter boundaries of the condominium after the withdrawal; and

(B) Show the information required under subsection (2)(i) of this section as it relates to any remaining variable property.

(c) If any property is reclassified, show the information required under subsection (2)(a) to (d) of this section.

(d) Include a "Declarant's Statement" that the property described on the supplemental plat is reclassified or withdrawn from the condominium and that the condominium exists as described and depicted on the plat.

(e) Include a surveyor's affidavit complying with ORS 92.070.

(4) The title of each supplemental plat described in ORS 100.120 shall include the complete name of the condominium, followed by the additional language specified in this subsection and the appropriate reference to the stage being annexed or tract of variable property being reclassified. Each supplemental plat for a condominium recorded on or after January 1, 2002, shall be numbered sequentially and shall:

(a) If property is annexed under ORS 100.125, include the words "Supplemental Plat No. \_\_\_\_\_: Annexation of Stage \_\_\_\_\_; or

(b) If property is reclassified under ORS 100.150, include the words "Supplemental Plat No. \_\_\_\_\_: Reclassification of Variable Property, Tract \_\_\_\_\_.

(5) Before a plat or a supplemental plat may be recorded, it must be approved by the city or county surveyor as provided in ORS 92.100. Before approving the plat as required by this section, the city or county surveyor shall:

(a) Check the *[boundaries]* **boundary** of the plat and **the location of the buildings and, in the discretion of the city or county surveyor, the boundary of any of the units** and take measurements and make computations necessary to determine that the plat complies with this section.

(b) Determine that the name complies with ORS 100.105 (5) and (6).

(c) **In the discretion of the city or county surveyor**, determine that the following are consistent:

(A) The designation and area in square feet of each unit shown on the plat and the unit designations and areas contained in the declaration in accordance with ORS 100.105 (1)(d);

(B) Limited common elements identified on the plat and the information contained in the declaration in accordance with ORS 100.105 [(1)(g)] **(1)(h)**;

(C) The description of the property in the surveyor's certificate included on the plat and the description contained in the declaration in accordance with ORS 100.105 (1)(a); and

(D) For a flexible condominium, the variable property depicted on the plat and the identification of the property contained in the declaration in accordance with ORS 100.105 (7)(c).

(6) The person offering the plat for approval shall:

(a) Submit a copy of the proposed declaration and bylaws or applicable supplemental declaration

1 at the time the plat is submitted; and

2 (b) Submit the original or a copy of the executed declaration and bylaws or the applicable sup-  
3 plemental declaration approved by the commissioner if required by law prior to approval.

4 (7) For performing the services described in subsection (5)(a) to (c) of this section, the city sur-  
5 veyor or county surveyor shall collect from the person offering the plat for approval a fee of \$150  
6 plus \$25 per building. The governing body of a city or county may establish a higher fee by resol-  
7 ution or order.

8 *[(8)(a) Whenever variable property is reclassified or withdrawn as provided in ORS 100.155 (1) or*  
9 *(2) or property is removed as provided in ORS 100.600 (2), the county surveyor shall, upon the sur-*  
10 *veyor's copy of all previously recorded plats relating to the variable property or property being removed*  
11 *and upon any copy thereof certified by the county clerk, trace, shade or make other appropriate marks*  
12 *or notations, including the date and the surveyor's name or initials, with archival quality black ink in*  
13 *such manner as to denote the reclassification, withdrawal or removal. The recording index numbers*  
14 *and date of recording of the supplemental declaration and plat or amendment and amended plat shall*  
15 *also be referenced on the copy of each plat. The original plat may not be changed or corrected after the*  
16 *plat is recorded.]*

17 *[(b) For performing the activities described in this subsection, the county clerk shall collect a fee*  
18 *set by the county governing body. The county clerk shall also collect a fee set by the county governing*  
19 *body to be paid to the county surveyor for services provided under this subsection.]*

20 *[(9)]* (8) In addition to the provisions of subsection *[(10)]* (9) of this section, a plat, including any  
21 floor plans that are a part of the plat, may be amended as *[provided in this subsection.]* **follows:**

22 (a)(A) Except as otherwise provided in ORS 100.600, a change to the boundary of the property,  
23 a unit or a limited common element or a change to the configuration of other information required  
24 to be graphically depicted on the plat shall be made by a plat entitled "Plat Amendment" that shall  
25 reference in the title of the amendment the recording information of the original plat and any pre-  
26 vious plat amendments.

27 (B) The plat amendment shall comply with ORS 92.050, 92.060 (1), (2) and (4), 92.080 and 92.120  
28 and shall include:

29 (i) A graphic depiction of the change.

30 (ii) For a change to the boundary of the property, a surveyor's certificate, complying with ORS  
31 92.070.

32 (iii) For a change to a boundary of a unit or a limited common element or a change to other  
33 information required to be graphically depicted, the statement of a registered architect, registered  
34 professional land surveyor or registered professional engineer described in subsection (2)(d) of this  
35 section.

36 (iv) A declaration by the chairperson and secretary on behalf of the association of unit owners  
37 that the plat is being amended pursuant to this subsection. *[Such]* **The** declaration shall be executed  
38 and acknowledged in the manner provided for acknowledgment of deeds.

39 (C) The plat amendment shall be accompanied by an amendment to the declaration authorizing  
40 *[such]* **the** plat amendment. The declaration amendment shall be executed, approved and recorded  
41 in accordance with ORS 100.110 and 100.135.

42 (D) Before a plat amendment may be recorded, it must be approved by the city or county sur-  
43 veyor as provided in ORS 92.100. The surveyor shall approve the plat amendment if it complies with  
44 the requirements of this subsection. The person offering the plat amendment shall:

45 (i) Submit a copy of the proposed amendment to the declaration required under this paragraph



1 when the plat amendment is submitted; and

2 (ii) Submit the original or a copy of the executed amendment to the declaration approved by the  
3 commissioner if required by law prior to approval of the plat amendment.

4 (E) Upon request, the person offering the plat amendment for recording shall also file an exact  
5 copy, certified by the surveyor who made the plat to be an exact copy of the plat amendment, with  
6 the county assessor and the county surveyor. The exact copy shall be made on suitable drafting  
7 material having the strength, stability and transparency required by the county surveyor.

8 (b)(A) A change to a restriction or other information not required to be graphically depicted on  
9 the plat **or a change to graphically depicted information that does not require a change to the**  
10 **dimensions of the depiction** may be made by amendment of the declaration without a plat amend-  
11 ment described in paragraph (a) of this subsection. An amendment under this paragraph shall in-  
12 clude:

13 (i) A reference to recording index numbers and date of recording of the declaration, plat and  
14 any applicable supplemental declarations, amendments, supplemental plats or plat amendments.

15 (ii) A description of the change to the plat.

16 (iii) A statement that the amendment was approved in accordance with the declaration and ORS  
17 110.135.

18 (B) The amendment shall be executed, approved and recorded in accordance with ORS 100.110  
19 and 100.135.

20 (C) Before the amendment may be recorded, it must be approved by the city or county surveyor  
21 as provided in ORS 92.100. The surveyor shall approve the amendment if it complies with this sub-  
22 section. *[Such]* **The** approval shall be evidenced by execution of the amendment or by written ap-  
23 proval attached thereto.

24 (c)(A) Floor plans of a condominium for which a plat was not required at the time of creation  
25 may be amended by an amendment to the declaration. An amendment under this paragraph shall  
26 include:

27 (i) A reference to recording index numbers and date of recording of the declaration and any  
28 applicable supplemental declarations or amendments.

29 (ii) A description of the change to the floor plans.

30 (iii) A graphic depiction of any change to the boundaries of a unit or common element and a  
31 statement by a registered architect, registered professional land surveyor or registered professional  
32 engineer certifying that *[such]* **the** graphic depiction fully and accurately depicts the boundaries of  
33 the unit or common element as it currently exists.

34 (B) The amendment shall be approved and recorded in accordance with ORS 100.110 and 100.135  
35 except that any change to the floor plans need only comply with the requirements of the unit own-  
36 ership laws in effect at the time the floor plans were initially recorded.

37 *[(d) After recording of any declaration amendment or plat amendment pursuant to this subsection,*  
38 *the county surveyor shall, upon the surveyor's copy of all previously recorded plats relating to the*  
39 *condominium and any copies filed under ORS 92.120 (3), make such appropriate marks or notations,*  
40 *including the date and the surveyor's name or initials, with archival quality black ink in such manner*  
41 *as to denote the changes. The recording index numbers and date of recording of the declaration*  
42 *amendment and any plat amendment shall also be referenced on the copy of each plat. The original plat*  
43 *may not be changed or corrected after the plat is recorded. For performing the services described in*  
44 *this subsection, the county surveyor shall collect from the person offering the plat amendment or dec-*  
45 *laration amendment for approval a fee established by the county governing body.]*

1       [(10)] (9) The following may be amended by an affidavit of correction in accordance with ORS  
2 92.170:

3       (a) A plat, whenever recorded.

4       (b) Floor plans recorded prior to October 15, 1983, **that were shown on the plat.**

5       **SECTION 28.** ORS 100.155 is amended to read:

6       100.155. (1) If by the termination date specified in the declaration there is any remaining vari-  
7 able property:

8       (a) Any property designated nonwithdrawable variable property shall become part of the com-  
9 mon elements and any interest in such property held for security purposes shall be automatically  
10 extinguished by reclassification.

11       (b) Any property designated withdrawable variable property shall be automatically withdrawn  
12 from the condominium as of the termination date.

13       (c) Subject to paragraph (d) of this subsection, the association may record in the office of the  
14 recording officer in the county in which the condominium is located:

15       (A) For property reclassified under paragraph (a) of this subsection, a "Statement of Reclassi-  
16 fication of Variable Property" stating that the remaining nonwithdrawable variable property has  
17 been reclassified to common elements pursuant to paragraph (a) of this subsection.

18       (B) For property withdrawn under paragraph (b) of this subsection, a "Statement of Withdrawal  
19 of Variable Property from Condominium" stating that remaining withdrawable variable property has  
20 been withdrawn from the condominium pursuant to paragraph (b) of this subsection.

21       (d) A statement described in paragraph (c) of this subsection shall:

22       (A) Include the name of the condominium, a reference to the recording index numbers and date  
23 of recording of the declaration, the plat creating the affected variable property and any applicable  
24 supplemental declaration.

25       (B) Include a description of the reclassified or withdrawn variable property complying with ORS  
26 93.600.

27       (C) Be executed by the chairperson and secretary of the association and acknowledged in the  
28 manner provided for acknowledgment of deeds.

29       (e) After recording a statement under paragraph (c) of this subsection, the association shall  
30 provide a copy of the recorded statement to the county surveyor. *[Upon receipt of the copy or other*  
31 *notification, the county surveyor shall, upon the surveyor's copy of all previously recorded plats relating*  
32 *to the condominium and any copies of the plat filed under ORS 92.120 (3), make appropriate marks and*  
33 *notations, including the date and the surveyor's name or initials, with archival quality black ink in a*  
34 *manner that denotes the reclassification or withdrawal. The recording index numbers and date of re-*  
35 *coding of the statement shall also be referenced on the copy of each plat. The original plat may not*  
36 *be changed or corrected after it is recorded with the county clerk.]*

37       (2)(a) Unless expressly prohibited by the declaration, any variable property automatically with-  
38 drawn from the condominium under subsection (1)(b) of this section or voluntarily withdrawn under  
39 ORS 100.150 (1)(b) may be later annexed to the condominium by the recording of a supplemental  
40 declaration and plat in accordance with ORS 100.120 (2) if such action is first approved by at least  
41 75 percent of all voting rights in the manner required for an amendment to the declaration.

42       (b) The supplemental declaration and plat shall be executed by the chairperson and secretary  
43 on behalf of the association and acknowledged in the manner provided for acknowledgment of deeds  
44 by such officers. Except for the termination date, the supplemental declaration shall comply with  
45 ORS 100.120 (1) and shall state that the annexation was approved by at least 75 percent of all voting

rights.

(3)(a) Unless expressly prohibited by the declaration and notwithstanding the termination date, the association may, with respect to any variable property automatically reclassified, exercise any rights previously held by the declarant. The exercise of any right shall first be approved by at least a majority of all voting rights. All other actions relating to such reclassified general common elements shall be regulated and governed in like manner as other general common elements of the condominium.

(b) If a supplemental declaration and plat is required for any action, the plat shall be executed by the chairperson and secretary of the association and shall comply with the requirements of this chapter as to a supplemental declaration and the recording of plats.

(4) Title to any additional units created under subsection (3) of this section shall automatically be vested in the association upon the recording of a supplemental declaration and plat. The board of directors acting on behalf of the association shall have the power to hold, convey, lease, encumber or otherwise deal with a unit or any interest therein in like manner as other property owned by the association.

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

**SECTION 29.** ORS 100.200 is amended to read:

100.200. (1) Subject to subsection (2) of this section, the declaration or bylaws may specifically provide for a period of declarant control of the association of unit owners, during which period a declarant or person designated by the declarant may appoint and remove officers and members of the board of directors and exercise powers and responsibilities otherwise assigned by the declaration, bylaws or the provisions of this chapter to the association, the officers or the board of directors. No formal or written proxy or power of attorney need be required of the unit owners to vest the declarant with *[such]* **the** authority. Declarant control may be achieved by allocating in the declaration greater voting rights to a unit owned by the declarant.

(2) The declaration or bylaws may not provide for a period of administrative control of the association of unit owners by the declarant for a period exceeding:

(a) In a single stage condominium the earlier of:

(A) Three years from the date the first unit is conveyed; or

(B) The date of conveyance to persons other than *[the]* **a successor** declarant of 75 percent of the units.

(b) In a staged or flexible condominium the earlier of:

(A) Seven years from the date the first unit is conveyed; or

(B) The date of conveyance to persons other than *[the]* **a successor** declarant of 75 percent of the units which may be created or annexed under ORS 100.125 or 100.150, whichever is applicable.

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

(4) Upon the expiration of any period of declarant control reserved in the declaration or bylaws under subsection (1) of this section, *[such]* **the right of administrative control of the association** shall automatically pass to the unit owners, including the declarant if the declarant then owns one or more units in the condominium.

(5) A declaration or bylaws may not be amended to increase the scope of any rights reserved in the declaration or bylaws under subsection (1) of this section without the consent of all unit owners.

(6) The limitations specified in subsection (2) of this section shall not limit any right reserved by the declarant under ORS 100.105 (2) or (7), 100.125 or 100.150 or any other special declarant right which does not relate to administrative control of the association by the declarant including, but not limited to, the right to require that the declaration or bylaws may not be amended without the declarant's consent until a stated date, the expiration of a stated number of years or the occurrence of a stipulated event.

(7) The limitations of subsection (2) of this section do not apply to a condominium or condominium units committed to a timeshare plan as defined in ORS 94.803.

**SECTION 30.** ORS 100.210 is amended to read:

100.210. (1) A turnover meeting shall be called by the declarant within 90 days of the expiration of any period of declarant control reserved in the declaration or bylaws under ORS 100.200. If no control has been reserved, the declarant shall call the turnover meeting within 90 days of the earlier of:

(a) In a single stage condominium, three years from the date of conveyance of the first unit to a person other than *[the]* **a successor** declarant or conveyance of 50 percent of the units.

(b) In a staged or flexible condominium, seven years from the date of conveyance of the first unit to a person other than the declarant or conveyance to persons other than *[the]* **a successor** declarant of 50 percent of the total number of units which the declarant may submit to the provisions of this chapter under ORS 100.125 or 100.150.

(2) The declarant shall give notice of the turnover meeting in accordance with the bylaws of the condominium to each unit owner at least 10 but not more than 50 days prior to the meeting. The notice shall state the purpose of the meeting and the time and place where it is to be held.

(3) If the meeting required under subsection (1) of this section is not called by the declarant within the time specified, the meeting may be called and notice given by a unit owner or any first mortgagee of a unit.

(4) At the turnover meeting:

(a) The declarant shall relinquish control of the administration of the association of unit owners and the unit owners shall assume the control;

(b) **If a quorum is present**, the unit owners shall elect *[a]* **not less than the number of directors sufficient to constitute a quorum of the** board of directors in accordance with the bylaws of the condominium; and

(c) The declarant shall deliver to the association the items specified in subsection (5) of this section.

(5) At the turnover meeting the declarant shall deliver to the association all property of the unit owners and the association of unit owners held or controlled by the declarant including, but not limited to, the following items, if applicable:

(a) The original or a photocopy of the recorded declaration and bylaws of the condominium and any supplements and amendments thereto.

(b) A copy of the articles of incorporation.

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

(d) The reserve study, updates described in ORS 100.175 and other sources of information that serve as a basis for calculating reserves in accordance with ORS 100.175 (3).

(e) Any rules and regulations which have been promulgated.

(f) 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 under ORS 100.200.

(g) 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.

(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 of unit owners exceed \$75,000.

(h) Association funds or control thereof, including, but not limited to, funds for reserve required under ORS 100.530 (3)(b) and any bank signature cards.

(i) All tangible personal property that is property of the association and an inventory of such property.

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

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

(B) The original specifications indicating thereon all 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.

(k) Insurance policies.

(L) Copies of any occupancy permits which have been issued for the condominium.

(m) Any other permits issued by governmental bodies applicable to the condominium in force or issued within one year prior to the date the unit owners assume control of the administration of the association of unit owners.

(n) A list of the general contractor and the subcontractors responsible for construction or installation of the major plumbing, electrical, mechanical and structural components of the common elements.

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

(p) Leases of the common elements and any other leases to which the association is a party.

(q) Employment or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit 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.

(r) Any other contracts to which the association of unit owners is a party.

(6) 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 (5) of this section.

(7) If the declarant has complied with this section, unless the declarant otherwise has sufficient voting rights as a unit owner to control the association, the declarant *[shall not be]* **is not** responsible for the failure of the unit owners to *[comply]* **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 (4) of this section and the declarant shall be relieved of any further responsibility for the administration of the association except as a unit owner of any unsold unit.

**(8) If the unit 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 subsection**

1 (1) of this section:

2 (a) Until the election of the number of directors sufficient to constitute a quorum, a  
 3 special meeting for the purpose of election of directors may be called and notice given by a  
 4 unit owner or any first mortgagee of a unit in accordance with the notice requirements in  
 5 the bylaws for special meetings. The unit owners present at the special meeting shall select  
 6 a person to preside over the meeting.

7 (b) A unit owner or first mortgagee of a unit may request the court to appoint a receiver  
 8 as provided in section 21 of this 2005 Act.

9 **SECTION 31.** Section 32 of this 2005 Act is added to and made a part of ORS 100.305 to  
 10 100.320.

11 **SECTION 32.** As used in ORS 100.305 to 100.320, “dwelling unit” and “tenant” have the  
 12 meanings given those terms in ORS 90.100.

13 **SECTION 33.** ORS 100.405 is amended to read:

14 100.405. (1)(a) An association of unit owners shall be organized to serve as a means through  
 15 which the unit owners may take action with regard to the administration, management and opera-  
 16 tion of the condominium. The association shall be organized as a corporation for profit or nonprofit  
 17 corporation or, **if the condominium consists of not more than four units, excluding units used**  
 18 **for parking, storage or other use ancillary to a unit,** as an unincorporated association. If the  
 19 association is incorporated, the name of the association shall include the complete name of the  
 20 condominium.

21 (b) Unless otherwise provided in the declaration or bylaws, an unincorporated association may  
 22 be incorporated **as a nonprofit corporation under ORS chapter 65** if: *[such]*

23 **(A) The** action is approved by a majority of unit owners in person, by written ballot or by proxy  
 24 at a meeting at which a quorum is present; **or**

25 **(B) The board of directors adopts a resolution that the association be incorporated.**

26 (2) Membership in the association of unit owners shall be limited to unit owners.

27 (3) The affairs of the association shall be governed by a board of directors as provided for in  
 28 the bylaws adopted under ORS 100.410.

29 (4) Subject to the provisions of the condominium’s declaration and bylaws, and whether or not  
 30 the association is unincorporated, the association may:

31 (a) Adopt and amend bylaws and rules and regulations;

32 (b) Adopt and amend budgets for revenues, expenditures and reserves and levy and collect as-  
 33 sessments for common expenses from unit owners;

34 (c) Hire and terminate managing agents and other employees, agents and independent contrac-  
 35 tors;

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

37 (e) Subject to subsection (11) of this section, initiate or intervene in litigation or administrative  
 38 proceedings in its own name, and without joining the individual unit owners, in the following:

39 (A) Matters relating to the collection of assessments and the enforcement of declarations and  
 40 bylaws;

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

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

44 (D) Matters relating to or affecting common elements, including but not limited to actions for  
 45 damage, destruction, impairment or loss of use of any common element;

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

(i) Resulting from a nuisance or a defect in or damage to a common element; or

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

(F) Any other matter to which the association has standing under law or pursuant to the declaration, bylaws or any articles of incorporation;

(f) Make contracts and incur liabilities;

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

(h) Cause additional improvement to be made as a part of the common elements;

(i) Acquire by purchase, lease, devise, gift or voluntary grant real or personal property or any interest therein and take, hold, possess and *[dispose of]* **convey** real or personal property or any interest therein;

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements;

(k) Impose charges for late payments of assessments, attorney fees for collection of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association, provided that the charge imposed or 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 unit, mailed to the mailing address of each unit or mailed to the mailing addresses designated in writing by the owners; or

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

(L) 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 unit owners *[and, after giving]*, **which must provide for** written notice and an opportunity to be heard~~[,] before the association may~~ terminate the rights of any owners to receive *[such]* benefits or services until the correction of any violation covered by *[such]* **the** rule has occurred;

(m) Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of assessments;

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

(o) Provide for the indemnification of its officers and executive board, as may be limited by ORS 61.218 (3)(d) (1987 Replacement Part), and maintain directors' and officers' liability insurance;

(p) Exercise any other powers conferred by the declaration or bylaws;

(q) Exercise all other powers that may be exercised in this state by any such association; and

(r) Exercise any other powers determined by the association to be necessary and proper for the governance and operation of the association.

(5) Subject to subsection (6) of this section, unless expressly limited or prohibited by the declaration, the association has the authority to grant, execute, acknowledge~~[,] and~~ deliver *[and record]* on behalf of the unit owners leases, easements, rights of way, licenses and other similar interests affecting the general common elements and consent to vacation of roadways within and adjacent to the condominium.

(6)(a)(A) Except as provided in subparagraph (B) of this paragraph, the granting of a lease,

1 easement, right of way, license or other similar interest pursuant to subsection (5) of this section  
2 shall be first approved by at least 75 percent of owners. **Unit owner approval may be solicited**  
3 **by any means the board of directors determines is reasonable and need not be at a meeting**  
4 **of the association.**

5 (B) Unless the declaration otherwise provides:

6 (i) The granting of a lease, easement, right of way, license or other similar interest affecting the  
7 general common elements for a term of two years or less shall require the approval of a majority  
8 of the board of directors.

9 (ii) The granting of a lease, easement, right of way, license or other similar interest affecting  
10 the general common elements for a term of more than two years to a public body, as defined in ORS  
11 174.109, or to a utility or a communications company for [*underground*] installation and maintenance  
12 of power, gas, electric, water or other utility and communication lines and services requires the  
13 approval of a majority of the board of directors.

14 (iii) The granting of a lease, easement, license or other similar interest to an owner for the ex-  
15 clusive use of a part of the general common elements to which the owner's unit provides primary  
16 access requires the approval of a majority of the board of directors. If the approval by the board  
17 of directors includes the right of the owner to make improvements to the general common elements  
18 to which the owner is being granted exclusive use, ORS 100.535 applies to the general common el-  
19 ements to the same extent that ORS 100.535 applies to a unit, including the right of the board under  
20 ORS 100.535 to require an owner, at owner's expense, to submit an opinion of a registered architect  
21 or registered professional engineer that the proposed improvement will not impair the structural  
22 integrity or mechanical systems of the condominium.

23 (b) Unless the declaration otherwise provides, the consent to vacation of roadways within and  
24 adjacent to the condominium must be approved first by at least a majority of unit owners present  
25 voting in person or by proxy at a duly constituted meeting of the association called for the purpose.

26 (7) The instrument granting an interest or consent pursuant to subsection (5) of this section  
27 shall be executed by the chairperson and secretary of the association and acknowledged in the  
28 manner provided for acknowledgment of such instruments by such officers and shall state that such  
29 grant or consent was approved, if appropriate, by at least the percent of owners required under  
30 subsection (6) of this section.

31 (8) Unless expressly prohibited by the declaration, any action permitted under subsections (5)  
32 and (6) of this section regarding a general common element may be taken with respect to any limited  
33 common element, provided that the owner of the unit to which the use of the limited common ele-  
34 ment is reserved and the holder of any mortgage or trust deed affecting the unit consent to the  
35 action and also execute an instrument as provided under subsection (7) of this section.

36 (9) Except as otherwise provided in the association's declaration or bylaws, the board of direc-  
37 tors of the association may modify, close, remove, eliminate or discontinue the use of a general  
38 common element facility or improvement or portion of the common element landscaping, regardless  
39 of whether such facility, improvement or landscaping is mentioned in the declaration or shown on  
40 the plat provided that:

41 (a) Nothing in this subsection shall be construed as limiting the authority of the board of di-  
42 rectors, in its discretion, to seek approval of such modification, closure, removal, elimination or  
43 discontinuance by the unit owners; and

44 (b) Modification, closure, removal, elimination or discontinuance other than on a temporary ba-  
45 sis of any swimming pool, spa or recreation or community building must be approved by at least a



majority of the unit owners voting on such matter at a meeting or by written ballot held in accordance with the declaration, bylaws or ORS 100.425.

(10)(a) A permit or authorization issued by the board of directors pursuant to authority granted to the board under law, the declaration or the bylaws, may be recorded in the deed records of the county where the condominium is located. An instrument recorded under this subsection shall:

(A) Include the name of the condominium and a reference to where the declaration and any applicable supplemental declarations are recorded;

(B) Identify, by the designations stated in the declaration or applicable supplemental declaration, all affected units and common elements;

(C) Include such other information and signatures as may be required by law, under the declaration or bylaws or as the board of directors may desire; and

(D) Be executed by the chairperson and secretary of the association and acknowledged in the manner provided for acknowledgment of such instruments by the officers.

(b) The board of directors may record an amendment, modification, termination or other instrument relating to the permit or authorization described in this subsection. Any such instrument shall include a reference to the location of the recorded instrument and be executed by the chairperson and secretary of the association and acknowledged in the manner provided for acknowledgment of such instruments.

(11)(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 condominium 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 condominium 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 dispute 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.

**SECTION 34.** Section 29, chapter 569, Oregon Laws 2003, is amended to read:

**Sec. 29.** Unless the declaration of a condominium recorded before [*the effective date of this 2003 Act*] **July 14, 2003**, expressly limits or prohibits the authority of the association of unit owners to grant, execute, acknowledge[,] **and** deliver [*and record*] on behalf of the unit owners leases, easements, rights of way, licenses and other similar interests affecting the general common elements and consent to vacation of roadways within and adjacent to the condominium pursuant to ORS 100.405 (6) in effect at the time the declaration was recorded, the amendments to ORS 100.405 (6) by section 28, **chapter 569, Oregon Laws 2003**, [*of this 2003 Act*] apply to **the authority of the association of unit owners of** a condominium recorded before [*the effective date of this 2003 Act*] **July 14, 2003, except for the limitation or prohibition on the authority of the association under this section.**

**SECTION 35.** ORS 100.407 is amended to read:

100.407. (1) The association of unit owners shall hold at least one meeting of the owners each calendar year.

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

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

**(3) If the unit 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 chairperson or the secretary, a person signing the request may set the time and place of the meeting and give notice as provided in this section.**

[(3)(a)] **(4)(a)** Not less than 10 nor more than 50 days before any meeting called under this section, the secretary or other officer of the association specified in the bylaws shall cause **the** notice to be hand delivered or mailed to the mailing address of each unit or to the mailing address designated in writing by the **unit** owner, and to all mortgagees that have requested [*such*] **the** notice.

(b) The notice 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 of the association.

(c) Mortgagees may designate a representative to attend a meeting called under this section.

**SECTION 36.** ORS 100.408 is amended to read:

100.408. (1) [*Unless the bylaws provide otherwise,*] **If the bylaws of an association of unit owners do not specify a quorum for any meeting of the association,** a quorum [*for any meeting of the association of unit owners*] shall consist of the number of persons who are entitled to cast 20 percent of the [*votes*] **voting rights** and who are present in person or by proxy at the beginning of the meeting.

**(2) If any meeting of unit owners 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 shall be the greater of:**

- 1       (a) One-half of the quorum required in the bylaws; or  
2       (b) The quorum required in subsection (1) of this section.

3       **SECTION 37.** ORS 100.410 is amended to read:

4       100.410. (1) The declarant shall adopt on behalf of the association of unit owners the initial by-  
5 laws that govern the administration of the condominium. The bylaws shall be recorded simultane-  
6 ously with the declaration as an exhibit or as a separate instrument.

7       (2) Unless otherwise provided in the declaration or bylaws, amendments to the bylaws may be  
8 proposed by a majority of the board of directors or by at least 30 percent of the owners.

9       (3) Subject to subsections (4) and (5) of this section and ORS 100.415 (20), an amendment of the  
10 bylaws is not effective unless the amendment is:

11       (a) Approved by at least a majority of the unit owners; and

12       (b) Certified by the chairperson and secretary of the association of unit owners as being adopted  
13 in accordance with the bylaws and the provisions of this section, acknowledged in the manner pro-  
14 vided for acknowledgment of instruments and recorded.

15       (4) In condominiums that are exclusively residential:

16       (a) The bylaws may not provide that greater than a majority of the unit owners is required to  
17 amend the bylaws except for amendments relating to age restrictions, pet restrictions, limitations  
18 on the number of persons who may occupy units and limitations on the rental or leasing of units.

19       (b) An amendment relating to a matter specified in paragraph (a) of this subsection is not ef-  
20 fective unless approved by at least 75 percent of the owners or a greater percentage specified in the  
21 bylaws.

22       (5) The bylaws may not be amended to limit or diminish any special declarant right without the  
23 consent of the declarant. However, the declarant may waive the declarant's right of consent.

24       (6)(a) For five years after the recording of the initial bylaws, before any amended bylaw may  
25 be recorded, the amended bylaw must be approved by the Real Estate Commissioner. The commis-  
26 sioner shall approve such amendment if the requirements of ORS 100.415 and this section have been  
27 satisfied.

28       (b) The approval by the commissioner under paragraph (a) of this subsection is not required for  
29 bylaws restated under subsection (10) of this section unless the bylaws are restated during the  
30 five-year period after the recording of the initial bylaws.

31       **(c) If the amended bylaw approved by the commissioner under this subsection is not re-**  
32 **corded as required in subsection (3) of this section within two years from the date of ap-**  
33 **proval by the commissioner, the approval automatically expires and the amended bylaw must**  
34 **be resubmitted for approval as provided in this section. The commissioner's approval shall**  
35 **set forth the date on which the approval expires.**

36       (7) Before the commissioner approves amended bylaws or restated bylaws under this section, the  
37 person submitting the amended bylaws or restated bylaws shall pay to the commissioner the fee  
38 provided by ORS 100.670.

39       (8) Notwithstanding a provision in the bylaws, including bylaws adopted prior to July 14, 2003,  
40 that requires an amendment to be executed, or executed and acknowledged, by all owners approving  
41 the amendment, amendments to the bylaws under this section become effective after approval by the  
42 owners if executed and certified on behalf of the association by the chairperson and secretary in  
43 accordance with subsection (3)(b) of this section.

44       (9) An amendment to the bylaws must be conclusively presumed to have been regularly adopted  
45 in compliance with all applicable procedures relating to the amendment unless an action is brought

1 within one year after the effective date of the amendment or the face of the amendment indicates  
 2 that the amendment received the approval of fewer votes than required for the approval. Nothing  
 3 in this subsection prevents the further amendment of an amended bylaw.

4 (10)(a) The board of directors, by resolution and without the further approval of unit owners,  
 5 may cause restated bylaws to be prepared and recorded to codify individual amendments that have  
 6 been adopted in accordance with this section.

7 (b) Bylaws restated under this subsection must:

8 (A) Include all previously adopted amendments that are in effect, state that the amendments  
 9 were approved by the commissioner as required under this section and state that no other changes  
 10 were made except, if applicable, to correct scriveners' errors or to conform format and style;

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

14 (C) Include a reference to the recording index numbers and date of recording of the initial by-  
 15 laws and all previously recorded amendments that are in effect and are being codified;

16 (D) Include a certification by the chairperson and secretary of the association that the restated  
 17 bylaws include all previously adopted amendments that are in effect, that amendments were ap-  
 18 proved by the commissioner if required under this section and that no other changes except, if ap-  
 19 plicable, to correct scriveners' errors or to conform format and style;

20 (E) Be executed and acknowledged by the chairperson and secretary of the association and re-  
 21 corded in the deed records of each county in which the condominium is located; and

22 (F) If required under subsection (6) of this section, be approved by the commissioner.

23 (c) The board of directors shall cause a copy of the recorded restated bylaws, including the re-  
 24 cording information, to be filed with the commissioner.

25 **SECTION 38.** ORS 100.425 is amended to read:

26 100.425. (1) Unless prohibited or limited by the declaration, articles of incorporation or bylaws,  
 27 any action that may be taken at any annual, regular or special meeting of the association of unit  
 28 owners may be taken without a meeting if the association delivers a written ballot to every associ-  
 29 ation member that is entitled to vote on the matter. Action by written ballot may not substitute for  
 30 the following meetings:

31 (a) The turnover meeting required under ORS 100.210.

32 (b) The annual meeting of an association if more than a majority of the units are the principal  
 33 residences of the occupants.

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

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

41 (A) A secrecy envelope;

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

43 (C) Instructions for marking and returning the ballot.

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

45 (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 must be received by the board requesting secrecy procedures; and

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

*[(d) Notwithstanding the applicable provisions of subsection (3) or (4) of this section, written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.]*

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

(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 return of ballots has passed, a quorum of unit owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected; and

(b) If approval of a proposed action otherwise would require a meeting at which a specified percentage of unit 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 *[such]* **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 *[such]* **the** required percentage has not been met. *[Unless otherwise prohibited by the declaration, articles of incorporation or bylaws, the votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are counted.]*

(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 *[such]* **the** quorum requirement; *[and]*

(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) *[All solicitations for votes by written ballot shall specify the period during which]* The association shall accept written ballots for counting~~*[, which]*~~ **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)]* **(A)** If approval of a proposed action by written ballot requires that a certain percentage of the unit owners approve the proposal, the date on which the association has received a sufficient number of approving ballots;

*[(b)]* **(B)** If approval of a proposed action by written ballot requires that a certain percentage of the unit owners approve the proposal, the date on which the association has received a sufficient

number of disapproving ballots to render approval impossible; *[and]* **or**

*[(c)]* **(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, articles of incorporation 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 unit owners before the end of the specified date certain.**

**(6) Except as otherwise provided in the declaration, articles of incorporation[,] or bylaws, unless the vote is by secrecy procedure as provided in subsection (2)(b) of this section, a written ballot may *[not]* be revoked before the final return date of ballots.**

**(7) Unless otherwise prohibited by the declaration, articles of incorporation 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. 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.**

**SECTION 39.** ORS 100.427 is amended to read:

100.427. (1) Unless the bylaws provide otherwise, the vote or votes of a unit owner may be cast *[by absentee ballot or]* pursuant to a proxy executed by the owner **or, in the discretion of the board of directors, by absentee ballot. An absentee ballot shall be treated as a proxy for the purpose of establishing a quorum.**

(2) An owner may not revoke a proxy **or absentee ballot** given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association of unit owners or to the board of directors if a vote is being conducted by written ballot in lieu of a meeting pursuant to ORS 100.425.

(3) A proxy is not valid if it is undated or purports to be revocable without notice. A proxy shall terminate one year after its date unless the proxy specifies a shorter term.

**SECTION 40.** ORS 100.450 is amended to read:

100.450. (1) Whenever an association of unit owners levies any assessment against a unit, the association of unit owners shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for any unpaid assessments. The lien includes interest, late charges, attorney fees, costs or other amounts levied under the declaration or bylaws. The lien is prior to a homestead exemption and all other liens or encumbrances upon the unit except:

(a) Tax and assessment liens; and

(b) A first mortgage or trust deed of record unless:

(A) The condominium consists of fewer than seven units, all of which are to be used for non-residential purposes;

(B) The declaration provides that the lien of any mortgage or trust deed of record affecting the property shall be subordinate to the lien of the association provided under subsection (1) of this section; and

(C) The holder of any mortgage or trust deed of record affecting the property when the decla-

1 ration is recorded executes a separate subordination of the holder's interest to the declaration  
2 which is attached as an exhibit and which states that the holder understands that the declaration  
3 subordinates the holder's lien to the assessment lien of the association provided under subsection  
4 (1) of this section.

5 (2) Recording of the declaration constitutes record notice and perfection of the lien for assess-  
6 ments. No further recording of a claim of lien for assessments or notice of a claim of lien under this  
7 section is required to perfect the association's lien. The association shall record a notice of claim  
8 of lien for assessments under this section in the deed records of the county in which the unit is lo-  
9 cated before any suit to foreclose may proceed under subsection (4) of this section. The notice shall  
10 contain:

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

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

14 (c) The name of the condominium and the designation of the unit as stated in the declaration  
15 or applicable supplemental declaration; and

16 (d) A statement that if the owner of the unit thereafter fails to pay any assessments when due,  
17 as long as the original or any subsequent unpaid assessment remains unpaid, the unpaid amount of  
18 assessments automatically continue to accumulate with interest without the necessity of further re-  
19 cording.

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

23 (4)(a) The proceedings to foreclose liens created by this section shall conform as nearly as pos-  
24 sible to the proceedings to foreclose liens created by ORS 87.010 except, notwithstanding ORS  
25 87.055, a lien may be continued in force for a period of time not to exceed six years from the date  
26 the assessment is due. For the purpose of determining the date the assessment is due in those cases  
27 when subsequent unpaid assessments have accumulated under a notice recorded as provided in  
28 subsection (2) of this section, the assessment and claim regarding each unpaid assessment shall be  
29 deemed to have been levied at the time the unpaid assessment became due.

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

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

34 (d) An action to foreclose a lien under this section or recover a money judgment for unpaid  
35 assessments may not be maintained unless the Condominium Information Report and the Annual  
36 Report described in ORS 100.250 are designated current as provided in ORS 100.255.

37 (5) Unless the declaration or bylaws provides otherwise, fees, late charges, fines and interest  
38 imposed pursuant to ORS 100.405 (4)(j), (k), (L) and (m) are enforceable as assessments under this  
39 section.

40 (6) With respect to condominium units also constituting timeshare property as defined by ORS  
41 94.803, liens created by this section shall be assessed to the timeshare owners in the timeshare  
42 property according to the method for determining each owner's liability for common expenses under  
43 the timeshare instrument and shall be enforced individually against each timeshare owner in the  
44 condominium unit.

45 (7) Notwithstanding the priority established for a lien for unpaid assessments and interest under

subsection (1) of this section, the lien shall also be prior to the lien of a first mortgage or trust deed of record for the unit and the undivided interest in the common elements, if:

(a) The association of unit owners for the condominium in which the unit is located has given the lender under the mortgage or trust deed 90 days prior written notice that the owner of the unit is in default in payment of an assessment. The notice shall contain:

(A) Name of borrower;

(B) Recording date of trust deed or mortgage;

(C) Recording information;

(D) Name of condominium, unit owner and unit designation stated in the declaration or applicable supplemental declaration; and

(E) Amount of unpaid assessment.

(b) The notice under paragraph (a) of this subsection shall set forth the following in 10-point type:

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NOTICE: The lien of the association may become prior to that of the lender pursuant to ORS 100.450.

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(c) The lender has not *[initiated]* **filed** judicial action to foreclose the mortgage or *[requested issuance of]* **recorded** a trustee's notice of sale under the trust deed or accepted a deed in lieu of foreclosure in the circumstances described in ORS 100.465 prior to the expiration of 90 days following the notice by the unit owners' association.

(d) The unit owners' association has provided the lender, upon request, with copies of any liens filed on the unit, a statement of the assessments and interest remaining unpaid on the unit and other documents which the lender may reasonably request.

*[(e) The borrower is in default under the terms of the mortgage or trust deed as to principal and interest.]*

*[(f)]* (e) A copy of the notice described in paragraph (a) of this subsection, together with an affidavit of notice by a person having knowledge of the facts, has been recorded in the manner prescribed in subsection (3) of this section. The affidavit shall recite the date and the person to whom the notice was given.

**SECTION 41.** ORS 100.470 is amended to read:

100.470. *[Unless otherwise provided in the declaration or bylaws,]* In any suit or action brought by an association of unit owners to foreclose its lien or to collect delinquent assessments or in any suit or action brought by declarant, the association or any owner or class of owners to enforce compliance with the terms and provisions of the Oregon Condominium Act, the condominium 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.

**SECTION 42.** ORS 100.480 is amended to read:

100.480. (1) An association of unit owners shall retain within this state the documents, information and records delivered to the association under ORS 100.210 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:



1 (a) The documents specified in ORS 100.210 (5)(j), if received, must be retained as permanent  
2 records of the association.

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

4 (2) The association of unit owners shall keep financial records sufficient for proper accounting  
5 purposes. All assessments shall be deposited in a separate bank account[, *located within*] **in a fi-**  
6 **ncial institution authorized to do business in** this state, in the name of the association. All  
7 expenses of the association shall be paid from the association bank account.

8 (3) Within 90 days after the end of the fiscal year, the board of directors shall:

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

11 (b) Distribute to each unit owner a copy of the annual financial statement.

12 (4) Subject to section 26, chapter 803, Oregon Laws 2003, the association of unit owners of a  
13 condominium that has annual assessments exceeding \$75,000 shall cause the financial statement re-  
14 quired under subsection (3) of this section to be reviewed within 180 days after the end of the fiscal  
15 year by an independent certified public accountant licensed in the State of Oregon in accordance  
16 with the Statements on Standards for Accounting and Review Services issued by the American In-  
17 stitute of Certified Public Accountants.

18 (5) The association of unit owners of a condominium that has annual assessments of \$75,000 or  
19 less shall cause the most recent financial statement required by subsection (3) of this section to be  
20 reviewed in the manner described in subsection (4) of this section within 180 days after the board  
21 of directors receives the petition requesting review signed by at least a majority of the owners.

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

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

28 (A) The amount of assessments due from the owner and unpaid at the time the request was re-  
29 ceived, including:

30 (i) Regular and special assessments;

31 (ii) Fines and other charges;

32 (iii) Accrued interest; and

33 (iv) Late payment charges.

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

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

37 (b) The association is not required to comply with paragraph (a) of this subsection if the asso-  
38 ciation has commenced litigation by filing a complaint against the owner and the litigation is  
39 pending when the statement would otherwise be due.

40 (8)(a) Except as provided in paragraph (b) of this subsection, the documents, information and  
41 records described in subsections (1) to (3) of this section and all other records of the association of  
42 unit owners must be reasonably available for examination and, upon written request, available for  
43 duplication by a unit owner and any mortgagee of a unit that makes the request in good faith for  
44 a proper purpose.

45 (b) Records kept by or on behalf of the association may be withheld from examination and du-

plication 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 subparagraphs (A) and (B) of this paragraph.

(D) Disclosure of information in violation of law.

(E) Documents, correspondence or management or board reports compiled for or 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 100.420 (1).

(F) Documents, correspondence or other matters considered by the board of directors in executive session held in accordance with ORS 100.420 (1).

(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 of unit owners 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 annual financial statement prepared in accordance with subsection (3) of this section;

(c) The current operating budget of the association;

(d) The reserve study, if any, described in ORS 100.175; and

(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 incurred to furnish the information.

(12) Subsection (3) of this section first applies to property submitted to the provisions of this chapter before January 1, 1982, when the board of directors of the association of unit owners receives a written request from at least one unit owner that a copy of the annual financial statement be distributed in accordance with subsection (3) of this section.

**SECTION 43.** ORS 100.510 is amended to read:

100.510. (1) Unless otherwise provided in the declaration, [*if the declaration designates*] **the** walls, floors [*or*] **and** ceilings [*as*] **are the** boundaries of a unit[:].

[(1)] (2) All lath, furring, wallboard, plaster-board, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof shall be a part of the unit except those portions of the walls, floors or ceilings that materially contribute to the structural or shear capacity of the condominium. All other portions of the walls, floors or ceilings shall be a part of the common elements.

[(2)] (3) The following shall be a part of the unit:

(a) All spaces, nonbearing interior partitions, [*windows, window frames, exterior*] **interior**

1 doors[, *door frames*] and all other fixtures and improvements within the boundaries of the unit;  
 2 [*and*]

3 **(b) The glazing and screening of windows and unit access doors; and**

4 [*(b)*] (c) All outlets of utility service lines, including but not limited to power, light, gas, hot and  
 5 cold water, heating, refrigeration, air conditioning and waste disposal within the boundaries of the  
 6 unit.

7 **SECTION 44.** ORS 100.515 is amended to read:

8 100.515. (1)(a) Each unit shall be entitled to an undivided interest in the common elements in  
 9 the allocation expressed in the declaration. [*Such*] **The** allocation shall be expressed as a fraction  
 10 or percentage of undivided interest in the common elements.

11 **(b)** Except as otherwise provided in this chapter, the allocation of undivided interest of each  
 12 unit in the common elements as expressed in a declaration shall not be altered unless all unit  
 13 owners having an interest in the particular common element agree thereto and record an amend-  
 14 ment to the declaration setting forth the altered allocation of each unit having an interest.

15 (2) The sums of the undivided interest in the common elements shall equal one if stated as  
 16 fractions or 100 percent if stated as percentages.

17 (3) The undivided interest in the common elements shall not be separated from the unit to which  
 18 it appertains and shall be conveyed or encumbered with the unit even though [*such*] **the** interest is  
 19 not expressly mentioned or described in the conveyance or other instrument.

20 (4) The common elements shall remain undivided and [*no*] **a** unit owner [*shall*] **may not** bring  
 21 any action for partition or division of any part thereof, except as provided in this chapter. Any  
 22 covenant to the contrary is void.

23 (5)(a) Notwithstanding subsections (1) and (3) of this section, except [*where*] **when** expressly  
 24 prohibited by the declaration or bylaws, the right of use of any unit in a limited common element  
 25 may be transferred to any other unit. [*Such*] **The** transfer [*shall*] **may** occur only if the existing unit  
 26 owner and **the owner of the unit to which the right of use is being transferred agree to, with**  
 27 **the consent of** all mortgagees of the unit for which the right of use of the limited common element  
 28 is presently reserved, [*and the unit owner to whom the right of use is being transferred agree to*] and  
 29 record an amendment to the declaration setting forth the transfer.

30 **(b) The amendment to the declaration shall be executed by the unit owners and ac-**  
 31 **knowledgeed in the manner of acknowledgement of deeds and shall include a certification by**  
 32 **the owner of each unit for which the consent of mortgagees is required under this subsection**  
 33 **that the required consent has been given.**

34 (6)(a) Notwithstanding subsections (1) and (3) of this section, [*in the case where*] **when** a single  
 35 unit is originally designed and constructed to be two or more separate hotel, motel or other similar  
 36 living accommodations with separate bathrooms and separate entrances from a hallway, balcony,  
 37 staircase or other common element, the owner, [*or owners,*] with the consent of the [*holder, or*]  
 38 holders[,], of any recorded [*mortgage or lien*] **mortgages or liens** on the unit, may separate [*such*]  
 39 **the** unit into two or more units each having [*such*] separate bathrooms and entrances from [*such*]  
 40 **the** common elements.

41 **(b)** [*Such persons*] **The owners** may divide between [*such*] **the** separate units the allocation of  
 42 the common elements assigned to the original unit on substantially the basis that the square footage  
 43 of [*such*] **the** separated units bears to the total square footage of the original unit.

44 **(c) The divisions shall be made** by recording an amendment to the declaration signed by  
 45 [*such*] **the** owner[, *or owners,*] of **the** original unit together with an amendment to any plat and floor

1 plan of *[such]* **the** original unit recorded pursuant to ORS 100.115 showing the division thereof into  
 2 *[such]* two or more units.

3 **(d)** The amendment shall comply with ORS 100.115. *[Such]* **The** separated parts of the original  
 4 unit *[shall]* **may** not be used for any purpose other than the purpose for which *[such]* **the** separable  
 5 parts were originally designed and constructed and thereafter have generally been used.

6 **SECTION 45.** ORS 100.535 is amended to read:

7 100.535. (1) Subject to subsections *[(2) and (3)]* **(5) and (6)** of this section and any additional  
 8 limitations contained in the declaration or bylaws, a unit owner:

9 (a) May make any improvements or alterations to the unit of the unit owner that do not impair  
 10 the structural integrity or mechanical systems of the condominium or lessen the support of any  
 11 portion of the condominium.

12 (b) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may submit a  
 13 written request to the board of directors for permission to remove or alter any intervening partition  
 14 or to create apertures therein, even if the partition in whole or in part is a common element.

15 **(2)** The board of directors shall approve the change unless it determines within 45 days that the  
 16 proposed change will impair the structural integrity or mechanical systems of the condominium or  
 17 lessen the support of any portion of the condominium.

18 **(3)** The board of directors may require the unit owner, at the expense of the unit owner, to  
 19 submit an opinion of a registered architect or registered professional engineer that the proposed  
 20 change will not impair the structural integrity or mechanical systems of the condominium or lessen  
 21 the support of any portion of the condominium.

22 **(4)** Removal of partitions or creation of apertures under *[this paragraph]* **subsection (1) of this**  
 23 **section** is not an alteration of boundaries.

24 *[(2)]* **(5)** A unit owner shall make no repair or alteration or perform any other work on the unit  
 25 which would jeopardize the soundness or safety of the property, reduce the value thereof, impair any  
 26 easement or hereditament or increase the common expenses of the association unless the consent  
 27 of all the other unit owners affected is first obtained.

28 *[(3)]* **(6)** Unless otherwise provided in the declaration or bylaws, a unit owner may not change  
 29 the appearance of the common elements or the exterior appearance of a unit without permission of  
 30 the board of directors of the association.

31 **(7) Unless otherwise provided in the declaration or bylaws, a unit owner is responsible**  
 32 **for the maintenance, repair and replacement of the unit.**

33 **SECTION 46.** ORS 100.540 is amended to read:

34 100.540. (1) Each unit owner may use the common elements in accordance with the purposes for  
 35 which they are intended, but may not hinder or encroach upon the lawful rights of the other unit  
 36 owners.

37 **(2) Unless otherwise provided in the declaration or bylaws, the responsibility for mainte-**  
 38 **nance, repair and replacement of the general common areas shall be the responsibility of the**  
 39 **association of unit owners. The cost of maintenance, repair and replacement shall be a**  
 40 **common expense of the association.**

41 **(3)** The necessary work of maintenance, repair and replacement of the common elements and  
 42 additions or improvements to the common elements shall be carried out only as provided in the by-  
 43 laws.

44 *[(3)]* **(4)** The association of unit owners shall have the right to have access to each unit as may  
 45 be necessary for the maintenance, repair or replacement of the common elements, or to make

1 emergency repairs therein necessary for the public safety or to prevent damage to the common el-  
 2 ements or to another unit.

3 **SECTION 47.** ORS 100.600 is amended to read:

4 100.600. (1)(a) Subject to ORS 100.605, the condominium may be terminated if all of the unit  
 5 owners remove the property from the provisions of this chapter by executing and recording an in-  
 6 strument to that effect and the holders of all liens affecting the units consent thereto or agree, in  
 7 either case by instruments duly recorded, that their liens be transferred to the undivided interest  
 8 of the unit owner in the property after the termination. The instrument shall state the interest of  
 9 each unit owner and lienholder as determined under ORS 100.610.

10 (b) The recording of an instrument of termination shall vacate the plat but shall not vacate or  
 11 terminate any recorded covenants, restrictions, easements or other interests not imposed under the  
 12 declaration or bylaws or any easement granted by the plat unless the instrument of termination  
 13 otherwise provides.

14 (c) Before the instrument of termination may be recorded, it must be signed by the county  
 15 assessor for the purpose of acknowledging that the county assessor has been notified of the proposed  
 16 termination.

17 (d)(A) The person offering the instrument of termination for recording shall cause a copy of the  
 18 recorded instrument, including the recording information, to be filed with the commissioner.

19 (B) The county clerk shall promptly provide a certified copy of the recorded instrument of ter-  
 20 mination to the county assessor and the county surveyor. Upon receipt of the instrument of termi-  
 21 nation, the county surveyor *[shall]* **may** make appropriate annotations, including the date and  
 22 surveyor's name or initials, with archival quality black ink on the surveyor's copy of the plat and  
 23 any copies filed under ORS 92.120.

24 (C) Corrections or changes *[shall not be]* **are not** allowed on the original plat once it is recorded  
 25 with the county clerk.

26 (e) Failure to file the copies as required under paragraph (d) of this subsection shall not invali-  
 27 date the termination.

28 (2) **Subject to subsection (4) of this section**, a portion of the property may be removed from  
 29 the provisions of this chapter by recording simultaneously with the recording officer an amendment  
 30 to the declaration and *[an amended]* a plat **amendment** approved as required under ORS 100.110,  
 31 100.115 and 100.135. The amendment to the declaration shall:

32 (a) Include a metes and bounds legal description of the property being removed;

33 (b) Include a metes and bounds legal description of the resulting boundaries of the condominium  
 34 after the removal;

35 (c) State the interest of each owner and lienholder in the property being removed;

36 (d) State the interest of each unit owner and lienholder in the condominium after the removal;

37 (e) Be approved and executed by all owners and lienholders and acknowledged in the manner  
 38 provided for acknowledgment of deeds; and

39 (f) **Include** a statement by the local governing body or appropriate department thereof that the  
 40 removal will not violate any applicable planning or zoning regulation or ordinance. The statement  
 41 may be attached as an exhibit to the amendment.

42 (3) The *[amended]* plat **amendment** required under subsection (2) of this section shall:

43 (a) Comply with ORS 100.115 *[(9)]* **(8)**;

44 (b) Include a "Statement of Removal" that the property described on the amended plat is re-  
 45 moved from the condominium and that the condominium exists as described and depicted on the

1 amended plat. *[Such]* **The** statement shall be made by the chairperson and secretary of the associ-  
 2 ation and acknowledged in the manner provided for acknowledgment of deeds; and

3 (c) Include such signatures of approval as may be required by local ordinance or regulation.

4 **(4)(a) The provisions of paragraph (b) of this subsection apply only if a proposed removal**  
 5 **of a portion of the condominium from the provisions of this chapter is:**

6 **(A) In conjunction with satisfying conditions of approval imposed by the local governing**  
 7 **body for the development of adjacent property, whether or not the unit owners or the asso-**  
 8 **ciation of unit owners has any interest in the property; or**

9 **(B) In response to an anticipated suit for condemnation by a local governing body.**

10 **(b) The amendment required under subsection (2) of this section shall:**

11 **(A) Include a statement that the amendment is pursuant to this subsection and a refer-**  
 12 **ence to the specific requirement or anticipated action of the local governing body.**

13 **(B) Be approved by at least 80 percent of the owners and lienholders, or a higher per-**  
 14 **centage if required by the declaration or bylaws, including the owner and lienholder of any**  
 15 **unit, or owner and lienholder of any unit to which the use of a limited common element is**  
 16 **reserved, all or a portion of which is being removed.**

17 **(C) Include a certification by the chairperson or secretary that the amendment was**  
 18 **adopted as required by the declaration and this subsection.**

19 **(D) Be executed by the chairperson and secretary of the association and the owners and**  
 20 **lienholders of any unit or limited common element whose approval is required under sub-**  
 21 **paragraph (B) of this paragraph and acknowledged in the manner provided for acknowledge-**  
 22 **ment of deeds.**

23 **(c) Upon the recording of an amendment under this section, any interest in the removed**  
 24 **property held for security purposes shall be automatically extinguished.**

25 **(5) The tax collector for any taxing unit having a lien for taxes or assessments *[shall have]* has**  
 26 **authority to consent to *[such]* a transfer of any tax or assessment lien under subsection (1) of this**  
 27 **section or the removal of a portion of the property under subsection (2) or (4) of this section.**

28 **SECTION 48. ORS 100.655 is amended to read:**

29 100.655. (1) The disclosure statement submitted to the Real Estate Commissioner as part of a  
 30 filing under ORS 100.635 shall contain the following information:

31 (a) The name and address of the condominium, and the name, address and telephone number of  
 32 the developer;

33 (b) A general narrative description of the condominium stating the total number of units, a de-  
 34 scription of the types of units, the total number of units that may be included in the condominium  
 35 pursuant to ORS 100.105 (2), and a precise statement of the nature of the interest which is being  
 36 offered;

37 (c) If at the time of filing:

38 **(A) The construction of the project is not completed, general disclosure of the status of con-**  
 39 **struction and the actual or scheduled dates of completion of buildings, recreational facilities and**  
 40 **other common elements, including a statement describing any recreational facilities or improvements**  
 41 **to the common elements that the developer reserves the right to develop or promises to develop, or**  
 42 **a statement that there are no such facilities or improvements; or**

43 **(B) The construction of the project is completed, the actual dates of completion of buildings,**  
 44 **recreational facilities and other common elements if known by the developer;**

45 **(d) The nature and significant terms of any financing offered by the developer to purchasers of**

the condominium units;

(e) Copies of any warranties for structural elements and mechanical and other systems or a brief description of such warranties;

(f)(A) A current or projected budget of the association of unit owners for the operation and maintenance and any other common expenses of the condominium, including an amount for a subsidy of the association by the declarant, if any, by a contribution of funds, goods or services;

(B) A brief statement of the method of determining liability for common expenses and the right to common [*profits*] **revenues**; and

(C) The following notice in at least 12-point type that is either all capitals or boldface:

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NOTICE TO PROSPECTIVE PURCHASERS

THE PROJECTION OF THE BUDGET OF THE ASSOCIATION OF UNIT OWNERS FOR THE OPERATION AND MAINTENANCE AND OTHER COMMON EXPENSES OF THE CONDOMINIUM IS ONLY AN ESTIMATE, PREPARED WITH DUE CARE.

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(g) If a provision for reserves under ORS 100.175 is included in the budget disclosed under paragraph (f) of this subsection:

(A) A statement identifying the information constituting the basis for the reserve assessment under ORS 100.175 (3)(b); and

(B) A statement that the information constituting the basis for the reserve assessment identified under ORS 100.175 (3)(b) is available for review upon written request to the declarant or the designated person, unless included in the disclosure statement;

(h) In the case of a conversion condominium, a statement of:

(A) The present condition of all structural components and major mechanical and utility installations in the condominium, including the approximate date of construction and a reasonable estimate of the remaining useful life of, at a minimum, the roof, siding, plumbing, electrical, HVAC system, asphalt, sidewalks and decks;

(B) Whether or not the assessment of conditions under subparagraph (A) of this paragraph, which shall be in at least 12-point type that is all capitals or boldface, was prepared by a licensed engineer, architect or home inspector[;] and, **if so:**

**(i) Whether or not the assessment of conditions included an inspection for pests, dry rot, mold or water intrusion; and**

**(ii) If there is an inspection report, a statement that the inspection report is available for review upon written request to the declarant or a designated person, unless the report is included in the disclosure statement; and**

(C) The statutory procedure required to create a conversion condominium;

(i) A cross-reference to the portions of the declaration, any supplemental declaration and bylaws containing the general power and authority of the board of directors, the method of apportionment of voting rights among the members of the association of unit owners and a statement of the nature and extent of control of the board of directors retained by the developer by voting rights or otherwise;

(j) A list of the documents by which purchasers may be bound, including the declaration, bylaws,

1 ground leases, management agreement, easements, covenants, restrictions and conditions;

2 (k) A statement of whether there are any restrictions on alienation of units or any use or oc-  
3 cupancy restrictions, such as limitations on residential or commercial use, pets, age of occupants  
4 or number of occupants, and a cross-reference to those portions of the declaration, any supplemental  
5 declaration, bylaws or any other document containing the principal provisions relating to those re-  
6 strictions; and

7 (L) If the condominium is a staged condominium:

8 (A) Whether the declarant reserves the right to annex additional property to the condominium  
9 pursuant to ORS 100.125 and, if so:

10 (i) The maximum number of units;

11 (ii) The date after which annexation right terminates;

12 (iii) The description of additional common elements declarant reserves right to annex to the  
13 property and whether such common elements might substantially increase the proportionate amount  
14 of common expenses by current unit owners; and

15 (iv) The effect of annexation of additional units on allocation of interest in the common elements  
16 and voting rights.

17 (B) If the condominium or any stage being filed under ORS 100.635 contains or may contain any  
18 variable property, a statement of the rights reserved by the declarant under ORS 100.150 (1) and the  
19 results specified in ORS 100.155 if such rights are not exercised.

20 (2) In lieu of the disclosure statement required under subsection (1) of this section, the com-  
21 missioner may accept a disclosure report issued or approved by another state or governmental  
22 agency.

23 (3) No disclosure statement is required for condominiums described in ORS 100.660.

24 (4) The declarant is not liable to the association or the owners with respect to a statement of  
25 condition or estimate of useful life contained in the disclosure statement if:

26 (a) The declarant did not have actual knowledge of any inaccuracies in the statement at the  
27 time of delivery of the disclosure statement to the purchaser; and

28 (b) The declarant relied upon reports prepared by licensed engineers or architects in making the  
29 statement or, if the condominium has four or fewer units, reports prepared by licensed engineers,  
30 architects or home inspectors.

31 **SECTION 49.** ORS 94.572 is amended to read:

32 94.572. (1)(a) A Class I or Class II planned community created before January 1, 2002, that was  
33 not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 (4)  
34 to (8), 94.625, 94.630 (1), (3) and (4), 94.640, 94.645, 94.647, 94.650, 94.655, 94.657, 94.658, 94.660, 94.662,  
35 94.665, 94.670, 94.675, 94.680, 94.690, [94.695,] 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728,  
36 94.733, 94.770, 94.775, 94.777 and 94.780 to the extent that those statutes are consistent with any  
37 governing documents. If the governing documents do not provide for the formation of an association,  
38 the requirements of this subsection are not effective until the formation of an association in ac-  
39 cordance with paragraph (b) of this subsection. If a provision of the governing documents is incon-  
40 sistent with this subsection, the owners may amend the governing documents using the procedures  
41 in this subsection:

42 (A) In accordance with the procedures for the adoption of amendments in the governing docu-  
43 ments and subject to any limitations in the governing documents, the owners may amend the in-  
44 consistent provisions of the governing documents to conform to the extent feasible with this section  
45 and ORS 94.550, 94.590, 94.595 (4) to (8), 94.625, 94.630 (1), (3) and (4), 94.640, 94.645, 94.647, 94.650,



1 94.655, 94.657, 94.658, 94.660, 94.662, 94.665, 94.670, 94.675, 94.680, 94.690, [94.695,] 94.704, 94.709,  
 2 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780. Nothing in this para-  
 3 graph requires the owners to amend a declaration or bylaws to include the information required by  
 4 ORS 94.580 or 94.635.

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

6 (i) For an amendment to a recorded governing document other than bylaws, the owners may  
 7 amend the inconsistent provisions of the document to conform to this section and ORS 94.550, 94.590,  
 8 94.595 (4) to (8), 94.625, 94.630 (1), (3) and (4), 94.640, 94.645, 94.647, 94.650, 94.655, 94.657, 94.658,  
 9 94.660, 94.662, 94.665, 94.670, 94.675, 94.680, 94.690, [94.695,] 94.704, 94.709, 94.712, 94.716, 94.719,  
 10 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  
 11 in the planned community.

12 (ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the  
 13 bylaws to conform to this section and ORS 94.550, 94.590, 94.595 (4) to (8), 94.625, 94.630 (1), (3) and  
 14 (4), 94.640, 94.645, 94.647, 94.650, 94.655, 94.657, 94.658, 94.660, 94.662, 94.665, 94.670, 94.675, 94.680,  
 15 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  
 16 94.780 by a vote of at least a majority of the owners in the planned community.

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

20 (iv) An amendment to a recorded declaration shall be executed, certified and recorded as pro-  
 21 vided in ORS 94.590 (2) and (3) and shall be subject to ORS 94.590 (5). An amendment to the bylaws  
 22 and any other governing document shall be executed and certified as provided in ORS 94.590 (3) and  
 23 shall be recorded in the office of the recording officer of every county in which the planned com-  
 24 munity is located if the bylaws or other governing document to which the amendment relates were  
 25 recorded.

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

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

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

31 (b)(A) If the governing documents do not provide for the formation of an association of owners,  
 32 at least 10 percent of the owners in the planned community or any governing entity may initiate the  
 33 formation of an association as provided in this paragraph. The owners or the governing entity ini-  
 34 tiating the association formation shall call an organizational meeting for the purpose of voting  
 35 whether to form an association described in ORS 94.625. The notice of the meeting shall:

36 (i) Name the initiating owners or governing entity;

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

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

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

44 (v) State that to adopt articles of incorporation, to elect the initial board of directors pursuant  
 45 to the articles of incorporation or to adopt the initial bylaws requires an affirmative vote of at least

1 a majority of the owners present;

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

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

6 (viii) Be delivered in accordance with the declaration and bylaws. If there is no governing doc-  
7 ument or the document does not include applicable provisions, the owners or governing entity shall  
8 follow the procedures prescribed in ORS 94.650 [(3)] (4).

9 (B) At least five business days before the organizational meeting, the initiating owners or gov-  
10 erning entity shall cause articles of incorporation and bylaws to be drafted. The bylaws shall in-  
11 clude, to the extent applicable, the information required by ORS 94.635.

12 (C) At the organizational meeting:

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

16 (ii) The initiating owners or governing entity shall make available copies of the proposed arti-  
17 cles of incorporation and the proposed bylaws.

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

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

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

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

31 (i) Cause the articles of incorporation to be filed with the Secretary of State under ORS chapter  
32 65;

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

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

40 (iv) Cause a statement of association information to be prepared, executed and recorded in ac-  
41 cordance with ORS 94.667.

42 (E) If the owners vote to form an association, all costs incurred under this paragraph, including  
43 but not limited to the preparation and filing of the articles of incorporation, drafting of bylaws,  
44 preparation of notice of meeting and the drafting, delivery and recording of all notices and state-  
45 ments shall be a common expense of the owners and shall be allocated as provided in the appropri-

1 ate governing document or any amendment thereto.

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

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

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

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

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

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

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

22 (c) Recorded in the office of the recording officer of every county in which the property is lo-  
23 cated.

24 (5) The notice of planned community shall include:

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

28 (b) A list of the properties, described as required for recordation in ORS 93.600, within the ju-  
29 risdiction of the association;

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

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

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

38 (f) If an association is formed under subsection (1)(b)(A) of this section, a statement to that ef-  
39 fect.

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

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

44 (8) The board of directors of an association not otherwise required to cause a notice of planned  
45 community described in subsection (4) of this section to be prepared and recorded under this section

1 may cause a notice of planned community to be prepared, executed and recorded as provided in  
2 subsection (4) of this section.

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

6 (10) As used in this section:

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

11 (b) "Recorded declaration" means an instrument recorded with the county recording officer of  
12 the county in which the planned community is located that contains conditions, covenants and re-  
13 strictions binding lots in the planned community or imposes servitudes upon the real property.

14 **SECTION 50.** ORS 94.585 is amended to read:

15 94.585. A declarant may amend the declaration or initial bylaws in order to comply with re-  
16 quirements of the Federal Housing Administration, the United States Department of Veterans Af-  
17 fairs, the *[Farmer's Home Administration of the United States]* **federal Rural Housing Service**, the  
18 Federal National Mortgage Association, the Government National Mortgage Association, the Fed-  
19 eral Home *[Mortgage]* Loan **Mortgage** Corporation, any department, bureau, board, commission or  
20 agency of the United States or the State of Oregon or any corporation wholly owned, directly or  
21 indirectly, by the United States or the State of Oregon *[which]* **that** insures, guarantees or provides  
22 financing for a planned community or lots in a planned community. However, if the need to amend  
23 the declaration or the initial bylaws occurs after the turnover to the homeowners association has  
24 occurred, the amendment must be approved by the association in accordance with the approval  
25 provisions of the declaration or bylaws.

26 **SECTION 51.** ORS 94.590 is amended to read:

27 94.590. (1)(a) The declaration may be amended only with the approval of owners representing  
28 at least 75 percent of the total votes in the planned community or any larger percentage specified  
29 in the declaration.

30 (b) An amendment under this section may not:

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

34 (B) Change the boundaries of any lot or any uses to which any lot or unit is restricted as stated  
35 in the declaration under ORS 94.580 (2)(L) or change the method of determining liability for common  
36 expenses, the method of determining the right to common *[profits]* **revenues** or the method of de-  
37 termining voting rights of any lot or unit unless the owners of the affected lots or units unanimously  
38 consent to the amendment.

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

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

44 (b) When the association adopts an amendment to the declaration, the association shall record  
45 the amendment in the office of the recording officer in each county in which the planned community

1 is located. An amendment of the declaration is effective only upon recordation.

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

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

13 (5) During any period of declarant control, voting on an amendment under subsection (1) of this  
 14 section shall be without regard to any weighted vote or special voting right reserved by the  
 15 declarant except as otherwise provided under ORS 94.585. Nothing in this subsection is intended  
 16 to prohibit a declarant from reserving the right to require the declarant's consent to an amendment  
 17 during the period reserved in the declaration for declarant control.

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

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

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

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

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

31 (e) Be executed and acknowledged by the president and secretary of the association and re-  
 32 corded in the deed records of each county in which the planned community is located.

33 **SECTION 52.** ORS 100.130 is amended to read:

34 100.130. (1) Subject to any limitations contained in the declaration, the boundaries between ad-  
 35 joining units, including any intervening common elements, may be relocated or eliminated by an  
 36 amendment to the declaration. The owners of the affected units shall submit to the board of direc-  
 37 tors of the association a proposed amendment which shall identify the units involved, state any re-  
 38 allocations of common element interest, voting rights, common expense liability and right to common  
 39 [profits] **revenues** and contain words of conveyance. The board of directors shall approve the  
 40 amendment unless it determines within 45 days that the reallocations are unreasonable or the relo-  
 41 cation or elimination will impair the structural integrity or mechanical systems of the condominium  
 42 or lessen the support of any portion of the condominium.

43 (2) The board of directors of the association of unit owners may require the owners of the af-  
 44 fected units to submit an opinion of a registered architect or registered professional engineer that  
 45 the proposed relocation or elimination will not impair the structural integrity or mechanical systems

1 of the condominium or lessen the support of any portion of the condominium.

2 (3) The board of directors of the association or any agent appointed by the board of directors  
3 may supervise the work necessary to effect the boundary relocation or elimination.

4 (4) Any expenses incurred under subsections (2) and (3) of this section shall be charged to the  
5 owners of the units requesting the boundary relocation or elimination.

6 (5) The amendment shall be executed by the owners and mortgagees or trust deed beneficiaries  
7 of the affected units, certified by the chairperson and secretary of the association and approved and  
8 recorded in accordance with ORS 100.135 (2)(b).

9 (6) An amendment to the plat and any floor plans necessary to show the altered boundaries be-  
10 tween the adjoining units shall be recorded in accordance with ORS 100.115.

11 **SECTION 53.** ORS 100.135 is amended to read:

12 100.135. (1) Unless otherwise provided in the declaration, an amendment to the declaration may  
13 be proposed by a majority of the board of directors of the association of unit owners or by least 30  
14 percent of the unit owners.

15 (2) Except as otherwise provided in ORS 100.005 to 100.625, an amendment of the declaration is  
16 not effective unless:

17 (a) The amendment is approved by the unit owners as provided in this section and the Real  
18 Estate Commissioner and county assessor according to ORS 100.110; and

19 (b) The amendment, certified by the chairperson and secretary of the association of unit owners  
20 as being adopted in accordance with the declaration and the provisions of this section and ac-  
21 knowledged in the manner provided for acknowledgment of deeds, is recorded notwithstanding a  
22 provision in a declaration, including a declaration recorded before January 1, 2002, that requires  
23 amendments to be executed and acknowledged by all owners approving the amendment.

24 (3) Except as otherwise provided in ORS 100.105 or 100.130 or this section, the declaration may  
25 be amended only with the approval of at least 75 percent of owners, or such greater percentage as  
26 may be required by the declaration.

27 (4) Unless the declaration requires a greater percentage:

28 (a) The declaration and plat may be amended to change a general common element to a limited  
29 common element or change the boundary of a limited common element with the approval of at least  
30 75 percent of owners and approval of the owners of all units to which the limited common element  
31 appertains.

32 (b) The declaration may be amended to change a limited common element, or portion thereof,  
33 to a general common element with the approval of the owners of all units to which the limited  
34 common element appertains and the board of directors.

35 (5)(a) Except as otherwise provided in ORS 100.120, 100.130, 100.515, 100.600, 100.605 and 100.625  
36 and paragraph (b) of this subsection or other provisions of the Oregon Condominium Act, an  
37 amendment that changes the boundary of the property or a unit shall be approved by all unit own-  
38 ers. Such amendment shall constitute a conveyance and shall include words of conveyance. In ad-  
39 dition to the certification required under subsection (2)(b) of this section, an amendment to the  
40 boundary of a unit shall also be executed by the owners of all affected units.

41 (b) An amendment that adds property owned by the association to the condominium as a com-  
42 mon element shall constitute a conveyance and shall:

43 (A) Be approved by at least 75 percent of owners;

44 (B) Contain words of conveyance;

45 (C) Be executed by the chairperson and secretary of the association on behalf of the unit owners

1 and be certified in accordance with subsection (2)(b) of this section; and

2 (D) Be accompanied by a plat amendment in accordance with ORS 100.115.

3 (c) Nothing in paragraph (b) of this subsection is intended to require property acquired or held  
4 by the association pursuant to ORS 100.405 (4)(i) to be added to the condominium.

5 (6) Except as otherwise provided in ORS 100.005 to 100.625, an amendment may not change the  
6 allocation of undivided interest in the common elements, the method of determining liability for  
7 common expenses, the method of determining the right to common *[profits]* **revenues** or the method  
8 of determining voting rights of any unit unless such amendment has been approved by the owners  
9 of the affected units.

10 (7) The declaration may not be amended to limit or diminish any right of a declarant reserved  
11 under ORS 100.105 (2) or (7) or any other special declarant right without the consent of the  
12 declarant. However, the declarant may waive the declarant's right of consent.

13 (8) Nothing in this section shall affect any other approval that may be required by the declara-  
14 tion, bylaws or other instrument.

15 (9) During a period of declarant control reserved under ORS 100.200, voting on an amendment  
16 under this section must be without regard to any weighted vote or other special voting allocation  
17 reserved by the declarant unless the declaration provides that the declarant has the right to exer-  
18 cise the voting rights with respect to specifically described amendments. Nothing in this subsection  
19 prohibits a declarant from reserving the right that declarant's consent is required for an amendment  
20 during a period of declarant control reserved in the declaration.

21 (10) An amendment to a declaration or a supplemental declaration shall be conclusively pre-  
22 sumed to have been regularly adopted in compliance with all applicable procedures relating to such  
23 amendment unless an action is brought within one year after the date such amendment was recorded  
24 or the face of the recorded amendment indicates that the amendment received the approval of fewer  
25 votes than are required for such approval. However, nothing in this subsection shall prevent the  
26 further amendment of an amended declaration or plat in accordance with ORS 100.005 to 100.625.

27 (11)(a) The board of directors, by resolution and without the further approval of the unit owners,  
28 may cause a restated declaration to be prepared and recorded to codify individual amendments that  
29 have been adopted in accordance with this section.

30 (b) A declaration restated under this subsection must:

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

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

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

38 (D) Include a certification by the chairperson and secretary of the association that the restated  
39 declaration includes all previously adopted amendments that are in effect, that amendments were  
40 approved by the county assessor and tax collector if required under ORS 100.110 and that no other  
41 changes were made except, if applicable, to correct scriveners' errors or to conform format and  
42 style;

43 (E) Be executed and acknowledged by the chairperson and secretary of the association and re-  
44 corded in the deed records of each county in which the condominium is located; and

45 (F) Be approved by the commissioner, and by the county assessor and the tax collector under

1 ORS 100.110 if the restated declaration includes any amendments required to be approved by the  
2 county assessor and the tax collector under ORS 100.110 but not previously approved.

3 (c) The board of directors shall cause a copy of the recorded restated declaration, including the  
4 recording information, to be filed with the commissioner.

5 **SECTION 54.** ORS 100.530 is amended to read:

6 100.530. (1) Unless otherwise provided in the declaration, the common [*profits*] **revenues** of the  
7 property shall be distributed among, and the common expenses shall be charged to, the unit owners  
8 according to the allocation of undivided interest of each unit in the common elements.

9 (2) No unit owner by the owner's own action may claim exemption from liability for contribution  
10 towards the common expenses by waiver by the owner of the use or enjoyment of any of the common  
11 elements or by abandonment by the owner of the owner's unit. An owner may not claim an offset  
12 against an assessment for failure of the association to perform its obligations.

13 (3) Subject to subsection (4) of this section:

14 (a) The declarant shall pay assessments due for operating expenses on all unsold units:

15 (A) From the date of conveyance of the first unit in the condominium; and

16 (B) For a staged or flexible condominium, from the date of recording the applicable supplemental  
17 declaration and supplemental plat recorded pursuant to ORS 100.120.

18 (b) From the date of conveyance of the first unit in the condominium, the declarant shall pay  
19 assessments due for reserves on all unsold units.

20 (c) The declarant may defer payment of accrued assessments for reserves required under ORS  
21 100.175 for a unit until the date the unit is conveyed. However, the declarant may not defer payment  
22 of accrued assessments for reserves:

23 (A) Beyond the date of the turnover meeting provided for in the bylaws in accordance with ORS  
24 100.210; or

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

27 (d) Failure of the declarant to deposit the balance due within 30 days after the due date con-  
28 stitutes a violation under ORS 100.545.

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

31 (4)(a) The association shall not assess units owned by the declarant for additional capital im-  
32 provements without the written consent of the declarant as long as:

33 (A) In a single stage condominium, the declarant owns more than two units or five percent of  
34 the units, whichever is greater.

35 (B) In a staged or flexible condominium, the declarant owns more than two units or five percent  
36 of the units submitted to the provisions of this chapter, whichever is greater, or the termination date  
37 has not expired.

38 (b) The declarant may waive the declarant's right of consent provided in paragraph (a) of this  
39 subsection.

40 (5)(a) Except with respect to assessments for reserves required by ORS 100.175, a declaration  
41 or bylaws may provide that, until the turnover meeting, the declarant may elect to defer com-  
42 mencement of all or part of common expense assessments as to all units in a condominium or as to  
43 all units in a stage of a condominium or as to all units created by a supplemental declaration and  
44 plat pursuant to ORS 100.150.

45 (b) If a declarant so elects to defer commencement of all or part of common expense assess-



ments, declarant shall pay as they accrue and be responsible for all or part of the common expenses attributable to the condominium or attributable to the stage of the condominium or the units and common elements created by such supplemental declaration and plat for which assessments have been deferred, until assessments commence for all common expenses.

(c) The declarant shall give not less than 10 days' written notice to all affected unit owners prior to the commencement of common expense assessments if such a deferral occurs.

**SECTION 55.** ORS 100.625 is amended to read:

100.625. (1) Subject to the provisions of the declaration and any applicable law, and upon compliance with this section:

(a) A unit designated in the declaration to be used for commercial, industrial or other nonresidential purpose may be divided by an owner, including the declarant, into two or more units.

(b) A unit owned by the declarant and located in a condominium that consists exclusively of units designated in the declaration to be used for nonresidential purposes, may be divided or converted into two or more units, common elements or a combination of units and common elements.

(2) The owner of a unit to be divided or converted shall submit to the board of directors of the association of unit owners a proposed amendment which shall:

(a) State the purposes of the amendment;

(b) Assign an identifying number to each unit created;

(c) Reallocate the interest in the common elements and the use of any limited common elements, voting rights, common expense liability and the right to common [*profits*] **revenues** in the manner prescribed in the declaration;

(d) Indicate the means of access for each unit to common elements; and

(e) Include any additional provisions necessary to conform any other provisions of the declaration or bylaws.

(3) The board of directors shall approve the proposed amendment unless the board determines within 45 days that the amendment is inconsistent with the declaration or bylaws, or the division or conversion will impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium.

(4) The board of directors may require the owner of the unit to be divided or converted to submit an opinion of a registered professional engineer as to whether or not the proposed division or conversion will impair the structural integrity or mechanical systems of the condominium or weaken the support of any portion of the condominium. The board of directors or any agent appointed by the board of directors may supervise the work necessary to effect the division or conversion. Any expenses incurred under this section shall be charged to the owner of the unit requesting the division or conversion.

(5) The amendment shall be executed by the owner and mortgagees or trust deed beneficiaries of the affected unit, certified by the chairperson and secretary of the association and approved and recorded in accordance with ORS 100.135 (2)(b).

(6) A plat showing each unit created or the conversion of a unit to common elements or combination thereof shall be recorded in accordance with ORS 100.115.

(7) This section applies only if the declaration expressly permits and contains:

(a) A statement of the maximum number of units into which a unit may be divided under subsection (1) of this section;

(b) A general description of the nature and proposed use of any unit or portion of any unit which the declarant may convert to common elements; and

(c) A statement of the method to be used to reallocate interest in the common elements, the use of any limited common elements, voting rights, common expense liability and right to common [profits] revenues.

**SECTION 56.** ORS 100.275 is amended to read:

100.275. (1) Subject to ORS 100.550 (3), ORS 100.250 to 100.280, including the filing of a Condominium Information Report described in ORS 100.260 (1), apply to property submitted to the provisions of this chapter before October 3, 1989, if:

(a) The board of directors of the association receives a written request to comply with such sections from at least one unit owner or holder of a first mortgage or deed of trust on a unit;

(b) The board of directors of the association adopts a resolution to comply with such sections in accordance with the bylaws;

(c) The association is a party to a suit or action, the person designated in the declaration under ORS 100.105 [(1)(k)] (1)(L), the chairperson or secretary receives written notice to comply with such sections from any other party to such suit or action. A copy of the notice shall be delivered to the Real Estate Agency. The Real Estate Agency shall provide a copy of the filed report to the requesting party and may charge the association a fee for cost of such action. If the association fails to deliver for filing such report, the provisions of ORS 100.265 (3) shall apply; or

(d) A filing is required to comply with the requirements of ORS 100.120, 100.135 or 100.450.

(2) The Condominium Information Report required under subsection (1) of this section shall be executed by the chairperson or secretary of the association and the designated agent.

**SECTION 57.** ORS 100.550 is amended to read:

100.550. (1) Service of process in any action relating to the condominium may be made on:

(a) If the condominium was submitted to the provisions of this chapter before October 3, 1989, the person designated in the declaration to receive service of process;

(b) The person named as designated agent in the Condominium Information Report filed with the Real Estate Agency under ORS 100.250;

(c) If the association is organized as a corporation under Oregon law, the registered agent in accordance with ORS 60.111 or 61.086 (1987 Replacement Part); or

(d) The chairperson or secretary of the association.

(2) Except as provided in subsection (4) of this section, if the association of unit owners of property submitted to the provisions of this chapter before October 15, 1983, wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in subsection (1) of this section, it shall record an amendment to the declaration. The amendment shall be certified by the chairperson and the secretary of the association of unit owners, and shall state the name of the successor with the successor's residence or place of business as required by ORS 100.105 [(1)(k)] (1)(L), and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners.

(3) Unless prohibited by the declaration or bylaws, the board of directors of the association of unit owners of property submitted to the provisions of this chapter after October 15, 1983, may elect to designate a person other than the one named in the declaration to receive service of the process in the cases provided in subsection (1) of this section. After the adoption of a resolution by the board of directors in accordance with the bylaws, the board of directors, without the need for further action by the association or approval under ORS 100.110 and 100.135, shall record an amendment to the declaration. The amendment shall be certified by the chairperson and the secretary of the association of unit owners, and shall state the name of the successor with the successor's resi-

dence or place of business as required by ORS 100.105 [(1)(k)] (1)(L), that the person named in the amendment has consented to the designation and that the resolution was duly adopted by the association of unit owners.

(4) Subsection (3) of this section applies to property submitted to the provisions of this chapter before October 15, 1983, if:

(a) The board of directors of the association of unit owners receives a written request from at least one unit owner that subsection (3) of this section applies; or

(b) The board of directors of the association of unit owners adopts a resolution in accordance with the bylaws of the association that subsection (3) of this section applies.

**SECTION 58.** ORS 100.110 is amended to read:

100.110. (1) Before a declaration, supplemental declaration or an amendment thereto may be recorded, it must be approved as provided in this section by the county assessor and the Real Estate Commissioner. Before a declaration or supplemental declaration may be recorded, it must be approved by the tax collector of the county in which the property is located. A declaration or amendment thereto may not be approved unless the requirements of subsections (2) to (6) of this section are met. Approval shall be evidenced by execution of the declaration or amendment or by a written approval attached thereto.

(2) The county assessor of the county in which the property is located shall approve a declaration, supplemental declaration or amendment thereto if:

(a) The name complies with ORS 100.105 (5) and (6); and

(b) The plat and floor plans comply with the requirements of ORS 100.115.

(3) The tax collector of the county in which the property is located shall approve the declaration or supplemental declaration, or an amendment that adds property to the condominium or changes the boundary of a unit for which a plat is required under ORS 100.115 [(9)(a)] (8)(a), if:

(a) All ad valorem taxes, special assessments, fees, or other charges required by law to be placed upon the tax roll which have or will become a lien upon the property during the tax year have been paid;

(b) Advance payment of ad valorem taxes, special assessments, fees or other charges which are not on the tax roll and for which payment is required under paragraph (a) of this subsection has been made to the tax collector utilizing the procedures contained in ORS 92.095 and 311.370; and

(c) The additional taxes, penalty, and any interest attributable thereto, required because of disqualification of the property from any special assessment have been paid.

(4) Subject to subsection (5) of this section, the commissioner shall approve the declaration or amendment thereto if:

(a) The declaration or the amendment thereto complies with the requirements of ORS 100.105 and 100.135;

(b) The bylaws adopted under ORS 100.410 comply with the requirements of ORS 100.410 and 100.415;

(c) The plat and floor plans comply with the requirements of ORS 100.115;

(d) The declaration is for a conversion condominium and the declarant has submitted:

(A) An affidavit that the notice of conversion was given in accordance with ORS 100.305 and that the notice period has expired;

(B) An affidavit that the notice of conversion was given in accordance with ORS 100.305 and copies of the written consent of any tenants who received the notice of conversion before expiration of the notice; or

1 (C) Any applicable combination of the requirements of subparagraphs (A) and (B) of this para-  
2 graph; and

3 (e) A paper copy of the plat executed by the declarant and prepared in conformance with ORS  
4 100.115 and a certification of plat execution, on a form prescribed and furnished by the commis-  
5 sioner, have been submitted stating that the paper copy is a true copy of the plat signed by the  
6 declarant. The certification may be executed by the declarant, the professional land surveyor who  
7 signed the surveyor's certificate on the plat, the attorney for the declarant, a representative of the  
8 title insurance company that issued the information required under ORS 100.640 (5) or 100.660 (2)(d)  
9 or another person authorized by the declarant in writing to execute the certification.

10 (5) Approval by the commissioner shall not be required for an amendment to a declaration  
11 transferring the right of use of a limited common element pursuant to ORS 100.515 (5).

12 (6) Before the commissioner approves the declaration or amendment thereto under this section:

13 (a) The declarant shall pay to the commissioner a fee determined by the commissioner under  
14 ORS 100.670; and

15 (b) For an amendment, the Condominium Information Report and the Annual Report described  
16 in ORS 100.260 shall be designated current by the Real Estate Agency as provided in ORS 100.255  
17 and the fee required under ORS 100.670 shall be paid.

18 (7) If the declaration or amendment thereto approved by the commissioner under subsection (4)  
19 of this section is not recorded in accordance with ORS 100.115 within two years from the date of  
20 approval by the commissioner, the approval shall automatically expire and the declaration or  
21 amendment thereto must be resubmitted for approval in accordance with this section. The commis-  
22 sioner's approval shall set forth the date on which the approval will expire.

23 **SECTION 59. ORS 94.695 is repealed.**  
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