

# Enrolled House Bill 3317

Sponsored by COMMITTEE ON BUSINESS AND LABOR

CHAPTER .....

## AN ACT

Relating to communities governed by declarations; creating new provisions; and amending ORS 94.622, 94.623, 94.635, 94.640, 94.655, 94.670, 94.673, 100.117, 100.175, 100.220, 100.405, 100.408, 100.417, 100.420, 100.480 and 100.535.

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

**SECTION 1.** ORS 94.622 is amended to read:

94.622. (1) As used in this section, "affiliate" means any person who controls a transferor or successor declarant, is controlled by a transferor or successor declarant or is under common control with a transferor or successor declarant.

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

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

(b) Directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests of the transferor or successor declarant;

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

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

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

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

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

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

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

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

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

**SECTION 2.** ORS 94.623 is amended to read:

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

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

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

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

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

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

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

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

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

(5) An instrument disclaiming or transferring special declarant rights shall be properly acknowledged as provided by law.

**SECTION 3.** ORS 94.640 is amended to read:

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

(2) **Subject to subsection (7) of this section**, unless otherwise provided in the bylaws, the board of directors may fill vacancies in its membership for the unexpired portion of any term.

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

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

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

(6)(a) Unless otherwise provided in the declaration or bylaws, [:]

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

*[(b) Removal of a director is not effective unless the matter of removal is an item on the agenda and stated in the notice for the meeting required under ORS 94.650.]* **at a meeting of the owners at which a quorum is present, the owners may remove a director from the board of directors, other than directors appointed by the declarant or individuals who are ex officio directors, with or without cause, by a majority vote of owners who are present and entitled to vote.**

**(b) Notwithstanding contrary provisions in the declaration or bylaws:**

**(A) Before a vote to remove a director, owners must give the director whose removal has been proposed an opportunity to be heard at the meeting.**

**(B) The owners must vote on the removal of each director whose removal is proposed as a separate question.**

**(C) Removal of a director by owners is effective only if the matter of removal was an item on the agenda and was stated in the notice of the meeting if notice is required under ORS 94.650.**

**(c) A director who is removed by the owners remains a director until a successor is elected by the owners or the vacancy is filled as provided in subsection (7) of this section.**

**(7) Unless the declaration or bylaws specifically prescribe a different procedure for filling a vacancy created by the removal of a director by owners, the owners shall fill a vacancy created by the removal of a director by the owners at a meeting of owners. The notice of the meeting must state that filling a vacancy is an item on the agenda.**

*[(7)(a)]* **(8)(a)** All meetings of the board of directors of the association shall be open to owners, except that at the discretion of the board, the board may close the meeting to owners other than board members and meet in executive session to:

**(A) Consult with legal counsel[; and].**

**(B) Consider the following:**

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

**(ii) Negotiation of contracts with third parties; [and] or**

**(iii) Collection of unpaid assessments.**

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

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

*[(d)]* **(9)** The meeting and notice requirements in **subsections (8) and (10)** of this section may not be circumvented by chance or social meetings or by any other means.

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

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

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

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

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

[(10)] (12) The board of directors shall cause the information required to enable the association to comply with ORS 94.670 (8) to be maintained and kept current.

[(11)] (13) As used in this section, "meeting" means a convening of a quorum of members of the board of directors at which association business is discussed, except a convening of a quorum of members of the board of directors for the purpose of participating in litigation, mediation or arbitration proceedings.

**SECTION 4.** ORS 94.655 is amended to read:

94.655. (1) Unless the declaration or bylaws of a homeowners association specify a greater percentage, a quorum for any meeting of the association consists of the number of persons who are entitled to cast 20 percent of the votes [*and who are present in person, by proxy or by absentee ballot, if absentee ballots are permitted by the board of directors, at the beginning of the meeting*] **in a planned community.**

(2) If any meeting of the association cannot be organized because of a lack of a quorum, the owners who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

(3) Except as provided in subsection (4) of this section, the quorum for a meeting following a meeting adjourned for lack of a quorum is the greater of:

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

(b) [*Twenty percent of the votes that may be cast by persons who are present in person, by proxy or by absentee ballot, if absentee ballots are permitted*] **The number of persons who are entitled to cast 20 percent of the votes in the planned community.**

(4) A quorum is not reduced under subsection (3) of this section unless:

(a) The meeting is adjourned to a date that is at least 48 hours from the time the original meeting was called; or

(b) The meeting notice specifies:

(A) That the quorum requirement will be reduced if the meeting cannot be organized because of a lack of a quorum; and

(B) The reduced quorum requirement.

**(5) For the purpose of establishing a quorum under this section, an individual who holds a proxy and an absentee ballot, if absentee ballots are permitted, counts as a present owner.**

**SECTION 5.** Section 6 of this 2011 Act is added to and made a part of ORS 94.550 to 94.783.

**SECTION 6.** (1) **Notwithstanding a contrary provision of a declaration or bylaws of a homeowners association, when a change to the declaration, bylaws or other governing document or another action to be taken by the board of directors, association or owners requires approval or consent of a mortgagee, if the mortgagee receives a request to approve or consent to the change or action, the mortgagee is deemed to have approved or consented**

**to the request unless the mortgagee delivers or posts a negative response to the requesting party within 60 days after receipt of the request.**

**(2) The request must:**

**(a) Be in writing.**

**(b) Name the mortgagor.**

**(c) Identify the property securing the mortgage by legal description as required for recordation in ORS 93.600 or by address.**

**(d) Identify the mortgage by loan number or reference to the county recording office and date of recording and recording index numbers of the mortgage.**

**(e) Be delivered to the mortgagee by certified or registered mail, return receipt requested.**

**SECTION 7.** ORS 100.175 is amended to read:

100.175. (1) The declarant, on behalf of the association of unit owners, shall:

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

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

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

(2)(a) A reserve account shall be established to fund major maintenance, repair or replacement of those common elements all or part of which will normally require major maintenance, repair or replacement in more than one and less than 30 years, for exterior painting if the common elements include exterior painted surfaces, and for such other items as may be required by the declaration or bylaws. The reserve account need not include:

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

(B) A reserve for limited common elements for which maintenance and replacement are the responsibility of one or more, but less than all, unit owners under the provisions of the declaration or bylaws.

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

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

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

(B) In the case of a conversion condominium, the statement described in ORS 100.655 (1)(g); or

(C) Other reliable information.

(d) The reserve account must be funded by assessments against the individual units for the purposes for which the reserve account is established.

(e) The assessment under this subsection accrues from the time of the conveyance of the first individual unit assessed as provided in ORS 100.530.

(3)(a) The board of directors of the association annually shall conduct a reserve study or review and update an existing study to determine the reserve account requirements. Subject to subsection [(1)] **(10)** of this section, after a review of the reserve study or the reserve study update, the board may, without any action by the unit owners:

(A) Adjust the amount of payments in accordance with the study or review; and

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

(b) The reserve study shall:

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

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

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

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

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

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

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

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

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

(5)(a) Except as provided in paragraph (b) of this subsection, the reserve study requirements under subsection (3) of this section and the maintenance plan requirements under subsection (4) of this section do not apply to a condominium consisting of one or two units, excluding units used for parking, storage or other uses ancillary to a unit:

(A) After the sale of the first unit to a person other than a successor declarant, if the condominium is created on or after September 27, 2007; or

(B) If the condominium was created before September 27, 2007, notwithstanding any requirement in the declaration or bylaws.

(b) The reserve study requirements under subsection (3) of this section and the maintenance plan requirements under subsection (4) of this section apply to a flexible condominium or a staged condominium created on or after September 27, 2007, if the condominium might in the future consist of more than two units.

(6)(a) If the declaration or bylaws require a reserve account, the reserve study requirements of subsection (3) of this section and the maintenance plan requirements of subsection (4) of this section first apply to the association of a condominium recorded prior to October 23, 1999:

(A) Upon adoption of a resolution by the board of directors in accordance with the bylaws providing that the requirements of subsections (3) and (4) of this section apply to the association; or

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

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

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

(b) After the individual unit owners have assumed administrative responsibility for the association under ORS 100.210, if the board of directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds:

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

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

(8) The reserve account is subject to the requirements and restrictions of ORS 100.480 and any additional requirements or restrictions imposed by the declaration, bylaws or rules of the association of unit owners.

(9) Assessments paid into the reserve account are the property of the association of unit owners and are not refundable to sellers of units.

(10)(a) Except as provided under paragraph (b) of this subsection, unless the board of directors under subsection (3) of this section determines that the reserve account will be adequately funded

for the following year, the board of directors or the owners may not vote to eliminate funding a reserve account required under this section or under the declaration or bylaws.

(b) Following the turnover meeting described in ORS [94.609] **100.210**, on an annual basis, the board of directors, with the approval of all owners, may elect not to fund the reserve account for the following year.

**SECTION 8.** ORS 100.220 is amended to read:

100.220. (1) As used in this section, "affiliate" means any person who controls a transferor or successor declarant, is controlled by a transferor or successor declarant or is under common control with a transferor or successor declarant. A person "controls" or "is controlled by" a transferor or successor declarant if the person:

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

(b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests of the transferor or successor declarant;

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

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

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

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed under ORS 100.185. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(b) If a transferor retains any special declarant right, or if a successor declarant is an affiliate of the transferor, the transferor is subject to liability for all obligations and liabilities imposed on a declarant by the provisions of this chapter or by the declaration or bylaws arising after the transfer and is jointly and severally liable with the successor declarant for the liabilities and obligations of the successor declarant *[which relate to the condominium]* **that relate to the special declarant rights.**

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

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

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

(b) A successor declarant who is not an affiliate of the transferor *[shall not be]* **is not** liable for any misrepresentations or warranties made or required to be made, including without limitation warranties required under ORS 100.185, by the declarant or previous successor declarant or for any breach of fiduciary obligation by such person. Such a successor declarant, however, shall:

(A) Comply with any provisions of the declaration and bylaws which pertain to such successor declarant's ownership of the unit or units and the exercise of any special declarant right;

(B) Comply with the provisions of ORS 100.015 and 100.635 to 100.910 in connection with the sale of any unit or units, except as provided in ORS 100.665; and

(C) Give the warranties described in ORS 100.185 only with respect to common elements or units constructed by the successor declarant.

**SECTION 9.** ORS 100.405 is amended to read:

100.405. (1)(a) An association of unit owners shall be organized to serve as a means through which the unit owners may take action with regard to the administration, management and operation of the condominium.

(b) The association of a condominium created on or after September 27, 2007, shall be organized:

(A) As a corporation for profit or a nonprofit corporation; or

(B) If the condominium consists of four or fewer units, excluding units used for parking, storage or other use ancillary to a unit, as an unincorporated association, corporation for profit or a nonprofit corporation.

(c) If the association is incorporated, the name of the association shall include the complete name of the condominium.

(d) Notwithstanding a provision in the declaration or bylaws of a condominium created before September 27, 2007, that states that the association shall be unincorporated or that requires approval of owners to incorporate as a nonprofit corporation under ORS chapter 65, an unincorporated association may be incorporated as a nonprofit corporation under ORS chapter 65 if the board of directors adopts a resolution that states the association will be incorporated.

(e) A separate association is not created when an unincorporated association formed under this section is incorporated, reinstated after administrative dissolution under ORS 60.654 or 65.654 or again incorporated following dissolution. The association automatically continues and, without any further action by incorporators, directors or officers that may otherwise be required under Oregon corporation laws:

(A) The incorporated association has all of the property, powers and obligations of the association that existed immediately prior to incorporation in addition to the powers and obligations under Oregon corporation laws.

(B) The bylaws in effect immediately prior to incorporation or reinstatement constitute the bylaws of the incorporated association.

(C) The members of the board of directors and the officers continue to serve as directors and officers.

(f) If an incorporated association is at any time dissolved, whether inadvertently or deliberately:

(A) The association continues as an unincorporated association under the same name.

(B) The unincorporated association has all of the property, powers and obligations of the incorporated association existing immediately prior to dissolution.

(C) The unincorporated association shall be governed by the bylaws, and to the extent applicable, the articles of incorporation of the incorporated association.

(D) The board of directors and the officers serving immediately prior to the dissolution continue to serve as the directors and officers of the unincorporated association.

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

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

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

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

(b) Adopt and amend budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from unit owners;

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

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

(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 unit owners, including but not limited to the abatement of nuisance;

(D) Matters relating to or affecting common elements, including but not limited to actions for 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 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 that 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 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 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, easement, right of way, license or other similar interest pursuant to subsection (5) of this section shall be first approved by at least 75 percent of owners present at a meeting of the association or with the consent of at least 75 percent of all owners solicited by any means the board of directors determines is reasonable. If a meeting is held to conduct the vote, the meeting notice must include a statement that the approval of the grant will be an item of business on the agenda of the meeting.
  - (B) Unless the declaration otherwise provides:
    - (i) The granting of a lease, easement, right of way, license or other similar interest affecting the general common elements for a term of two years or less shall require the approval of a majority of the board of directors.
    - (ii) The granting of a lease, easement, right of way, license or other similar interest affecting the general common elements for a term of more than two years to a public body, as defined in ORS

174.109, or to a utility or a communications company for installation and maintenance of power, gas, electric, water or other utility and communication lines and services requires the approval of a majority of the board of directors.

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

(b) Unless the declaration otherwise provides, the consent to vacation of roadways within and adjacent to the condominium must be approved first by at least a majority of unit owners present and voting at a meeting of the association or with consent of at least a majority of all owners solicited by any means the board of directors determines is reasonable. If a meeting is held to conduct the vote, the meeting notice must include a statement that the roadway vacation will be an item of business on the agenda of the meeting.

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

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

**(b) Except as provided in paragraph (c) of this subsection, the easement, lease or other action under this section requires the approval or consent of the owner of the unit to which the use of the limited common element is reserved and the holder of a first mortgage or first trust deed affecting the unit. However, if the use of the limited common element is reserved for five or more units:**

**(A) When the action is for more than two years, the owners of 75 percent of the units to which the use of the limited common element is reserved must approve or consent.**

**(B) When the action is for two years or less, the owners of a majority of the units to which the use of the limited common element is reserved must approve or consent.**

**(c) The instrument granting an interest or consent under this section must:**

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

**(B) State that the grant or consent is given pursuant to this subsection.**

**(C) Include a certification by the chairperson and secretary that the action was approved by the owners in accordance with this subsection.**

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

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

(b) Modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreation or community building must be approved by at least a majority of 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 10.** ORS 100.408 is amended to read:

100.408. (1) Unless the bylaws specify a greater percentage, a quorum for any meeting of the association of unit owners consists of the number of persons who are entitled to cast 20 percent of

the voting rights [*and who are present in person, by proxy or by absentee ballot, if absentee ballots are permitted by the board of directors, at the beginning of the meeting*].

(2) If any meeting of the association of unit owners cannot be organized because of a lack of a quorum, the unit owners who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

(3) Subject to subsection (4) of this section, the quorum for a meeting following a meeting adjourned for lack of a quorum is the greater of:

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

(b) [*Twenty percent of the votes that may be cast by persons who are present in person, by proxy or by absentee ballot, if absentee ballots are permitted*] **The number of persons who are entitled to cast 20 percent of the votes in the association of unit owners.**

(4) The quorum is not reduced under subsection (3) of this section unless:

(a) The meeting is adjourned to a date that is at least 48 hours from the date the original meeting was called; or

(b) The meeting notice specifies:

(A) The quorum requirement will be reduced if the meeting cannot be organized because of a lack of a quorum; and

(B) The reduced quorum requirement.

**(5) For the purpose of establishing a quorum under this section, an individual who holds a proxy and an absentee ballot, if absentee ballots are permitted, counts as a present owner.**

**SECTION 11.** ORS 100.417 is amended to read:

100.417. (1) The board of directors of an association of unit owners may act on behalf of the association except as limited by the declaration or bylaws. In the performance of their duties, officers and members of the board of directors shall be governed by this section and the applicable provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377 whether or not the association is incorporated under ORS chapter 65.

(2) **Subject to subsection (8) of this section**, unless otherwise provided in the bylaws, the board of directors of an association may fill vacancies in its membership for the unexpired portion of any term.

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

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

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

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

(7) The board of directors shall cause to be maintained and kept current the information required to enable the association to comply with ORS 100.480 (11).

(8)(a) Unless otherwise provided in the declaration or bylaws, [:]

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

[*(b) Removal of a member of the board of directors is not effective unless the matter of removal is an item on the agenda and stated in the notice for the meeting required under ORS 100.407.*] **at a meeting of the unit owners at which a quorum is present, the unit owners may remove a director from the board of directors, other than directors appointed by the declarant or individuals who are ex officio directors, with or without cause, by a majority vote of unit owners who are present and entitled to vote.**

**(b) Notwithstanding contrary provisions in the declaration or bylaws:**

**(A) Before a vote to remove a director, unit owners must give the director whose removal has been proposed an opportunity to be heard at the meeting.**

**(B) The unit owners must vote on the removal of each director whose removal is proposed as a separate question.**

**(C) Removal of a director by unit owners is effective only if the matter of removal was an item on the agenda and was stated in the notice of the meeting required under ORS 100.407.**

**(c) A director who is removed by the unit owners remains a director until a successor is elected by the unit owners or the vacancy is filled as provided in subsection (9) of this section.**

**(9) Unless the declaration or bylaws specifically prescribe a different procedure for filling a vacancy created by the removal of a director by unit owners, the unit owners shall fill a vacancy created by the removal of a director by the unit owners at a meeting of unit owners. The notice of the meeting must state that filling a vacancy is an item on the agenda.**

**SECTION 12.** ORS 100.420 is amended to read:

100.420. (1)(a) All meetings of the board of directors of the association of unit owners shall be open to unit owners except that, in the discretion of the board, the board may close the meeting to unit owners and meet in executive session to:

(A) Consult with legal counsel[; *and*].

(B) Consider the following:

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

(ii) Negotiation of contracts with third parties; [*and*] **or**

(iii) Collection of unpaid assessments.

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

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

[(d)] **(2)** The meeting and notice requirements in this section may not be circumvented by chance or social meetings or by any other means.

[(2)] **(3)** Except as provided in subsection [(3)] **(4)** of this section, board of directors' meetings may be conducted by telephonic communication or by the use of a means of communication that allows all members of the board of directors participating to hear each other simultaneously or otherwise to be able to communicate during the meeting. A member of the board of directors participating in a meeting by this means is deemed to be present in person at the meeting.

[(3)] **(4)** In condominiums where the majority of the units are the principal residences of the occupants, meetings of the board of directors shall comply with the following:

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

(b) Only emergency meetings of the board of directors may be conducted by telephonic communication or in a manner described in subsection [(2)] **(3)** of this section.

[(4)] **(5)** Subsection [(3)(a)] **(4)(a)** of this section first applies to property submitted to the provisions of this chapter prior to October 3, 1979, upon receipt by the board of directors of the association of unit owners of a written request from at least one unit owner that notice of board of directors meetings be given in accordance with subsection [(3)(a)] **(4)(a)** of this section.

[5] (6) As used in this section, "meeting" means a convening of a quorum of members of the board of directors at which association business is discussed, except a convening of a quorum of members of the board of directors for the purpose of participating in litigation, mediation or arbitration proceedings.

**SECTION 13.** ORS 100.535 is amended to read:

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

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

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

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

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

(4) Removal of partitions or creation of apertures under subsection (1) of this section is not an alteration of boundaries.

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

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

(b) **Notwithstanding a contrary provision in the declaration or bylaws, the approval of the board of directors under paragraph (a) of this subsection may be conditioned upon requirements, including assignment of responsibility for maintenance or repair.**

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

**SECTION 14.** Section 15 of this 2011 Act is added to and made a part of ORS chapter 100.

**SECTION 15.** (1) Subject to subsection (3) of this section, when a change to the declaration, bylaws or other governing document or another action to be taken by the board of directors, association or unit owners requires approval or consent of a mortgagee, if the mortgagee receives a request to approve or consent to the change or action, the mortgagee is deemed to have approved or consented to the request unless the mortgagee delivers or posts a negative response to the requesting party within 60 days after receipt of the request.

(2) **The request must:**

(a) **Be in writing.**

(b) **Name the mortgagor.**

(c) **Identify the property securing the mortgage by legal description as required for recordation in ORS 93.600 or by address.**

(d) **Identify the mortgage by loan number or reference to the county recording office and date of recording and recording index numbers of the mortgage.**

(e) **Be delivered to the mortgagee by certified or registered mail, return receipt requested.**

(3) **This section does not apply to:**

(a) **The consent of a mortgagee required under ORS 100.100 or 100.600.**

**(b) The extent a provision in the declaration or bylaws prescribes a different procedure for approval or consent.**

**SECTION 16.** ORS 94.635 is amended to read:

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

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

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

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

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

(b) The percentage of votes that constitutes a quorum in accordance with ORS 94.655.

(5)(a) The election of a board of directors and the number of persons constituting the board;

(b) The powers and duties of the board;

(c) Any compensation of the directors; and

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

(6) The terms of office of directors.

(7) The method of calling meetings of the board of directors in accordance with ORS 94.640 [8] (10) and a statement that all meetings of the board of directors shall be open to owners.

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

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

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

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

(c) The method of approving payment vouchers.

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

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

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

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

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

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

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

(18) Any other details regarding the planned community that the declarant or the association consider desirable. However, if a provision required to be in the declaration under ORS 94.580 is included in the bylaws, the voting requirements for amending the declaration shall govern the amendment of that provision of the bylaws.

**SECTION 17.** ORS 94.670 is amended to read:

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

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

(b) Proxies and ballots must be retained for one year from the date of determination of the vote, except that proxies and ballots relating to an amendment to the declaration, bylaws or other governing document must be retained for one year from the date the amendment is effective.

(2)(a) All assessments, including declarant subsidies and all other association funds, shall be deposited and maintained in the name of the association in one or more separate federally insured accounts, including certificates of deposit, at a financial institution, as defined in ORS 706.008, other than an extranational institution. Except as provided in paragraph (b) of this subsection, funds must be maintained in an association account until disbursed.

(b) Subject to any limitations imposed by the declaration or bylaws, funds of the association maintained in accounts established under this subsection may be used to purchase obligations of the United States government.

(c) All expenses of the association shall be paid from the association account.

(3) The association shall keep financial records sufficiently detailed for proper accounting purposes.

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

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

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

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

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

(7) An association subject to the requirements of subsection (5) of this section may elect, on an annual basis, not to comply with the requirements of subsection (5) of this section by an affirmative vote of at least 60 percent of the owners, not including the votes of the declarant with respect to lots owned by the declarant.

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

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

(i) Regular and special assessments;

(ii) Fines and other charges;

(iii) Accrued interest; and

(iv) Late payment charges.

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

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

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

(9)(a) Except as provided in paragraph (b) of this subsection, the association shall make the documents, information and records described in subsections (1) and (4) of this section and all other records of the association reasonably available for examination and, upon written request, available

for duplication by an owner and any mortgagee of a lot that makes the request in good faith for a proper purpose.

(b) Records kept by or on behalf of the association may be withheld from examination and duplication to the extent the records concern:

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

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

(C) Communications with legal counsel that relate to matters specified in subparagraphs (A) and (B) of this paragraph and the rights and duties of the association regarding existing or potential litigation or criminal matters.

(D) Disclosure of information in violation of law.

(E) Documents, correspondence or management or board reports compiled for or on behalf of the association or the board of directors by its agents or committees for consideration by the board of directors in executive session held in accordance with ORS 94.640 [(7)] (8).

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

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

(10) 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 (4) 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.

(11) 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 (10) of this section.

(12) 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 18.** ORS 94.673 is amended to read:

94.673. (1) The homeowners association of a subdivision that received preliminary plat approval before July 1, 1982, shall comply with the provisions of ORS 94.640 (1), (3), (4), (7), (8) and (9)] **and (8) to (11)** and 94.670 if:

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

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

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

(2) A homeowners association board of directors is not subject to ORS 94.780 unless the association fails to comply with subsection (1) of this section after receiving a written request from an owner.

**SECTION 19.** ORS 100.117 is amended to read:

100.117. (1) As used in this section and ORS 100.118, "document" means the declaration, supplemental declaration or bylaws of a condominium.

(2) Notwithstanding a provision in a document or this chapter, a document or an amendment to a document may be corrected by a correction amendment under this section to:

(a) Correct the omission of an exhibit to a document.

- (b) Correct a mathematical mistake, including, but not limited to:
  - (A) The calculation of the stated interest of affected units in the common elements;
  - (B) The area in square feet of a unit specified in the declaration or supplement declaration; and
  - (C) Liability of a unit for common expenses or right to common profits.
- (c) Correct an inconsistency within a document or between or among the documents or a plat, supplemental plat or plat amendment.
  - (d) Correct an ambiguity, inconsistency or error with respect to an objectively verifiable fact.
  - (e) Authorize a plat amendment by correction under ORS 100.118 or an affidavit of correction under ORS 100.118.
  - (f) Correct a provision that was inconsistent with this chapter at the time the document was recorded.
    - (g) Correct the omission of a provision required under this chapter.
- (3) A correction amendment adopted under subsection (4) of this section shall include:
  - (a) The words "Correction Amendment" in or after the title;
  - (b) A reference to the recording index numbers and date of recording of the declaration, bylaws, plat, the document being corrected and any other applicable supplemental declarations, supplemental plats or amendments to the documents;
  - (c) A statement of the purpose of the correction; and
  - (d) A reference to this section.
- (4) The board of directors may adopt a correction amendment under this section after giving notice as provided in subsection (8) of this section. No action by the unit owners is required.
- (5) The declarant of the condominium may unilaterally adopt a correction amendment under this section to:
  - (a) A document or an amendment to a document, before the conveyance of the first unit in the condominium.
  - (b) A supplemental declaration or an amendment to the supplemental declaration, before conveyance of the first unit created by the supplemental declaration.
- (6) A correction amendment under this section is not effective unless:
  - (a) The amendment is approved by the Real Estate Commissioner under ORS 100.110 and, to the extent required, ORS 100.410, the county assessor in accordance with ORS 100.110 and, if required, the county tax collector;
  - (b) The amendment is certified by the chairperson and secretary of the association of unit owners as being adopted in accordance with subsection (4) of this section or is certified by the declarant under subsection (5) of this section and acknowledged in the manner provided for acknowledgement of deeds; and
  - (c) Is recorded.
- (7) A correction amendment that corrects the boundary of a unit, common element, variable property or other property interest constitutes a conveyance to the extent necessary to effectuate the correction.
- (8)(a) Except for a correction amendment adopted by a declarant under subsection (5) of this section, the notice of any meeting of the board of directors at which the board intends to consider adoption of a correction amendment under this section must:
  - (A) State that the board intends to consider the adoption of a correction amendment.
  - (B) Specify the document to be corrected.
  - (C) Include a description of the nature of the correction.
- (b) At least three days before the meeting of the board of directors, a notice of the meeting must be given to all owners in the manner described in ORS 100.420 [(3)] (4).
- (9) The owner of a unit materially affected by the correction must be given notice of the meeting of the board of directors under subsection (8) of this section in the manner required under ORS 100.407 (4).
- (10) The board of directors shall provide a copy of the recorded correction amendment and any plat amendment by correction or by affidavit of correction under ORS 100.118 recorded concurrently

with the correction amendment to any owner described under subsection (9) of this section and to any owner if the correction changes that owner's:

- (a) Allocation of voting rights;
- (b) Liability for common expenses that changes the amount of any assessment; or
- (c) Allocation of interest in the common elements.

**SECTION 20.** 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:

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

(b) Proxies and ballots must be retained for one year from the date of determination of the vote, except proxies and ballots relating to an amendment to the declaration, supplemental declaration plat, supplemental plat or bylaws must be retained for one year from the date the amendment is recorded.

(2) The association of unit owners shall keep financial records sufficient for proper accounting purposes.

(3)(a) All assessments and other association funds shall be deposited and maintained in the name of the association in one or more separate federally insured accounts, including certificates of deposit, at a financial institution, as defined in ORS 706.008, other than an extranational institution. Except as provided in paragraph (b) of this subsection, funds must be maintained in an association account until disbursed.

(b) Subject to any limitations imposed by the declaration or bylaws, association funds maintained in accounts established under this subsection may be used to purchase obligations issued by the United States government.

(c) All expenses of the association shall be paid from the association account.

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

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

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

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

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

(7) An association of unit owners subject to the requirements of subsection (5) of this section may elect, on an annual basis, not to comply with the requirements of subsection (5) of this section by an affirmative vote of at least 60 percent of the owners, not including the votes of the declarant with respect to units owned by the declarant.

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

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

- (i) Regular and special assessments;
- (ii) Fines and other charges;
- (iii) Accrued interest; and

- (iv) Late payment charges.
- (B) The percentage rate at which interest accrues on assessments that are not paid when due.
- (C) The percentage rate used to calculate the charges for late payment or the amount of a fixed charge for late payment.
- (b) The association is not required to comply with paragraph (a) of this subsection if the association has commenced litigation by filing a complaint against the owner and the litigation is pending when the statement would otherwise be due.
- (9)(a) Except as provided in paragraph (b) of this subsection, the documents, information and records described in subsections (1) to (4) of this section and all other records of the association of unit owners must be reasonably available for examination and, upon written request, available for duplication by a unit owner and any mortgagee of a unit that makes the request in good faith for a proper purpose.
- (b) Records kept by or on behalf of the association may be withheld from examination and duplication to the extent the records concern:
  - (A) Personnel matters relating to a specific identified person or a person's medical records.
  - (B) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.
  - (C) Communications with legal counsel that relate to matters specified in subparagraphs (A) and (B) of this paragraph and the rights and duties of the association regarding existing or potential litigation or criminal matters.
  - (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) **and** (2).
  - (F) Documents, correspondence or other matters considered by the board of directors in executive session held in accordance with ORS 100.420 (1) **and** (2).
  - (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.
- (10) 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 (4) 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.
- (11) 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 (10) of this section.
- (12) 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.
- (13) Subsection (4) 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 (4) of this section.

**Passed by House May 26, 2011**

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Passed by Senate June 16, 2011**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

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Kate Brown, Secretary of State