

HOUSE AMENDMENTS TO HOUSE BILL 2666

By COMMITTEE ON JUDICIARY

April 12

- 1 On page 1 of the printed bill, line 3, after “94.625” insert “, 94.630”.
- 2 On page 3, lines 20 through 22, restore the bracketed material and delete the boldfaced material.
- 3 On page 5, after line 9, insert:
- 4 “**SECTION 2a.** ORS 94.630 is amended to read:
- 5 “94.630. (1) Subject to subsection (2) of this section and except as otherwise provided in its
- 6 declaration or bylaws, a homeowners association may:
- 7 “(a) Adopt and amend bylaws, rules and regulations for the planned community;
- 8 “(b) Adopt and amend budgets for revenues, expenditures and reserves, and collect assessments
- 9 from owners for common expenses and the reserve account established under ORS 94.595;
- 10 “(c) Hire and terminate managing agents and other employees, agents and independent con-
- 11 tractors;
- 12 “(d) Defend against any claims, proceedings or actions brought against it;
- 13 “(e) Subject to subsection (4) of this section, initiate or intervene in litigation or administrative
- 14 proceedings in its own name and without joining the individual owners in the following:
- 15 “(A) Matters relating to the collection of assessments and the enforcement of governing docu-
- 16 ments;
- 17 “(B) Matters arising out of contracts to which the association is a party;
- 18 “(C) Actions seeking equitable or other nonmonetary relief regarding matters that affect the
- 19 common interests of the owners, including but not limited to the abatement of nuisance;
- 20 “[*(D) Matters relating to or affecting common property, including but not limited to actions for*
- 21 *damage, destruction, impairment or loss of use of any common property;*]
- 22 “**(D) Matters, including but not limited to actions for damage, destruction, impairment**
- 23 **or loss of use, relating to or affecting:**
- 24 “**(i) Individually owned real property, the expenses for which, including maintenance, re-**
- 25 **pair or replacement, insurance or other expenses, the association is responsible; or**
- 26 “**(ii) Common property;**
- 27 “(E) Matters relating to or affecting the lots or interests of the owners including but not limited
- 28 to damage, destruction, impairment or loss of use of a lot or portion thereof, if:
- 29 “(i) Resulting from a nuisance or a defect in or damage to common property **or individually**
- 30 **owned real property, the expenses for which, including maintenance, repair or replacement,**
- 31 **insurance or other expenses, the association is responsible; or**
- 32 “(ii) Required to facilitate repair to any common property; and
- 33 “(F) Any other matter to which the association has standing under law or pursuant to the dec-
- 34 laration or bylaws;
- 35 “(f) Make contracts and incur liabilities;

1 “(g) Regulate the use, maintenance, repair, replacement and modification of common property;
2 “(h) Cause additional improvements to be made as a part of the common property;
3 “(i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or
4 personal property, except that common property may be conveyed or subjected to a security interest
5 only pursuant to ORS 94.665;
6 “(j) Grant easements, leases, licenses and concessions through or over the common property;
7 “(k) Modify, close, remove, eliminate or discontinue the use of common property, including any
8 improvement or landscaping, regardless of whether the common property is mentioned in the decla-
9 ration, provided that:
10 “(A) Nothing in this paragraph is intended to limit the authority of the association to seek ap-
11 proval of the modification, closure, removal, elimination or discontinuance by the owners; and
12 “(B) Modification, closure, removal, elimination or discontinuance other than on a temporary
13 basis of any swimming pool, spa or recreation or community building must be approved by at least
14 a majority of owners voting on the matter at a meeting or by written ballot held in accordance with
15 the declaration, bylaws or ORS 94.647;
16 “(L) Impose and receive any payments, fees or charges for the use, rental or operation of the
17 common property and services provided to owners;
18 “(m) Adopt rules regarding the termination of utility services paid for out of assessments of the
19 association and access to and use of recreational and service facilities available to owners. **The**
20 **rules must provide for** [*and, after giving*] written notice and an opportunity to be heard[,] **before**
21 **the association may** terminate the rights of any owners to receive [*such*] **the** benefits or services
22 until the correction of any violation covered by [*such*] **the** rule has occurred;
23 “(n) Impose charges for late payment of assessments and attorney fees related to the collection
24 of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines
25 for violations of the declaration, bylaws, rules and regulations of the association, provided that the
26 charge imposed or the fine levied by the association is based:
27 “(A) On a schedule contained in the declaration or bylaws, or an amendment to either that is
28 delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses
29 designated in writing by the owners; or
30 “(B) On a resolution of the association or its board of directors that is delivered to each lot,
31 mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing
32 by the owners;
33 “(o) Impose reasonable charges for the preparation and recordation of amendments to the dec-
34 laration;
35 “(p) Provide for the indemnification of its officers and the board of directors and maintain li-
36 ability insurance for directors and officers;
37 “(q) Assign its right to future income, including the right to receive common expense assess-
38 ments; and
39 “(r) Exercise any other powers necessary and proper for the administration and operation of the
40 association.
41 “(2) Notwithstanding subsection (1) of this section, a declaration may not impose any limitation
42 on the ability of the association to deal with a declarant that is more restrictive than the limitations
43 imposed on the ability of the association to deal with any other person, except during the period
44 of declarant control under ORS 94.600.
45 “(3) A permit or authorization, or an amendment, modification, termination or other instrument

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

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

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

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

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

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

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

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

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

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

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

41 On page 9, line 44, delete “all” and insert “the”.

42 On page 20, delete lines 30 through 33 and insert:

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

44 “(a) The responsibility for maintenance, repair and replacement of the common elements is the
45 responsibility of the association of unit owners; and

1 “(b) The cost of maintenance, repair and replacement is a common expense of the
2 association.”
3 _____