

Senate Bill 746

Sponsored by Senator BONAMICI

SUMMARY

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

Requires declarant to disclose goods or services provided to homeowners association of planned community by business entity in which declarant holds ownership interest. Requires declarant to disclose intent to retain lots or units in planned community.

A BILL FOR AN ACT

1
2 Relating to the relationship of a declarant with the community governed by a declaration; creating
3 new provisions; and amending ORS 94.550 and 94.580.

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

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

6 94.550. As used in ORS 94.550 to 94.783:

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

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

14 (3) "Class I planned community" means a planned community that:

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

17 (b) Has an estimated annual assessment, including an amount required for reserves under ORS
18 94.595, exceeding \$10,000 for all lots or \$100 per lot, whichever is greater, based on:

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

22 (B) For a planned community created before January 1, 2002, a reasonable estimate of the cost
23 of fulfilling existing obligations imposed by the declaration, bylaws or other governing document as
24 of January 1, 2002.

25 (4) "Class II planned community" means a planned community that:

26 (a) Is not a Class I planned community;

27 (b) Contains at least five lots; and

28 (c) Has an estimated annual assessment exceeding \$1,000 for all lots based on:

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

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 (B) For a planned community created before January 1, 2002, a reasonable estimate of the cost
2 of fulfilling existing obligations imposed by the declaration, bylaws or other governing document as
3 of January 1, 2002.

4 (5) "Class III planned community" means a planned community that is not a Class I or II
5 planned community.

6 (6) "Common expenses" means expenditures made by or financial liabilities incurred by the
7 homeowners association and includes any allocations to the reserve account under ORS 94.595.

8 (7) "Common property" means any real property or interest in real property within a planned
9 community which is owned, held or leased by the homeowners association or owned as tenants in
10 common by the lot owners, or designated in the declaration or the plat for transfer to the associ-
11 ation.

12 (8) "Condominium" means property submitted to the provisions of ORS chapter 100.

13 (9) "Declarant" means any person who creates a planned community under ORS 94.550 to 94.785.

14 (10) "Declarant control" means any special declarant right relating to administrative control of
15 a homeowners association, including but not limited to:

16 (a) The right of the declarant or person designated by the declarant to appoint or remove an
17 officer or a member of the board of directors;

18 (b) Any weighted vote or special voting right granted to a declarant or to units owned by the
19 declarant so that the declarant will hold a majority of the voting rights in the association by virtue
20 of such weighted vote or special voting right; and

21 (c) The right of the declarant to exercise powers and responsibilities otherwise assigned by the
22 declaration or bylaws or by the provisions of ORS 94.550 to 94.783 to the association, officers of the
23 association or board of directors of the association.

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

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

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

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

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

35 (a) A mortgagee under a mortgage;

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

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

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

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

42 (18)(a) "Planned community" means any subdivision under ORS 92.010 to 92.190 that results in
43 a pattern of ownership of real property and all the buildings, improvements and rights located on
44 or belonging to the real property, in which the owners collectively are responsible for the mainte-
45 nance, operation, insurance or other expenses relating to any property within the planned commu-

1 nity, including common property, if any, or for the exterior maintenance of any property that is
 2 individually owned.

3 (b) “Planned community” does not mean:

4 (A) A condominium under ORS chapter 100;

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

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

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

9 (20) “Purchaser for resale” means any person who purchases from the declarant more than two
 10 lots for the purpose of resale whether or not the purchaser for resale makes improvements to the
 11 lots before reselling them.

12 (21) “Special declarant rights” means any rights, in addition to the rights of the declarant as a
 13 lot owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to
 14 94.783[,] including, but not limited to, **the right to:**

15 (a) [*Constructing or completing*] **Construct or complete** construction of improvements in the
 16 planned community which are described in the declaration;

17 (b) [*Expanding*] **Expand** the planned community or [*withdrawing*] **withdraw** property from the
 18 planned community under ORS 94.580 (3) and (4);

19 (c) [*Converting*] **Retain and convert** lots into common property;

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

21 (e) **Provide goods or services to the homeowners association through business entities in**
 22 **which the declarant holds an ownership interest; or**

23 [(e)] (f) [*Exercising any*] **Exercise a** right of declarant control reserved under ORS 94.600.

24 (22) “Successor declarant” means the transferee of any special declarant right.

25 (23) “Turn over” means the act of turning over administrative responsibility pursuant to ORS
 26 94.609 and 94.616.

27 (24) “Unit” means a building or portion of a building located upon a lot in a planned community
 28 and designated for separate occupancy or ownership, but does not include any building or portion
 29 of a building located on common property.

30 (25) “Votes” means the votes allocated to lots in the declaration under ORS 94.580 (2).

31 **SECTION 2.** ORS 94.580 is amended to read:

32 94.580. (1) A declarant shall record, in accordance with ORS 94.565, the declaration for a
 33 planned community in the office of the recording officer of each county in which the planned com-
 34 munity is located.

35 (2) The declaration shall include:

36 (a) The name and classification of the planned community;

37 (b) The name of the association and the type of entity formed in accordance with ORS 94.625;

38 (c) A statement that the planned community is subject to ORS 94.550 to 94.783;

39 (d) A statement that the bylaws adopted under ORS 94.625 must be recorded;

40 (e) A legal description, as required under ORS 93.600, of the real property included in the
 41 planned community;

42 (f) A legal description, as required under ORS 93.600, of any real property included in the
 43 planned community which is or must become a common property;

44 (g) A description of any special declarant rights other than the rights described under sub-
 45 sections (3) and (4) of this section;

- 1 (h) A statement of the number of votes allocated to each lot in accordance with ORS 94.658;
- 2 (i) A method of determining the liability of each lot for common expenses and the right of each
3 lot to any common profits of the association;
- 4 (j) A statement of when the lots, including lots owned by the declarant, become subject to as-
5 sessment;
- 6 (k) If a Class I planned community, provisions for establishing a reserve account and for the
7 preparation, review and update of the reserve study and the maintenance plan as required by ORS
8 94.595;
- 9 (L) Any restrictions on the alienation of lots. Any such restriction created by any document
10 other than the declaration may be incorporated by reference to the official records of the county
11 where the property is located;
- 12 (m) A statement of the use, residential or otherwise, for which each lot is intended;
- 13 (n) A statement as to whether or not the association pursuant to ORS 94.665 may sell, convey
14 or subject to a security interest any portion of the common property and any limitation on such
15 authority;
- 16 (o) A statement of any restriction on the use, maintenance or occupancy of lots or units, **in-**
17 **cluding identification of the number of lots or units the declarant intends to retain;**
- 18 (p) The method of amending the declaration and a statement of the percentage of votes required
19 to approve an amendment of the declaration in accordance with ORS 94.590;
- 20 (q) A description of any contemplated improvements which the declarant agrees to build, or a
21 statement that the declarant does not agree to build any improvement or does not choose to limit
22 declarant's rights to add improvements not described in the declaration;
- 23 (r) A statement of any period of declarant control or other special declarant rights reserved by
24 the declarant under ORS 94.600;
- 25 (s) A statement of the time at which the deed to the common property is to be delivered,
26 whether by date or upon the occurrence of a stipulated event;
- 27 **(t) A description of any goods or services provided to the homeowners association**
28 **through business entities in which the declarant holds an ownership interest and the costs**
29 **to the association of the goods or services;** and
- 30 [(t)] (u) Any provisions restricting a right of the association with respect to the common prop-
31 erty, or an individual lot owner with respect to the lot or improvements on the lot, including but
32 not limited to:
- 33 (A) A right to divide the lot or to combine it with other lots;
- 34 (B) A right to repair or restore improvements on the lot at the owner's discretion in the event
35 of damage or destruction;
- 36 (C) The requirement for architectural controls, including but not limited to fencing, landscaping
37 or choice of exterior colors and materials of structures to be placed on the common property or on
38 a lot; and
- 39 (D) The requirement of review of any plans of any structure to be placed on the common prop-
40 erty or a lot.
- 41 (3) If the declarant reserves the right to expand the planned community by annexing lots or
42 common property or by creating additional lots or common property by developing existing property
43 in the planned community, the declaration shall contain, in addition to the provisions required under
44 subsections (1) and (2) of this section, a general description of the plan of development including:
- 45 (a) The procedure by which the planned community will be expanded;

1 (b) The maximum number of lots and units to be included in the planned community or a state-
2 ment that there is no limitation on the number of lots or units which the declarant may create or
3 annex to the planned community;

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

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

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

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

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

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

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

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

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

21 **SECTION 3. The amendments to ORS 94.550 and 94.580 by sections 1 and 2 of this 2009**
22 **Act apply to a declaration recorded on or after the effective date of this 2009 Act.**

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