

Enrolled House Bill 2665

Sponsored by COMMITTEE ON JUDICIARY (at the request of Legislative Action Committee of Community Associations Institute Oregon Chapter, Condominium-HOA Working Group, Oregon Washington Community Association Managers)

CHAPTER

AN ACT

Relating to properties governed by declarations; creating new provisions; amending ORS 94.572, 94.580, 94.595, 94.616, 94.645, 94.647, 94.650, 94.655, 94.658, 94.660, 94.675, 94.680, 94.685, 94.719, 100.175, 100.210, 100.407, 100.408, 100.410, 100.412, 100.415, 100.425, 100.427, 100.435, 100.470, 100.525, 100.640 and 100.655; and prescribing an effective date.

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

SECTION 1. Sections 2, 3, 4, 5 and 6 of this 2007 Act are added to and made a part of ORS 94.550 to 94.783.

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

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

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

(a) A description of the intended action.

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

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

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

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

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

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

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

(7) Notwithstanding subsections (2) and (3) of this section, in the case of an emergency, the court may waive the notice requirements of subsections (2) and (3) of this section.

SECTION 3. (1) If the declaration or bylaws of a planned community created under ORS 94.550 to 94.783 before the effective date of this 2007 Act or a planned community subject to ORS 94.572 do not assign the responsibility for payment of the amount of the deductible in an association insurance policy, the board of directors of the homeowners association may adopt a resolution that assigns the responsibility for payment of the amount of the deductible. The resolution must include, but need not be limited to:

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

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

(B) All owners;

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

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

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

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

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

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

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

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

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

(a) Delivered to each lot; or

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

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

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

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

(6) Failure to provide a copy of a resolution or a notice required under this section does not affect the responsibility of an owner to comply with a resolution adopted under this section.

SECTION 4. (1) Subject to subsection (2) of this section and notwithstanding any requirement under the declaration or bylaws or ORS 94.550 to 94.783, in the discretion of the board of directors of the homeowners association, any notice, information or other written

material required to be given to an owner or director under the declaration or bylaws or ORS 94.550 to 94.783, may be given by electronic mail, facsimile or other form of electronic communication.

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

- (a) Failure to pay an assessment;
- (b) Foreclosure of an association lien under ORS 94.709; or
- (c) An action the association may take against an owner.

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

SECTION 5. (1) As used in this section, "electronic ballot" means a ballot given by:

- (a) Electronic mail;
- (b) Facsimile transmission;
- (c) Posting on a website; or
- (d) Other means of electronic communication acceptable to the board of directors.

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

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

(4) An electronic ballot may be accompanied by or contained in an electronic notice in accordance with section 4 of this 2007 Act.

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

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

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

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

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

(b) That the electronic ballot is secret, if the declaration or bylaws or rules adopted by the board require that electronic ballots be secret.

SECTION 6. (1) A director of a homeowners association who is present at a meeting of the board of directors at which action is taken on any association matter is presumed to have assented to the action unless the director votes against the action or abstains from voting on the action because the director claims a conflict of interest.

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

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

(4) Notwithstanding subsection (3) of this section, officers may be elected by secret ballot.

SECTION 6a. 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 of the association;
- (j) A statement of when the lots, including lots owned by the declarant, become subject to assessment;
- (k) If a Class I planned community, provisions for establishing a reserve account and for the preparation, review and update of the reserve study **and the maintenance plan** as required by ORS 94.595;
- (L) Any restrictions on the alienation of lots. Any such restriction created by any document other than the declaration may be incorporated by reference to the official records of the county where the property is located;
- (m) A statement of the use, residential or otherwise, for which each lot is intended;
- (n) A statement as to whether or not the association pursuant to ORS 94.665 may sell, convey or subject to a security interest any portion of the common property and any limitation on such authority;
- (o) A statement of any restriction on the use, maintenance or occupancy of lots or units;
- (p) The method of amending the declaration and a statement of the percentage of votes required to approve an amendment of the declaration in accordance with ORS 94.590;
- (q) A description of any contemplated improvements which the declarant agrees to build, or a statement that the declarant does not agree to build any improvement or does not choose to limit declarant's rights to add improvements not described in the declaration;
- (r) A statement of any period of declarant control or other special declarant rights reserved by the declarant under ORS 94.600;
- (s) A statement of the time at which the deed to the common property is to be delivered, whether by date or upon the occurrence of a stipulated event; and
- (t) Any provisions restricting a right of the association with respect to the common property, or an individual lot owner with respect to the lot or improvements on the lot, including but not limited to:
 - (A) A right to divide the lot or to combine it with other lots;
 - (B) A right to repair or restore improvements on the lot at the owner's discretion in the event of damage or destruction;
 - (C) The requirement for architectural controls, including but not limited to fencing, landscaping or choice of exterior colors and materials of structures to be placed on the common property or on a lot; and
 - (D) The requirement of review of any plans of any structure to be placed on the common property or a lot.
- (3) If the declarant reserves the right to expand the planned community by annexing lots or common property or by creating additional lots or common property by developing existing property in the planned community, the declaration shall contain, in addition to the provisions required under subsections (1) and (2) of this section, a general description of the plan of development including:
 - (a) The procedure by which the planned community will be expanded;
 - (b) The maximum number of lots and units to be included in the planned community or a statement that there is no limitation on the number of lots or units which the declarant may create or annex to the planned community;

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

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

(e) The formula to be used for reallocating the common expenses if additional lots are to be created or annexed to the planned community, and the manner of reapportioning the common expenses if lots are created or annexed during the fiscal year.

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

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

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

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

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

(e) The date after which the right to withdraw property from the planned community shall expire or a statement that such a right shall not expire.

SECTION 7. ORS 94.595 is amended to read:

94.595. (1) The declarant, **on behalf of a homeowners association**, shall:

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

(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.

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

(A) That *[could]* **can** reasonably be funded from *[operating assessments]* **the general budget or other funds or accounts of the association; or**

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

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

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

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

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

(A) The reserve study described in *[paragraph (c) of this subsection]* **subsection (3) of this section; or**

(B) Other *[sources of]* reliable information.

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

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

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

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

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

[(d)] (b) The reserve study shall *include*:

(A) *Identification of* **Identify** all items for which reserves are *required to* **or will** be established;

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

(C) *The* **Include for each item, as applicable, an** estimated cost of maintenance[,] **and** repair *or* **and** replacement *of each item* at the end of *its* **the item's** useful life; *and*].

[(D)] (4)(a) *A 30-year* **The board of directors shall prepare a maintenance** plan for the maintenance, repair and replacement of *common property with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.* **all property for which the association has maintenance, repair or replacement responsibility under the declaration or bylaws or ORS 94.550 to 94.783. The maintenance plan shall:**

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

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

[(4) *The 30-year plan under subsection (3) of this section shall:*]

[(a)] (C) Be appropriate for the size and complexity of the *common property* **maintenance, repair and replacement responsibility of the association;** and

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

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

[(5) *The board of directors and the declarant shall, within 30 days after conducting the reserve study, provide to every owner a written summary of the reserve study and of any revisions to the 30-year plan adopted by the board of directors or the declarant as a result of the reserve study.*]

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

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

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

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

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

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

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

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

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

~~[(9)]~~ **(8)** In addition to the authority of the board of directors under subsection ~~[(3)(c)]~~ **(3)(a)** of this section, following the second year after the association has assumed administrative responsibility for the planned community under ORS 94.616:

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

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

~~[(10)]~~ **(9)** Assessments paid into the reserve account are the property of the association and are not refundable to sellers or owners of lots.

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 of the owners is present**, the owners shall elect **not fewer than the number of directors sufficient to constitute a quorum of the** [a] board of directors in accordance with the **declaration or** bylaws of the association.

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

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

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

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

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

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

(f) A financial statement. The financial statement:

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

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

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

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

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

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

(k) All bank signature cards;

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

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

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

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

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

- (B) The original specifications, indicating all subsequent material changes;
- (C) The plans for underground site service, site grading, drainage and landscaping together with cable television drawings;
- (D) Any other plans and information relevant to future repair or maintenance of the property; and
- (E) A list of the general contractor and the electrical, heating and plumbing subcontractors responsible for construction or installation of common property;
 - (p) Insurance policies;
 - (q) Copies of any occupancy permits issued for the planned community;
 - (r) Any other permits issued by governmental bodies applicable to the planned community in force or issued within one year before the date on which the owners assume administrative responsibility;
 - (s) A list of any written warranties on the common property that are in effect and the names of the contractor, subcontractor or supplier who made the installation for which the warranty is in effect;
 - (t) A roster of owners and their addresses and telephone numbers, if known, as shown on the records of the declarant;
 - (u) Leases of the common property and any other leases to which the association is a party;
 - (v) Employment or service contracts in which the association is one of the contracting parties or service contracts in which the association or the owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service; and
 - (w) Any other contracts to which the homeowners association is a party.

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

(5) If the declarant has complied with this section and unless the declarant has sufficient voting rights as a lot owner to control the association, the declarant is not responsible for the failure of the owners to *[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 (1) of this section. *[and]* The declarant is relieved from further responsibility for the administration of the association, except as a lot owner.

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

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

(b) An owner or first mortgagee may request a court to appoint a receiver as provided in section 2 of this 2007 Act.

SECTION 8a. ORS 94.645 is amended to read:

94.645. (1) *[Unless otherwise provided in the bylaws,]* The board of directors at least annually shall adopt a budget for the planned community.

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

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

(4) If the board fails to adopt a budget, the last adopted annual budget shall continue in effect.

SECTION 9. ORS 94.647 is amended to read:

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

(a) A turnover meeting required under ORS 94.616.

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

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

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

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

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

(A) A secrecy envelope;

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

(C) Instructions for marking and returning the ballot.

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

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

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

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

(D) The date and time by which any petition **requesting secrecy procedures** must be received by the board [*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 an owner if the consent or approval of that owner is required by the declaration or bylaws or ORS 94.550 to 94.783.

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

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

(b) If approval of a proposed action otherwise would require a meeting at which a specified percentage of owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds [*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 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 the 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 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 owners approve the proposal, the date on which the association has received a sufficient number of disapproving ballots to render approval impossible; or

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

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

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

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

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

(8) Notwithstanding subsection (7) of this section, written ballots that are returned in secrecy envelopes may not be examined or counted before the date certain specified in the solicitation or any extension under subsection (5)(c) of this section.

SECTION 10. ORS 94.650 is amended to read:

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

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

(b) If the bylaws do not specify a percentage of owners that may *[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.

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

(3) If the owners request a special meeting under subsection (2) of this section and the notice is not given within 30 days after the date the written request is delivered to the

president or the secretary, an owner who signed the request may set the time and place of the meeting and give notice as provided in subsection (4) of this section.

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

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

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

SECTION 11. ORS 94.655 is amended to read:

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

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

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

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

SECTION 12. ORS 94.658 is amended to read:

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

(2) Unless the declaration or bylaws provide otherwise:

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

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

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

(B) A valid court order may establish the right of co-owners' authority to vote.

SECTION 13. ORS 94.660 is amended to read:

94.660. **(1)** ~~[Unless the bylaws provide otherwise,]~~ The vote ~~[or votes]~~ **or consent** of a lot may be cast ~~[by absentee ballot or pursuant to a proxy executed by the owner.]~~ **or given:**

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

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

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

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

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

(2)(a) A proxy:

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

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

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

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

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

[(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.]

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

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

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

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

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

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

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

(A) Returned the absentee ballot; and

(B) Canceled the absentee ballot, if cancellation is permitted in the instructions given under paragraph (b) of this subsection.

SECTION 14. ORS 94.675 is amended to read:

94.675. (1) The board of directors of [an] a homeowners association shall obtain and maintain:

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

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

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

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

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

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

(b) \$10,000.

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

(6) Not later than 10 days after adoption of a resolution under subsection (4) of this section, the board of directors shall ensure that a copy of the resolution and a notice described in section 3 of this 2007 Act are:

(a) Delivered to each owner; or

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

SECTION 15. ORS 94.680 is amended to read:

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

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

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

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

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

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

(B) Insurance proceeds exceed or fall short of the costs of repair or reconstruction.

SECTION 16. ORS 94.685 is amended to read:

94.685. (1) Unless provided in the declaration, the bylaws shall specify:

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

[(2)] (b) The insurance, if any, an individual owner is precluded from obtaining; [*and*]

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

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

(2) **The declaration or bylaws may provide that the responsibility for payment of the amount of the deductible may be prescribed by resolution adopted by the board of directors.**

SECTION 17. 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 18. Sections 19, 20, 21 and 22 of this 2007 Act are added to and made a part of ORS chapter 100.

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

(2) At least 45 days before a unit owner or first mortgagee of a unit requests the circuit court to appoint a receiver under subsection (1) of this section, the unit 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 unit owners of the proposed action.

(3) The notice shall be signed by the unit owner or first mortgagee of the unit 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 unit owner or first mortgagee may file a petition with the court under subsection (1) of this section.
- (e) A statement that if a receiver is appointed, all expenses of the receivership will be common expenses of the association as provided in subsection (4) of this section.
- (4) If a receiver is appointed, the salary of the receiver, court costs, attorney fees and all other expenses of the receivership shall be common expenses of the association.
- (5) A receiver appointed under this section has all of the powers and duties of a duly constituted board of directors and shall serve until a sufficient number of vacancies on the board are filled to constitute a quorum.
- (6) If at a turnover meeting held in accordance with ORS 100.210 the unit owners fail to elect the number of directors sufficient to constitute a quorum of the board of directors, in addition to the notice requirements specified in subsections (2) and (3) of this section, a unit owner shall give the notice to all other unit owners as provided in the bylaws.
- (7) Notwithstanding subsections (2) and (3) of this section, in the case of an emergency, the court may waive the notice requirements of subsections (2) and (3) of this section.

SECTION 20. (1) Subject to subsection (2) of this section and notwithstanding any requirement under the declaration or bylaws or this chapter, in the discretion of the board of directors of the association of unit owners, any notice, information or other written material required to be given to a unit owner or director under the declaration or bylaws or this chapter, may be given by electronic mail, facsimile or other form of electronic communication acceptable to the board of directors.

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

- (a) Failure to pay an assessment;
 - (b) Foreclosure of an association lien under ORS 100.450;
 - (c) An action the association may take against a unit owner; or
 - (d) An offer to use the dispute resolution program under ORS 100.405.
- (3) A unit owner or director may decline to receive notice by electronic mail, facsimile or other form of electronic communication and may direct the board of directors to provide notice in the manner required under the declaration or bylaws or this chapter.

SECTION 21. (1) As used in this section, "electronic ballot" means a ballot given by:

- (a) Electronic mail;
 - (b) Facsimile transmission;
 - (c) Posting on a website; or
 - (d) Other means of electronic communication acceptable to the board of directors.
- (2) Unless the declaration or bylaws prohibit or provide for other methods of electronic ballots, the board of directors of an association of unit owners, in the board's discretion, may provide that a vote, approval or consent of a unit owner may be given by electronic ballot.

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

(4) An electronic ballot may be accompanied by or contained in an electronic notice in accordance with section 20 of this 2007 Act.

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

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

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

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

(a) Compliance with ORS 100.425 if the vote conducted by written ballot under ORS 100.425 uses the procedures specified in ORS 100.425 (2)(b); and

(b) That the electronic ballot is secret, if the declaration or bylaws or rules adopted by the board require that electronic ballots be secret.

SECTION 22. (1) A director of an association of unit owners who is present at a meeting of the board of directors at which action is taken on any association matter is presumed to have assented to the action unless the director votes against the action or abstains from voting on the action because the director claims a conflict of interest.

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

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

(4) Notwithstanding subsection (3) of this section, officers may be elected by secret ballot.

SECTION 23. ORS 100.175 is amended to read:

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

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

(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.**

[*(b)*] (2)(a) [*Establish*] A reserve account [*for*] **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 [*three*] **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 [*could*] **can** reasonably be funded from [*operating assessments*] **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.

[*(2)(a)*] *The reserve account must be funded by assessments against the individual units for the purposes for which the reserve account is being established.*

[*(b)*] *The assessment under this subsection will accrue from the time of the conveyance of the first individual unit assessed as provided in ORS 100.530.*

[*(3)(a)*] (b) The reserve account shall be established in the name of the association of unit owners. [*that will be*] **The association is** responsible for administering the account and for making periodic payments into the account.

[*(b)*] (c) The reserve portion of the initial assessment determined by the declarant shall be based on [*the following*]:

(A) The reserve study described in [*paragraph (c) of this*] 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.**

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

(A) Adjust the amount of payments 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.

[(d)] **(b)** The reserve study shall *[include]*:

(A) *[Identification of]* **Identify** all items for which reserves are *[to]* **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 *[or]* **and** replacement *[of each item at the end of its]* **at the end of the item's** useful life. *[: and]*

[(D)] **(4)(a)** *[A 30-year plan]* **The board of directors shall prepare a maintenance plan** for the maintenance, repair and replacement of *[common elements and association property with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.]* **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;

[(4) The 30-year plan under subsection (3) of this section shall:]

[(a)] **(C)** Be appropriate for the size and complexity of the *[common elements and association property]* **maintenance, repair and replacement responsibility of the association;** and

[(b)] **(D)** Address issues that include but are not limited to warranties and the useful life of the *[common elements and association property.]* **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 the effective date of this 2007 Act; or

(B) If the condominium was created before the effective date of this 2007 Act, 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 the effective date of this 2007 Act, if the condominium might in the future consist of more than two units.

[(5) The board of directors and the declarant shall, within 30 days after conducting the reserve study, provide to every unit owner a written summary of the reserve study and of any revisions to the 30-year plan adopted by the board of directors or the declarant as a result of the reserve study.]

(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 *[subsection (3)]* **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 *[subsection (3)]* **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) Restrictions on the use of the reserve account do not prohibit its prudent investment subject to any constraints on investment of association funds 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) In addition to the authority of the board of directors under subsection [(3)(c)] **(3)(a)** of this section, following turnover, the association may:

(a) On an annual basis, elect not to fund the reserve account described in subsection (1) of this section by unanimous vote of the owners; or

(b) Elect to reduce or increase future assessments for the reserve account described in subsection (1) of this section by an affirmative vote of at least 75 percent of the owners.

SECTION 24. 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 of the unit owners is present**, the unit owners shall elect *[a]* **not fewer than the number of directors sufficient to constitute a quorum of the** board of directors in accordance with the **declaration or** bylaws of the 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, **the maintenance plan and all** 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 ac-**

cordance 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 present do not constitute a quorum or 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) of this section:

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

(b) A unit owner or first mortgagee of a unit may request a court to appoint a receiver as provided in section 19 of this 2007 Act.

SECTION 25. 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 unit owners specified in the bylaws.** However, the bylaws may not require a percentage greater than 50 percent or less than 10 percent of the unit owners for the purpose of calling a meeting.

(b) If the bylaws do not specify a percentage of unit owners that may [call] **request the calling of a special meeting, a special meeting shall be called if 30 percent or more of the unit 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 unit owner who signed the request may set the time and place of the meeting and give notice as provided in subsection (4) of this section.

[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 **owner** 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 26. ORS 100.408 is amended to read:

100.408. (1) Unless the bylaws provide otherwise, a quorum for any meeting of the association of unit owners [shall consist] **consists** 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 **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. The quorum for a subsequent meeting is the greater of:

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

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

SECTION 26a. ORS 100.412 is amended to read:

100.412. (1) [Unless otherwise provided in the bylaws,] The board of directors at least annually shall adopt a budget for the association of unit owners.

(2) The budget shall include moneys required to be allocated to the reserve account under ORS 100.175.

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

(4) If the board of directors fails to adopt an annual budget, the last adopted budget shall continue in effect.

SECTION 27. ORS 100.425 is amended to read:

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

(a) The turnover meeting required under ORS 100.210.

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

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

(d) A special meeting of the association called at the request of unit owners under ORS 100.407 (2).

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

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

(A) A secrecy envelope;

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

(C) Instructions for marking and returning the ballot.

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

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

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

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

(D) The date and time by which any petition **requesting secrecy procedures** must be received by the board [*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 unit 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 under subsection (2)(b) of this section, a written ballot may [not] be revoked before the final return date of the 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.**

(8) **Notwithstanding subsection (7) of this section, 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 28. ORS 100.427 is amended to read:

100.427. (1) [Unless the bylaws provide otherwise, the vote or votes] **The voting rights or consent** of a unit owner may be cast [by absentee ballot or pursuant to a proxy executed by the owner.] **or given:**

(a) **In person at a meeting of the association of unit owners.**

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

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

(d) **By written ballot in lieu of a meeting under ORS 100.425.**

(e) **By any other method specified by the declaration or bylaws or this chapter.**

(2)(a) A proxy:

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

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

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

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

[2] (c) [An] **A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association 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.*

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

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

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

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

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

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

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

(A) Returned the absentee ballot; and

(B) Canceled the absentee ballot, if cancellation is permitted in the instructions given under paragraph (b) of this subsection.

SECTION 29. 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 30. ORS 100.415 is amended to read:

100.415. **(1)** The bylaws shall include a reference to the declaration to which the bylaws relate and shall provide for:

[1] **(a)** The organization of the association of unit owners in accordance with ORS 100.405, when the initial meeting shall be held and the method of calling that meeting.

[2] **(b)** If required under ORS 100.205, the formation of a transitional committee in accordance with such section.

[3] **(c)** The turnover meeting required under ORS 100.210, including when the meeting shall be called, the method of calling the meeting, the right of a unit owner under ORS 100.210 (3) to call the meeting and a statement of the purpose of the meeting.

[4(a)] **(d)(A)** The method of calling the annual meeting and all other meetings of the unit owners in accordance with ORS 100.407; and

[b] **(B)** The percentage of owners that constitutes a quorum.

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

[(b)] (B) The terms of office of directors;

[(c)] (C) The powers and duties of the board;

[(d)] (D) The compensation, if any, of the directors;

[(e)] (E) The method of removal from office of directors; and

[(f)] (F) The method of filling vacancies on the board.

[(6)] (f) The method of calling meetings of the board of directors in accordance with ORS 100.420 and a statement that all meetings of the board of directors of the association of unit owners shall be open to unit owners.

[(7)] (g) The election of a chairperson, a secretary, a treasurer and any other officers of the association.

[(8)] (h) The preparation and adoption of a budget in accordance with ORS 100.412.

[(9)(a)] (i)(A) The maintenance, repair and replacement of the common elements and association property;

[(b)] (B) Payment for the expense of maintenance, repair and replacement of common elements and association property and other expenses of the condominium in accordance with ORS 100.530; and

[(c)] (C) The method of approving payment vouchers.

[(10)] (j) The employment of personnel necessary for the maintenance and repair of the common elements.

[(11)] (k) The manner of collecting assessments from the unit owners.

[(12)] (L) Insurance coverage in accordance with ORS 100.435 **and the responsibility for payment of the amount of the deductible in an association insurance policy.**

[(13)] (m) The preparation and distribution of the annual financial statement in accordance with ORS 100.480.

[(14)] (n) The reserve account and the preparation, review and update of the reserve study **and the maintenance plan** required under ORS 100.175.

[(15)] (o) The filing of an Annual Report and any amendment with the Real Estate Agency in accordance with ORS 100.250.

[(16)] (p) The method of adopting and of amending administrative rules and regulations governing the details of the operation of the condominium and use of the common elements.

[(17)] (q) Restrictions on and requirements respecting the enjoyment and maintenance of the units and the common elements as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners.

[(18)] (r) Any restrictions on use or occupancy of units. Any such restrictions created by documents other than the bylaws may be incorporated by reference in the bylaws to the official records of the county in which the property is located.

[(19)] (s) The method of amending the bylaws in accordance with ORS 100.410.

[(20)] (t) Any other details regarding the property that the declarant considers desirable. However, if a provision required to be in the declaration under ORS 100.105 is included in the bylaws, the voting requirements for amending the declaration shall also govern the amendment of the provision in the bylaws.

[(21)] (u) In the event additional units are proposed to be annexed or created pursuant to ORS 100.125 or 100.150, the method of apportioning common expenses in the event new units are added during the course of the fiscal year.

(2) The bylaws may provide that the responsibility for payment of the amount of the deductible may be prescribed by resolution adopted by the board of directors.

SECTION 31. ORS 100.435 is amended to read:

100.435. (1) If the bylaws provide that the association of unit owners has the sole authority to decide whether to repair or reconstruct a unit that has suffered damage or that a unit must be repaired or reconstructed, the board of directors shall obtain and maintain at all times and shall pay

for out of the common expense funds, the following insurance covering both the common elements and individual units:

(a) Property insurance including, but not limited to, fire, extended coverage, vandalism and malicious mischief; and

(b) Insurance covering the legal liability of the association of unit owners, the unit owners individually and the manager including, but not limited to, the board of directors, the public and the unit owners and their invitees or tenants, incident to ownership, supervision, control or use of the property. There may be excluded from the policy required under this paragraph, coverage of a unit owner, other than coverage as a member of the association of unit owners or board of directors, for liability arising out of acts or omissions of that unit owner and liability incident to the ownership or use of the part of the property as to which that unit owner has the exclusive use or occupancy. Liability insurance required under this paragraph shall be issued on a comprehensive liability basis and shall provide a cross liability indorsement providing that the rights of a named insured under the policy [shall] do not prejudice any action against another named insured.

(2) If the bylaws require the individual unit owners to obtain insurance for their units, the bylaws also shall contain a provision requiring the board of directors to obtain the following insurance covering the common elements:

(a) Property insurance including, but not limited to, fire, extended coverage, vandalism and malicious mischief; and

(b) Insurance covering the legal liability of the association of unit owners and the manager including, but not limited to, the board of directors, to the public or the unit owners and their invitees or tenants, incident to supervision, control or use of the property.

(3) The board of directors shall obtain, if reasonably available, terms in insurance policies under this section that provide a waiver of subrogation by the insurer as to any claims against the board of directors of the association[, *any owner or any guest of an owner*].

(4) Notwithstanding a provision in the declaration or bylaws of a condominium, including a condominium created before the effective date of this 2007 Act, that imposes a maximum deductible amount of \$10,000 or less in an association insurance policy, if the board of directors determines that it is in the best interest of the association of unit owners and of the unit owners, as provided in subsection (5) of this section, the board may adopt a resolution authorizing the association to obtain and maintain an insurance policy with a deductible amount exceeding the specified maximum, but not in excess of the greater of:

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

(b) \$10,000.

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

(6) If the declaration or bylaws of a condominium created before the effective date of this 2007 Act do not assign the responsibility for payment of the amount of the deductible in an association insurance policy, the board of directors may adopt a resolution that assigns the responsibility for payment of the amount of the deductible. The resolution must include, but need not be limited to:

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

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

(B) All unit owners;

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

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

(7) If the board of directors adopts a resolution described in subsection (6) of this section, the resolution may require that a unit owner, in addition to any other insurance required by the declaration or bylaws, obtain and maintain:

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

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

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

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

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

(9) Not later than 10 days after adoption of a resolution under subsection (4), (6) or (8) of this section, the board of directors shall ensure that a copy of the resolution and a notice described in subsection (10) of this section are:

(a) Delivered to each unit owner; or

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

(10) The notice required under subsection (9) of this section shall:

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

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

(11) Failure to provide a copy of a resolution or a notice required under this section does not affect the responsibility of a unit owner to comply with a resolution adopted under this section.

SECTION 32. ORS 100.525 is amended to read:

100.525. (1) Unless otherwise provided in the declaration, each unit of a condominium shall be entitled to one vote.

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

(a) An executor, administrator, guardian or trustee may vote, *in person or by proxy, at a meeting of the association* or grant consent with respect to a unit owned or held in a fiduciary capacity, whether or not the *[same]* specific right has been transferred to the fiduciary, if the person satisfies the secretary that the person is the executor, administrator, guardian or trustee holding the unit in a fiduciary capacity.

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

(A) Except as provided in this subsection, the vote *[or proxy]* of the unit may be exercised by any one of the owners *[present]*, in the absence of protest by a co-owner. In the event of a disagreement among the co-owners, the vote of the unit shall be disregarded completely in determining the proportion of votes given with respect to the matter.

(B) A valid court order may establish the right of co-owners' authority to vote.

SECTION 33. ORS 94.572 is amended to read:

94.572. (1)(a) A Class I or Class II planned community created before January 1, 2002, that was not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 [(6) to (10)] (5) to (9), 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, 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, 94.733, 94.770, 94.775, 94.777 and 94.780 and sections 2, 3, 4, 5 and 6 of this 2007

Act to the extent that those statutes are consistent with any governing documents. If the governing documents do not provide for the formation of an association, the requirements of this subsection are not effective until the formation of an association in accordance with paragraph (b) of this subsection. If a provision of the governing documents is inconsistent with this subsection, the owners may amend the governing documents using the procedures in this subsection:

(A) In accordance with the procedures for the adoption of amendments in the governing documents and subject to any limitations in the governing documents, the owners may amend the inconsistent provisions of the governing documents to conform to the extent feasible with this section and ORS 94.550, 94.590, 94.595 [(6) to (10)] **(5) to (9)**, 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, 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, 94.733, 94.770, 94.775, 94.777 and 94.780 **and sections 2, 3, 4, 5 and 6 of this 2007 Act**. Nothing in this paragraph requires the owners to amend a declaration or bylaws to include the information required by ORS 94.580 or 94.635.

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

(i) For an amendment to a recorded governing document other than bylaws, the owners may amend the inconsistent provisions of the document to conform to this section and ORS 94.550, 94.590, 94.595 [(6) to (10)] **(5) to (9)**, 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, 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, 94.733, 94.770, 94.775, 94.777 and 94.780 **and sections 2, 3, 4, 5 and 6 of this 2007 Act** by a vote of at least 75 percent of the owners in the planned community.

(ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the bylaws to conform to this section and ORS 94.550, 94.590, 94.595 [(6) to (10)] **(5) to (9)**, 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, 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, 94.733, 94.770, 94.775, 94.777 and 94.780 **and sections 2, 3, 4, 5 and 6 of this 2007 Act** by a vote of at least a majority of the owners in the planned community.

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

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

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

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

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

(b)(A) If the governing documents do not provide for the formation of an association of owners, at least 10 percent of the owners in the planned community or any governing entity may initiate the formation of an association as provided in this paragraph. The owners or the governing entity initiating the association formation shall call an organizational meeting for the purpose of voting whether to form an association described in ORS 94.625. The notice of the meeting shall:

(i) Name the initiating owners or governing entity;

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

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

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

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

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

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

(viii) Be delivered in accordance with the declaration and bylaws. If there is no governing document or the document does not include applicable provisions, the owners or governing entity shall follow the procedures prescribed in ORS 94.650 [(3)] (4).

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

(C) At the organizational meeting:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The notice of planned community shall include:

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

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

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

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

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

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

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

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

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

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

(10) As used in this section:

(a) "Governing entity" means an incorporated or unincorporated association, committee, person or any other entity that has authority, under a governing document, to maintain commonly main-

tained property, impose assessments on lots or to act on behalf of lot owners within the planned community on matters of common concern.

(b) "Recorded declaration" means an instrument recorded with the county recording officer of the county in which the planned community is located that contains conditions, covenants and restrictions binding lots in the planned community or imposes servitudes upon the real property.

SECTION 34. ORS 100.410 is amended to read:

100.410. (1) The declarant shall adopt on behalf of the association of unit owners the initial bylaws that govern the administration of the condominium. The bylaws shall be recorded simultaneously with the declaration as an exhibit or as a separate instrument.

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

(3) Subject to subsections (4) and (5) of this section and ORS 100.415 [(20)] (1)(t), an amendment of the bylaws is not effective unless the amendment is:

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

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

(4) In condominiums that are exclusively residential:

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

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

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

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

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

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

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

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

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

(b) Bylaws restated under this subsection must:

(A) Include all previously adopted amendments that are in effect, state that the amendments were approved by the commissioner as required under this section and state that no other changes were made except, if applicable, 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 paragraph (a) of 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 and all previously recorded amendments that are in effect and are being codified;

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

(E) Be executed and acknowledged by the chairperson and secretary of the association and recorded in the deed records of each county in which the condominium is located; and

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

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

SECTION 35. ORS 100.640 is amended to read:

100.640. The following documents and information shall be submitted to the Real Estate Commissioner as part of the filing required under ORS 100.635:

(1) A copy of the proposed or recorded declaration or supplemental declaration of condominium ownership drawn in conformance with ORS 100.105 or 100.120, or the law applicable in the state where the condominium was created;

(2) A copy of the proposed or recorded bylaws drawn in conformance with ORS 100.415 or the law applicable in the state where the condominium was created;

(3) A copy of the full size plat prepared in conformance with ORS 100.115 (2) or the law applicable in the state where the condominium was created, or a copy of the site plan;

(4) A statement from the county assessor or county surveyor that the name for the condominium is acceptable under ORS 100.105 (6);

(5) A copy of a preliminary title report, title insurance policy or condominium guarantee that has been issued within the preceding 30 days, including a map showing the location of property described in the report, policy or guarantee or other evidence of title satisfactory to the commissioner;

(6) A copy of all restrictive covenants, reservations or other documents that may create an encumbrance on or limit the use of the property other than those restrictions contained in the declaration or bylaws;

(7) A copy of the reserve study required by ORS 100.175 and other sources of information that serve as a basis for calculating reserves in accordance with ORS 100.175 [(3)], unless the information is contained in the disclosure statement;

(8) The following sample forms:

(a) Unit sales agreement, including the notice to purchaser of cancellation rights in accordance with ORS 100.730 and 100.740, the statement required by ORS 93.040 (1) and any warranty required under ORS 100.185; and

(b) A receipt for documents required under ORS 100.725;

(9) If required by ORS 100.680:

(a) A copy of the escrow agreement drawn in conformance with ORS 100.680 and executed by both the declarant and the escrow agent. If individual escrow agreements or instructions are to be executed by the purchaser, other than the standard escrow instruction required by the escrow agent, submit sample form and a letter from the escrow agent, agreeing to the establishment of the escrows and the procedure set forth in the sample form; and

(b) A unit sales agreement drawn in conformance with ORS 100.680;

(10) If any of the sales will be by means of an installment contract of sale:

(a) A copy of the escrow agreement or escrow instructions executed by the developer and the escrow agent providing for the establishment of collection escrows and the deposit of documents in accordance with ORS 100.720; and

(b) The proposed installment contract of sale form, if available;

(11) Any other documents by which the purchasers will be bound;

(12) Any report or disclosure statement issued for the condominium, by the federal government and any other state; and

(13) A statement of any additional facts or information which the developer desires to submit to the commissioner.

SECTION 36. ORS 100.655 is amended to read:

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

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

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

(c) If at the time of filing:

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

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

(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; and

(C) The following notice in at least 12-point type that is either all capitals or boldface:

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.

(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

(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, ground leases, management agreement, easements, covenants, restrictions and conditions;

(k) A statement of whether there are any restrictions on alienation of units or any use or occupancy restrictions, such as limitations on residential or commercial use, pets, age of occupants or number of occupants, and a cross-reference to those portions of the declaration, any supplemental declaration, bylaws or any other document containing the principal provisions relating to those restrictions; and

(L) If the condominium is a staged condominium:

(A) Whether the declarant reserves the right to annex additional property to the condominium pursuant to ORS 100.125 and, if so:

(i) The maximum number of units;

(ii) The date after which annexation right terminates;

(iii) The description of additional common elements declarant reserves right to annex to the property and whether such common elements might substantially increase the proportionate amount of common expenses by current unit owners; and

(iv) The effect of annexation of additional units on allocation of interest in the common elements and voting rights.

(B) If the condominium or any stage being filed under ORS 100.635 contains or may contain any variable property, a statement of the rights reserved by the declarant under ORS 100.150 (1) and the results specified in ORS 100.155 if such rights are not exercised.

(2) In lieu of the disclosure statement required under subsection (1) of this section, the commissioner may accept a disclosure report issued or approved by another state or governmental agency.

(3) No disclosure statement is required for condominiums described in ORS 100.660.

(4) The declarant is not liable to the association or the owners with respect to a statement of condition or estimate of useful life contained in the disclosure statement if:

(a) The declarant did not have actual knowledge of any inaccuracies in the statement at the time of delivery of the disclosure statement to the purchaser; and

(b) The declarant relied upon reports prepared by licensed engineers or architects in making the statement or, if the condominium has four or fewer units, reports prepared by licensed engineers, architects or home inspectors.

SECTION 37. This 2007 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fourth Legislative Assembly adjourns sine die.

Passed by House April 18, 2007

Repassed by House May 30, 2007

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate May 24, 2007

.....
President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

.....
Secretary of State