

B-Engrossed
House Bill 2666

Ordered by the Senate May 21
Including House Amendments dated April 12 and Senate Amendments
dated May 21

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)

SUMMARY

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

Revises provisions governing condominiums and planned communities.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to properties governed by declarations; creating new provisions; amending ORS 94.550,
3 94.590, 94.625, 94.630, 94.858, 100.005, 100.020, 100.102, 100.105, 100.115, 100.275, 100.405, 100.410,
4 100.510, 100.535, 100.540, 100.550 and 100.640 and section 29, chapter 569, Oregon Laws 2003; and
5 prescribing an effective date.

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

7 **SECTION 1.** ORS 94.550 is amended to read:

8 94.550. As used in ORS 94.550 to 94.783:

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

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

16 (3) "Class I planned community" means a planned community [*as defined in ORS 94.550*] that:

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

19 (b) Has an estimated annual assessment, including an amount required for reserves under ORS
20 94.595, exceeding \$10,000 for all lots or \$100 per lot, whichever is greater, based on:

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

24 (B) For a planned community created before January 1, 2002, a reasonable estimate of the cost
25 of fulfilling existing obligations imposed by the declaration, [*and*] bylaws **or other governing doc-**
26 **ument** as of January 1, 2002.

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

- 1 (4) "Class II planned community" means a planned community [as defined in ORS 94.550] that:
2 (a) Is not a Class I planned community;
3 (b) Contains at least five lots; and
4 (c) Has an estimated annual assessment exceeding \$1,000 for all lots based on:
5 (A) For a planned community created on or after January 1, 2002, the initial estimated annual
6 assessment, including a constructive assessment based on a subsidy of the association through a
7 contribution of funds, goods or services by the declarant; or
8 (B) For a planned community created before January 1, 2002, a reasonable estimate of the cost
9 of fulfilling existing obligations imposed by the declaration, [and] bylaws **or other governing doc-**
10 **ument** as of January 1, 2002.
- 11 (5) "Class III planned community" means a planned community [as defined in ORS 94.550] that
12 is not a Class I or II planned community.
- 13 (6) "Common expenses" means expenditures made by or financial liabilities incurred by the
14 homeowners association and includes any allocations to the reserve account under ORS 94.595.
- 15 (7) "Common property" means any real property or interest in real property within a planned
16 community which is owned, held or leased by the homeowners association or owned as tenants in
17 common by the lot owners, or designated in the declaration **or the plat** for transfer to the associ-
18 ation.
- 19 (8) "Condominium" means property submitted to the provisions of ORS chapter 100.
- 20 (9) "Declarant" means any person who creates a planned community under ORS 94.550 to 94.785.
- 21 (10) "Declarant control" means any special declarant right relating to administrative control of
22 a homeowners association, including but not limited to:
23 (a) The right of the declarant or person designated by the declarant to appoint or remove an
24 officer or a member of the board of directors;
25 (b) Any weighted vote or special voting right granted to a declarant or to units owned by the
26 declarant so that the declarant will hold a majority of the voting rights in the association by virtue
27 of such weighted vote or special voting right; and
28 (c) The right of the declarant to exercise powers and responsibilities otherwise assigned by the
29 declaration or bylaws or by the provisions of ORS 94.550 to 94.783 to the association, officers of the
30 association or board of directors of the association.
- 31 (11) "Declaration" means the instrument described in ORS 94.580 which establishes a planned
32 community, and any amendments to the instrument.
- 33 (12) "Governing document" means an instrument or plat relating to common ownership or com-
34 mon maintenance of a portion of a planned community and that is binding upon lots within the
35 planned community.
- 36 (13) "Homeowners association" or "association" means the organization of owners of lots in a
37 planned community, created under ORS 94.625, required by a governing document or formed under
38 ORS 94.572.
- 39 (14) "Majority" or "majority of votes" or "majority of owners" means more than 50 percent of
40 the votes in the planned community.
- 41 (15) "Mortgagee" means any person who is:
42 (a) A mortgagee under a mortgage;
43 (b) A beneficiary under a trust deed; or
44 (c) The vendor under a land sale contract.
- 45 (16) "Owner" means the owner of any lot in a planned community, unless otherwise specified,

1 but does not include a person holding only a security interest in a lot.

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

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

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

11 (A) A condominium under ORS chapter 100;

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

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

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

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

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

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

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

26 (c) Converting lots into common property;

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

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

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

30 (23) "Turn over" means the act of turning over administrative responsibility pursuant to ORS
31 94.609 and 94.616.

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

35 (25) "Votes" means the votes allocated to lots in the declaration under ORS 94.580 (2).

36 **SECTION 2.** ORS 94.625 is amended to read:

37 94.625. (1) **Except as provided in subsection (2) of this section**, not later than the date on
38 which the first lot in the planned community is conveyed, the declarant shall:

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

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

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

44 **(2) If the plat contains a conveyance of any property to the homeowners association, the**
45 **declarant shall organize the homeowners association as a nonprofit corporation under ORS**

1 **chapter 65 before the plat is recorded.**

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

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

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

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

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

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

17 [(3)] (4) Unless otherwise provided in the bylaws, amendments to the bylaws may be proposed
18 by a majority of the board of directors or by at least 30 percent of the owners of the planned com-
19 munity.

20 [(4)] (5) Subject to subsection [(5)] (6) of this section, an amendment is not effective unless the
21 amendment is:

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

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

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

31 [(5)] (6) If a provision required to be in the declaration under ORS 94.580 is included in the
32 bylaws, the voting requirements for amending the declaration shall also govern the amendment of
33 the provision in the bylaws.

34 [(6)] (7) Notwithstanding a provision in the bylaws, including bylaws adopted prior to July 14,
35 2003, that requires an amendment to be executed, or executed and acknowledged, by all owners ap-
36 proving the amendment, amendments to the bylaws under this section become effective after ap-
37 proval by the owners if executed and certified on behalf of the association by the president and
38 secretary in accordance with subsection [(4)(b)] (5)(b) of this section.

39 [(7)] (8) An amendment to the bylaws is conclusively presumed to have been regularly adopted
40 in compliance with all applicable procedures relating to the amendment unless an action is brought
41 within one year after the effective date of the amendment or the face of the amendment indicates
42 that the amendment received the approval of fewer votes than required for approval. Nothing in this
43 subsection prevents the further amendment of an amended bylaw.

44 [(8)] (9) Failure to comply with subsection (1) of this section does not invalidate a conveyance
45 from the declarant to an owner.

1 [(9)] (10) The board of directors, by resolution and without the further approval of the owners,
2 may cause restated bylaws to be prepared and recorded to codify individual amendments that have
3 been adopted in accordance with subsection [(4)] (5) of this section. Bylaws restated under this
4 subsection must:

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

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

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

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

14 (e) Be executed and acknowledged by the president and secretary of the association and re-
15 corded in the deed records of each county in which the planned community is located.

16 **SECTION 2a.** ORS 94.630 is amended to read:

17 94.630. (1) Subject to subsection (2) of this section and except as otherwise provided in its dec-
18 laration or bylaws, a homeowners association may:

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

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

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

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

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

27 (A) Matters relating to the collection of assessments and the enforcement of governing docu-
28 ments;

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

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

32 [(D) Matters relating to or affecting common property, including but not limited to actions for
33 damage, destruction, impairment or loss of use of any common property;]

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

36 **(i) Individually owned real property, the expenses for which, including maintenance, re-
37 pair or replacement, insurance or other expenses, the association is responsible; or**

38 **(ii) Common property;**

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

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

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

45 (F) Any other matter to which the association has standing under law or pursuant to the dec-

1 laration or bylaws;

2 (f) Make contracts and incur liabilities;

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

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

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

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

9 (k) Modify, close, remove, eliminate or discontinue the use of common property, including any
10 improvement or landscaping, regardless of whether the common property is mentioned in the decla-
11 ration, provided that:

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

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

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

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

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

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

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

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

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

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

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

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

1 of declarant control under ORS 94.600.

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

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

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

11 (c) Identify, by the designations stated or referenced in the declaration or applicable supple-
12 mental declaration, all affected lots and common property; and

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

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

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

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

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

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

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

43 **SECTION 3. Section 4 of this 2007 Act is added to and made a part of ORS chapter 100.**

44 **SECTION 4. (1) A declarant may amend the declaration or bylaws in order to comply with**
45 **requirements of the Federal Housing Administration, the United States Department of Vet-**

1 **erans Affairs, Rural Development or the Farm Service Agency of the United States Depart-**
2 **ment of Agriculture, the Federal National Mortgage Association, the Government National**
3 **Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bu-**
4 **reau, board, commission or agency of the United States or the State of Oregon or any cor-**
5 **poration wholly owned, directly or indirectly, by the United States or the State of Oregon**
6 **that insures, guarantees or provides financing for a condominium or units in a condominium.**

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

10 **SECTION 5.** ORS 100.005 is amended to read:

11 100.005. As used in this chapter, unless the context requires otherwise:

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

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

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

18 (4) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance,
19 mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than
20 one unit in a condominium, or an agreement affecting more than one such unit by which the devel-
21 oper holds such condominium under an option, contract to sell or trust agreement.

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

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

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

27 (8) "Common expenses" means:

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

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

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

32 (9) "Condominium" means:

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

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

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

37 (C) Any easements, rights and appurtenances belonging to the property submitted to the pro-
38 visions of ORS 100.005 to 100.625; and

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

42 (10) "Conversion condominium" means a condominium in which there is a building, improvement
43 or structure that was occupied prior to any negotiation and that is:

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

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

1 (11) "Declarant" means a person who records a declaration under ORS 100.100 or a supple-
2 mental declaration under ORS 100.110.

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

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

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

10 [(15)] (14) "Flexible condominium" means a condominium containing property that may be re-
11 classified or withdrawn from the condominium pursuant to ORS 100.150 (1).

12 [(16)] (15) "General common elements," unless otherwise provided in a declaration, means all
13 portions of the condominium that are not part of a unit or a limited common element, including but
14 not limited to the following:

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

17 (b) The foundations, columns, girders, beams, supports, bearing and shear walls, **windows, ex-**
18 **cept glazing and screening, unit access doors, except glazing and screening,** roofs, halls, cor-
19 ridors, lobbies, stairs, fire escapes, entrances and exits of a building;

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

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

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

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

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

28 [(17)] (16) "Leasehold" means the interest of a person, firm or corporation who is the lessee
29 under a lease from the owner in fee and who files a declaration creating a condominium under ORS
30 100.100.

31 [(18)] (17) "Limited common elements" means those common elements designated in the decla-
32 ration, as reserved for the use of a certain unit or number of units, to the exclusion of the other
33 units.

34 [(19)] (18) "Majority" or "majority of unit owners" means more than 50 percent of the voting
35 rights allocated to the units by the declaration.

36 (19) "**Mortgagee" means any person who is:**

37 (a) **A mortgagee under a mortgage;**

38 (b) **A beneficiary under a trust deed; or**

39 (c) **The vendor under a land sale contract.**

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

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

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

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

1 owners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 **SECTION 6.** ORS 100.020 is amended to read:

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

6 (2) Unless the declarant elects otherwise, ORS 100.175, 100.185, 100.200 (2), 100.205, 100.210,
7 100.300, 100.305, 100.310, 100.315 and 100.320 apply only to condominiums that include units to be
8 used for residential purposes.

9 (3) Property may not be submitted to the condominium form of ownership under ORS 100.005 to
10 100.625 unless:

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

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

16 (A) A building or part of a building;

17 (B) A space used for the parking or storage of automobiles, trucks, boats, campers or other ve-
18 hicles or equipment;

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

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

21 (i) Is permanently moored to structures in a river, lake or other waterway pursuant to a long-
22 term lease with a remaining term at the time the declaration and plat are recorded of not less than
23 15 years;

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

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

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

33 (4)(a) Except as otherwise provided in subsection (5) of this section, ORS 100.015 and 100.635
34 to 100.910 apply to condominiums having units to be used for residential purposes which are not
35 offered for sale as a security pursuant to ORS 59.005 to 59.451[, 59.660 to 59.830, 59.991 and
36 59.995].

37 **(b) ORS 100.635 (2), 100.640 (8) to (12), 100.655, 100.705, 100.720, 100.725, 100.730, 100.735,**
38 **100.740 and 100.745 do not apply to the sale of units to be used for nonresidential purposes**
39 **unless the units, including units used for parking or storage, are ancillary to the sale of units**
40 **to be used for residential purposes.**

41 (5) ORS 100.650, 100.660, 100.670, 100.675, 100.750, 100.770, 100.775, 100.780, 100.900, 100.905 and
42 100.990 apply to [*the sale of condominium units*] **a condominium located in this state that consists**
43 **exclusively of units to be used for nonresidential purposes or that consists of units to be offered**
44 **for sale as a security under ORS 59.005 to 59.451.**

45 (6) The units in a condominium described in subsection (3)(b)(C) and (D) of this section shall be

1 considered real property for purposes of this chapter.

2 **(7) Unless the declaration or bylaws provide otherwise, a condominium unit may be sub-**
3 **mitted to the condominium form of ownership under ORS 100.005 to 100.625.**

4 **SECTION 7.** ORS 100.102 is amended to read:

5 100.102. (1) The owner of fee title interest in the real property underlying a leasehold condo-
6 minium may submit the fee title to the provisions of this chapter by the procedures set forth in this
7 section. Submission has the effect set forth in ORS 100.103.

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

10 (a) Include a reference to the recording index numbers and date of recording of the initial dec-
11 laration, supplemental declarations recorded pursuant to ORS 100.120 and the lease;

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

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

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

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

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

24 (g) Be certified by the chairperson and secretary as being adopted in accordance with this sec-
25 tion;

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

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

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

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

35 (a) The declaration; or

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

40 **SECTION 8.** ORS 100.105 is amended to read:

41 100.105. (1) A declaration shall contain:

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

1 (b) Subject to subsection (11) of this section, a statement of the interest in the property being
2 submitted to the condominium form of ownership, whether fee simple, leasehold, easement or other
3 interest or combination thereof.

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

8 (d) The unit designation, a statement that the location of each unit is shown on the plat, a de-
9 scription of the boundaries and area in square feet of each unit and any other data necessary for
10 proper identification. The area of a unit shall be the same as shown for that unit on the plat de-
11 scribed in ORS 100.115 (2).

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

14
15
16
17 **NOTICE**

18
19 **THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION AND THE PLAT**
20 **ARE BASED ON THE BOUNDARIES OF THE UNITS AS DESCRIBED IN THIS DECLARA-**
21 **TION AND MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PUR-**
22 **POSES.**

23
24
25 [(e)] (f) A description of the general common elements.

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

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

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

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

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

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

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

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

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

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

45 [(m)] (n) A statement as to whether or not the association of unit owners pursuant to ORS

1 100.405 (5) and (8) has authority to grant leases, easements, rights of way, licenses and other similar
2 interests affecting the general and limited common elements of the condominium and consent to
3 vacation of roadways within and adjacent to the condominium.

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

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

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

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

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

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

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

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

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

28 (3) Except where expressly prohibited by the declaration and subject to the requirements of ORS
29 100.135 (2) and subsections (9) and (10) of this section:

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

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

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

40 (5) The name of the property shall include the word “condominium” or “condominiums” or the
41 words “a condominium.”

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

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

- 1 (a) A statement that the rights provided for under ORS 100.150 (1) are being reserved.
- 2 (b) A statement:
 - 3 (A) Of any limitations on rights reserved under ORS 100.150 (1), including whether the consent
 - 4 of any unit owner shall be required, and if so, a statement of the method by which the consent shall
 - 5 be ascertained; or
 - 6 (B) That there are no limitations on rights reserved under ORS 100.150 (1).
 - 7 (c) A statement of the total number of tracts of variable property within the condominium, in-
 - 8 cluding:
 - 9 (A) A designation of each tract as withdrawable or nonwithdrawable variable property;
 - 10 (B) Identification of each variable tract by a label in accordance with ORS 100.115 (2)(i);
 - 11 (C) A statement of the method of labeling each tract depicted on the plat in accordance with
 - 12 ORS 100.115 (2)(i); and
 - 13 (D) A statement of the total number of tracts of each type of variable property.
 - 14 (d) The termination date, which is the date or time period after which any right reserved under
 - 15 ORS 100.150 (1) will terminate, and a statement of the circumstances, if any, that will terminate any
 - 16 right on or before the date or time period specified. The date or time period may not exceed seven
 - 17 years from the recording of the conveyance of the first unit in the condominium to a person other
 - 18 than the declarant. Recording shall be in the county in which the property is located.
 - 19 (e) The maximum number of units that may be created.
 - 20 (f) A statement that the method used to establish the allocations of undivided interest in the
 - 21 common elements, the method used to determine liability for common expenses and right to common
 - 22 profits and the method used to allocate voting rights as additional units are created shall be the
 - 23 same as stated in the declaration in accordance with subsection [(1)(f), (h) and (i)] **(1)(g), (i) and (j)**
 - 24 of this section.
 - 25 (g) A general description of all existing improvements and the nature and proposed use of any
 - 26 improvements that may be made on variable property if the improvements might substantially in-
 - 27 crease the proportionate amount of the common expenses payable by existing unit owners.
 - 28 (h) A statement of whether or not the declarant reserves the right to create limited common
 - 29 elements within any variable property, and if so, a general description of the types that may be
 - 30 created.
 - 31 (i) A statement that the plat shows the location and dimensions of all withdrawable variable
 - 32 property that is labeled "WITHDRAWABLE VARIABLE PROPERTY."
 - 33 (j) A statement that if by the termination date all or a portion of the withdrawable variable
 - 34 property has not been withdrawn or reclassified, the withdrawable property shall automatically be
 - 35 withdrawn from the condominium as of the termination date.
 - 36 (k) A statement of the rights of the association under ORS 100.155 (2).
 - 37 (L) A statement of whether or not all or any portion of the variable property may not be with-
 - 38 drawn from the condominium and, if so, with respect to the nonwithdrawable variable property:
 - 39 (A) A statement that the plat shows the location and dimensions of all nonwithdrawable prop-
 - 40 erty that is labeled "NONWITHDRAWABLE VARIABLE PROPERTY."
 - 41 (B) A description of all improvements that may be made and a statement of the intended use of
 - 42 each improvement.
 - 43 (C) A statement that, if by the termination date all or a portion of the variable property desig-
 - 44 nated as "nonwithdrawable variable property" has not been reclassified, the property shall auto-
 - 45 matically be reclassified as of the termination date as a general common element of the

1 condominium and any interest in such property held for security purposes shall be automatically
2 extinguished by such classification.

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

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

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

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

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

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

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

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

31 **SECTION 9. Section 10 of this 2007 Act is added to and made a part of ORS 100.305 to**
32 **100.320.**

33 **SECTION 10. As used in ORS 100.305 to 100.320, “dwelling unit” and “tenant” have the**
34 **meanings given those terms in ORS 90.100.**

35 **SECTION 11.** ORS 100.405 is amended to read:

36 100.405. (1)(a) An association of unit owners shall be organized to serve as a means through
37 which the unit owners may take action with regard to the administration, management and opera-
38 tion of the condominium. The association **of a condominium created on or after the effective**
39 **date of this 2007 Act** shall be organized as a corporation for profit or nonprofit corporation or, **if**
40 **the condominium consists of not more than four units, excluding units used for parking,**
41 **storage or other use ancillary to a unit,** as an unincorporated association. If the association is
42 incorporated, the name of the association shall include the complete name of the condominium.

43 *[(b) Unless otherwise provided in the declaration or bylaws, an unincorporated association may be*
44 *incorporated if such action is approved by a majority of unit owners in person, by written ballot or*
45 *by proxy at a meeting at which a quorum is present.]*

1 **(b) Notwithstanding a provision in the declaration or bylaws of a condominium created**
2 **before the effective date of this 2007 Act that states that the association shall be**
3 **unincorporated or that requires approval of owners to incorporate as a nonprofit corporation**
4 **under ORS chapter 65, an unincorporated association may be incorporated as a nonprofit**
5 **corporation under ORS chapter 65 if the board of directors adopts a resolution that states**
6 **the association will be incorporated.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (F) Any other matter to which the association has standing under law or pursuant to the dec-
32 laration, bylaws or any articles of incorporation;

33 (f) Make contracts and incur liabilities;

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

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

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

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

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

45 (A) On a schedule contained in the declaration or bylaws, or an amendment to either that is

1 delivered to each unit, mailed to the mailing address of each unit or mailed to the mailing addresses
2 designated in writing by the owners; or

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

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

11 (m) Impose reasonable charges for the preparation and recordation of amendments to the dec-
12 laration or statements of assessments;

13 (n) Assign its right to future income, including the right to receive common expense assess-
14 ments;

15 (o) Provide for the indemnification of its officers and executive board, as may be limited by ORS
16 61.218 (3)(d) (1987 Replacement Part), and maintain directors' and officers' liability insurance;

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

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

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

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

26 (6)(a)(A) Except as provided in subparagraph (B) of this paragraph, the granting of a lease,
27 easement, right of way, license or other similar interest pursuant to subsection (5) of this section
28 shall be first approved by at least 75 percent of owners. **Unit owner approval may be solicited**
29 **by any means the board of directors determines is reasonable and need not be at a meeting**
30 **of the association.**

31 (B) Unless the declaration otherwise provides:

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

35 (ii) The granting of a lease, easement, right of way, license or other similar interest affecting
36 the general common elements for a term of more than two years to a public body, as defined in ORS
37 174.109, or to a utility or a communications company for [*underground*] installation and maintenance
38 of power, gas, electric, water or other utility and communication lines and services requires the
39 approval of a majority of the board of directors.

40 (iii) The granting of a lease, easement, license or other similar interest to an owner for the ex-
41 clusive use of a part of the general common elements to which the owner's unit provides primary
42 access requires the approval of a majority of the board of directors. If the approval by the board
43 of directors includes the right of the owner to make improvements to the general common elements
44 to which the owner is being granted exclusive use, ORS 100.535 applies to the general common el-
45 ements to the same extent that ORS 100.535 applies to a unit, including the right of the board under

1 ORS 100.535 to require an owner, at owner's expense, to submit an opinion of a registered architect
2 or registered professional engineer that the proposed improvement will not impair the structural
3 integrity or mechanical systems of the condominium.

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

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

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

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

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

25 (b) Modification, closure, removal, elimination or discontinuance other than on a temporary ba-
26 sis of any swimming pool, spa or recreation or community building must be approved by at least a
27 majority of the unit owners voting on such matter at a meeting or by written ballot held in ac-
28 cordance with the declaration, bylaws or ORS 100.425.

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

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

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

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

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

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

45 (11)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an administrative

1 proceeding in which the association and an owner have an adversarial relationship, the party that
2 intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution
3 program available within the county in which the condominium is located that is in substantial
4 compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be
5 hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the
6 records of the association, for the other party.

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

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

18 (d) Unless a stay has been granted under paragraph (c) of this subsection, if the dispute resolu-
19 tion process is not completed within 30 days after receipt of the initial offer, the initiating party
20 may commence litigation or an administrative proceeding without regard to whether the dispute
21 resolution is completed.

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

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

28 **SECTION 12.** Section 29, chapter 569, Oregon Laws 2003, is amended to read:

29 **Sec. 29.** Unless the declaration of a condominium recorded before [*the effective date of this 2003*
30 *Act*] **July 14, 2003**, expressly limits or prohibits the authority of the association of unit owners to
31 grant, execute, acknowledge[,] **and** deliver [*and record*] on behalf of the unit owners leases, ease-
32 ments, rights of way, licenses and other similar interests affecting the general common elements and
33 consent to vacation of roadways within and adjacent to the condominium pursuant to ORS 100.405
34 (6) in effect at the time the declaration was recorded, the amendments to ORS 100.405 (6) by section
35 28, **chapter 569, Oregon Laws 2003**, [*of this 2003 Act*] apply to **the authority of the association**
36 **of unit owners of** a condominium recorded before [*the effective date of this 2003 Act*] **July 14, 2003**,
37 **except for the limitation or prohibition on the authority of the association under this**
38 **section.**

39 **SECTION 13.** ORS 100.410 is amended to read:

40 100.410. (1) The declarant shall adopt on behalf of the association of unit owners the initial by-
41 laws that govern the administration of the condominium. The bylaws shall be recorded simultane-
42 ously with the declaration as an exhibit or as a separate instrument.

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

45 (3) Subject to subsections (4) and (5) of this section and ORS 100.415 (20), an amendment of the

1 bylaws is not effective unless the amendment is:

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

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

6 (4) In condominiums that are exclusively residential:

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

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

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

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

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

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

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

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

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

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

43 (b) Bylaws restated under this subsection must:

44 (A) Include all previously adopted amendments that are in effect, state that the amendments
45 were approved by the commissioner as required under this section and state that no other changes

1 were made except, if applicable, to correct scriveners' errors or to conform format and style;

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

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

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

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

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

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

16 **SECTION 14.** ORS 100.510 is amended to read:

17 100.510. (1) Unless otherwise provided in the declaration, [*if the declaration designates*] **the**
18 walls, floors [*or*] **and** ceilings [*as*] **are the** boundaries of a unit[:].

19 [(1)] (2) All lath, furring, wallboard, plaster-board, plaster, paneling, tiles, wallpaper, paint, fin-
20 ished flooring and any other materials constituting any part of the finished surfaces thereof shall
21 be a part of the unit except those portions of the walls, floors or ceilings that materially contribute
22 to the structural or shear capacity of the condominium. All other portions of the walls, floors or
23 ceilings shall be a part of the common elements.

24 [(2)] (3) The following shall be a part of the unit:

25 (a) All spaces, nonbearing interior partitions, [*windows, window frames, exterior*] **interior**
26 doors[, *door frames*] and all other fixtures and improvements within the boundaries of the unit;
27 [*and*]

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

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

32 **SECTION 15.** ORS 100.535 is amended to read:

33 100.535. (1) Subject to subsections [(2) and (3)] **(5) and (6)** of this section and any additional
34 limitations contained in the declaration or bylaws, a unit owner:

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

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

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

44 (3) The board of directors may require the unit owner, at the expense of the unit owner, to
45 submit an opinion of a registered architect or registered professional engineer that the proposed

1 change will not impair the structural integrity or mechanical systems of the condominium or lessen
2 the support of any portion of the condominium.

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

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

9 [(3)] (6) Unless otherwise provided in the declaration or bylaws, a unit owner may not change
10 the appearance of the common elements or the exterior appearance of a unit without permission of
11 the board of directors of the association.

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

14 **SECTION 16.** ORS 100.540 is amended to read:

15 100.540. (1) Each unit owner may use the common elements in accordance with the purposes for
16 which they are intended, but may not hinder or encroach upon the lawful rights of the other unit
17 owners.

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

19 (a) **The responsibility for maintenance, repair and replacement of the common elements**
20 **is the responsibility of the association of unit owners; and**

21 (b) **The cost of maintenance, repair and replacement is a common expense of the asso-**
22 **ciation.**

23 [(2)] (3) The necessary work of maintenance, repair and replacement of the common elements
24 and additions or improvements to the common elements shall be carried out only as provided in the
25 bylaws.

26 [(3)] (4) The association of unit owners shall have the right to have access to each unit as may
27 be necessary for the maintenance, repair or replacement of the common elements, or to make
28 emergency repairs therein necessary for the public safety or to prevent damage to the common el-
29 ements or to another unit.

30 **SECTION 17.** ORS 100.115 is amended to read:

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

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

45 (a) Show the location of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (b) If any property is withdrawn:

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

10 (B) Show the information required under subsection (2)(i) of this section as it relates to any re-
11 maining variable property.

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

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

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

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

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

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

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

30 (a) Check the boundaries of the plat and units and take measurements and make computations
31 necessary to determine that the plat complies with this section.

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

33 (c) Determine that the following are consistent:

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

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

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

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

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

43 (a) Submit a copy of the proposed declaration and bylaws or applicable supplemental declaration
44 at the time the plat is submitted; and

45 (b) Submit the original or a copy of the executed declaration and bylaws or the applicable sup-

1 plemental declaration approved by the commissioner if required by law prior to approval.

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

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

15 (b) For performing the activities described in this subsection, the county clerk shall collect a fee
16 set by the county governing body. The county clerk shall also collect a fee set by the county gov-
17 erning body to be paid to the county surveyor for services provided under this subsection.

18 (9) In addition to the provisions of subsection (12) of this section, a plat, including any floor
19 plans that are a part of the plat, may be amended as follows:

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

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

27 (i) A graphic depiction of the change.

28 (ii) For a change to the boundary of the property, a surveyor's certificate, complying with ORS
29 92.070.

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

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

37 (C) The plat amendment shall be accompanied by an amendment to the declaration authorizing
38 such plat amendment. The declaration amendment shall be executed, approved and recorded in ac-
39 cordance with ORS 100.110 and 100.135.

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

43 (i) Submit a copy of the proposed amendment to the declaration required under this paragraph
44 when the plat amendment is submitted; and

45 (ii) Submit the original or a copy of the executed amendment to the declaration approved by the

1 commissioner if required by law prior to approval of the plat amendment.

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

6 (b)(A) A change to a restriction or other information not required to be graphically depicted on
7 the plat may be made by amendment of the declaration without a plat amendment described in
8 paragraph (a) of this subsection. An amendment under this paragraph shall include:

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

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

12 (iii) A statement that the amendment was approved in accordance with the declaration and ORS
13 110.135.

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

16 (C) Before the amendment may be recorded, it must be approved by the city or county surveyor
17 as provided in ORS 92.100. The surveyor shall approve the amendment if it complies with this sub-
18 section. Such approval shall be evidenced by execution of the amendment or by written approval
19 attached thereto.

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

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

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

26 (iii) A graphic depiction of any change to the boundaries of a unit or common element and a
27 statement by a registered architect, registered professional land surveyor or registered professional
28 engineer certifying that such graphic depiction fully and accurately depicts the boundaries of the
29 unit or common element as it currently exists.

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

33 (10) After recording of any declaration amendment or plat amendment pursuant to subsection
34 (9) of this section, the county surveyor shall, upon the surveyor's copy of all previously recorded
35 plats relating to the condominium and any copies filed under ORS 92.120 (3), make such appropriate
36 marks or notations, including the date and the surveyor's name or initials, with archival quality
37 black ink in such manner as to denote the changes. The recording index numbers and date of re-
38 cording of the declaration amendment and any plat amendment shall also be referenced on the copy
39 of each plat. The original plat may not be changed or corrected after the plat is recorded.

40 (11) For performing the services described in subsections (9) and (10) of this section, the county
41 surveyor shall collect from the person offering the plat amendment or declaration amendment for
42 approval a fee established by the county governing body.

43 (12) The following may be amended by an affidavit of correction in accordance with ORS 92.170:

44 (a) A plat, whenever recorded.

45 (b) Floor plans recorded prior to October 15, 1983.

1 **SECTION 18.** ORS 100.275 is amended to read:

2 100.275. (1) Subject to ORS 100.550 (3), ORS 100.250 to 100.280, including the filing of a Condo-
3 minium Information Report described in ORS 100.260 (1), apply to property submitted to the pro-
4 visions of this chapter before October 3, 1989, if:

5 (a) The board of directors of the association receives a written request to comply with such
6 sections from at least one unit owner or holder of a first mortgage or deed of trust on a unit;

7 (b) The board of directors of the association adopts a resolution to comply with such sections
8 in accordance with the bylaws;

9 (c) The association is a party to a suit or action, the person designated in the declaration under
10 ORS 100.105 [(1)(k)] (1)(L), the chairperson or secretary receives written notice to comply with such
11 sections from any other party to such suit or action. A copy of the notice shall be delivered to the
12 Real Estate Agency. The Real Estate Agency shall provide a copy of the filed report to the re-
13 questing party and may charge the association a fee for cost of such action. If the association fails
14 to deliver for filing such report, the provisions of ORS 100.265 (3) shall apply; or

15 (d) A filing is required to comply with the requirements of ORS 100.120, 100.135 or 100.450.

16 (2) The Condominium Information Report required under subsection (1) of this section shall be
17 executed by the chairperson or secretary of the association and the designated agent.

18 **SECTION 19.** ORS 100.550 is amended to read:

19 100.550. (1) Service of process in any action relating to the condominium may be made on:

20 (a) If the condominium was submitted to the provisions of this chapter before October 3, 1989,
21 the person designated in the declaration to receive service of process;

22 (b) The person named as designated agent in the Condominium Information Report filed with the
23 Real Estate Agency under ORS 100.250;

24 (c) If the association is organized as a corporation under Oregon law, the registered agent in
25 accordance with ORS 60.111 or 61.086 (1987 Replacement Part); or

26 (d) The chairperson or secretary of the association.

27 (2) Except as provided in subsection (4) of this section, if the association of unit owners of
28 property submitted to the provisions of this chapter before October 15, 1983, wishes to designate a
29 person other than the one named in the declaration to receive service of process in the cases pro-
30 vided in subsection (1) of this section, it shall record an amendment to the declaration. The
31 amendment shall be certified by the chairperson and the secretary of the association of unit owners,
32 and shall state the name of the successor with the successor's residence or place of business as re-
33 quired by ORS 100.105 [(1)(k)] (1)(L), and that the person named in the amendment was designated
34 by resolution duly adopted by the association of unit owners.

35 (3) Unless prohibited by the declaration or bylaws, the board of directors of the association of
36 unit owners of property submitted to the provisions of this chapter after October 15, 1983, may elect
37 to designate a person other than the one named in the declaration to receive service of the process
38 in the cases provided in subsection (1) of this section. After the adoption of a resolution by the
39 board of directors in accordance with the bylaws, the board of directors, without the need for fur-
40 ther action by the association or approval under ORS 100.110 and 100.135, shall record an amend-
41 ment to the declaration. The amendment shall be certified by the chairperson and the secretary of
42 the association of unit owners, and shall state the name of the successor with the successor's resi-
43 dence or place of business as required by ORS 100.105 [(1)(k)] (1)(L), that the person named in the
44 amendment has consented to the designation and that the resolution was duly adopted by the asso-
45 ciation of unit owners.

1 (4) Subsection (3) of this section applies to property submitted to the provisions of this chapter
2 before October 15, 1983, if:

3 (a) The board of directors of the association of unit owners receives a written request from at
4 least one unit owner that subsection (3) of this section applies; or

5 (b) The board of directors of the association of unit owners adopts a resolution in accordance
6 with the bylaws of the association that subsection (3) of this section applies.

7 **SECTION 20.** ORS 100.640 is amended to read:

8 100.640. The following documents and information shall be submitted to the Real Estate Com-
9 missioner as part of the filing required under ORS 100.635:

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

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

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

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

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

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

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

28 (8) The following sample forms:

29 (a) Unit sales agreement, including the notice to purchaser of cancellation rights in accordance
30 with ORS 100.730 and 100.740, the statement required by ORS 93.040 [(1)] (2) and any warranty re-
31 quired under ORS 100.185; and

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

33 (9) If required by ORS 100.680:

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

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

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

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

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

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

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

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

5 **SECTION 21.** ORS 94.858 is amended to read:

6 94.858. (1) The timeshare instrument may provide that an association of timeshare owners be
7 organized to serve as a means through which the timeshare owners may take action with regard to
8 the administration, management and operation of the timeshare plan and the timeshare property.
9 The association shall be organized as a corporation for profit or nonprofit corporation. The name
10 of the association shall include the complete name of the timeshare plan.

11 (2) Membership in the association shall be limited to timeshare owners.

12 (3) The affairs of the association shall be governed by a board of directors or other governing
13 body as provided for in the bylaws adopted under the applicable incorporation requirements.

14 (4) Subject to the provisions of the timeshare instrument and bylaws, the association may:

15 (a) Assume the role of managing entity;

16 (b) Adopt and amend bylaws, rules and regulations;

17 (c) Adopt and amend budgets for revenues, expenditures and reserves and levy and collect as-
18 sessments for common expenses from timeshare owners;

19 (d) Hire and terminate a managing agent, other employees, agents and independent contractors;

20 (e) Institute, defend or intervene in litigation or an administrative proceeding in the associ-
21 ation's own name on behalf of the association or on behalf of two or more timeshare owners on any
22 matter affecting the timeshare property;

23 (f) Make contracts and incur liabilities;

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

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

27 (i) Impose a charge for the late payment of an assessment and, after giving notice and an op-
28 portunity to be heard, levy a reasonable fine for violation of the timeshare instrument, bylaws and
29 rules and regulations of the association;

30 (j) Provide for the indemnification of the association's officers and governing board and maintain
31 adequate liability insurance for the association's officers and governing board;

32 (k) Exercise any other power conferred by a timeshare instrument or bylaws; and

33 (L) Exercise any other power determined by the association to be necessary and proper for the
34 governance and operation of the association.

35 (5) If an association of timeshare owners is formed under this section, the public report issued
36 for the timeshare plan under ORS 94.828 (1), (2) and (4) shall include a disclosure of the powers of
37 the association and the manner in which the association will be governed.

38 **SECTION 22.** ORS 94.590 is amended to read:

39 94.590. (1)(a) The declaration may be amended only with the approval of owners representing
40 at least 75 percent of the total votes in the planned community or any larger percentage specified
41 in the declaration.

42 (b) An amendment under this section may not:

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

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

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

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

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

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

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

25 (5) During any period of declarant control, voting on an amendment under subsection (1) of this
26 section shall be without regard to any weighted vote or special voting right reserved by the
27 declarant except as otherwise provided under ORS 94.585. Nothing in this subsection is intended
28 to prohibit a declarant from reserving the right to require the declarant's consent to an amendment
29 during the period reserved in the declaration for declarant control.

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

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

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

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

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

43 (e) Be executed and acknowledged by the president and secretary of the association and re-
44 corded in the deed records of each county in which the planned community is located.

45 **SECTION 23. This 2007 Act takes effect on the 91st day after the date on which the**

1 **regular session of the Seventy-fourth Legislative Assembly adjourns sine die.**

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