

Enrolled
Senate Bill 963

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to properties governed by declarations; creating new provisions; and amending ORS 94.572, 94.595, 94.625, 94.630, 94.635, 94.640, 94.655, 94.657, 94.658, 94.665, 94.670, 94.700, 94.704, 94.733, 100.020, 100.105, 100.110, 100.115, 100.120, 100.125, 100.130, 100.135, 100.155, 100.175, 100.405, 100.408, 100.409, 100.410, 100.415, 100.417, 100.420, 100.480, 100.485, 100.510, 100.515, 100.525, 100.530, 100.540, 100.600 and 100.640 and sections 24 and 26, chapter 803, Oregon Laws 2003.

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

SECTION 1. Sections 2 and 3 of this 2009 Act are added to and made a part of ORS 94.550 to 94.783.

SECTION 2. (1) Each member of the board of directors must be an individual and, except as provided in subsections (2) and (3) of this section, an owner or co-owner of a lot in the planned community.

(2) A director appointed by a declarant under ORS 94.600 need not be an owner or co-owner of a lot in the planned community.

(3)(a) Except as otherwise provided in the bylaws, prior to election to the board of directors, an individual described in this subsection shall, upon request of the board, provide the board with documentation satisfactory to the board that the individual is qualified to represent the entity or is a trustee or is serving in a fiduciary capacity for the owner of a lot.

(b) If a corporation, limited liability company or partnership owns a lot in the planned community or owns an interest in an entity that owns a lot in the planned community, an officer, employee or agent of a corporation, a member, manager, employee or agent of a limited liability company, or a partner, employee or agent of a partnership may serve on the board of directors.

(c) A trustee may serve on the board of directors if the trustee holds legal title to a lot in the planned community for the benefit of the owner of the beneficial interest in the lot.

(d) An executor, administrator, guardian, conservator, or other individual appointed by a court to serve in a fiduciary capacity for an owner of a lot in the planned community, or an officer or employee of an entity if an entity is appointed, may serve on the board of directors.

(4) The position of an individual serving on the board of directors under subsection (3) of this section automatically becomes vacant if the individual no longer meets the requirements of subsection (3) of this section.

SECTION 3. (1) If a homeowners association is at any time dissolved, whether inadvertently or deliberately:

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

(b) The unincorporated association:

(A) Has all the property, powers and obligations of the incorporated association existing immediately prior to dissolution;

(B) Shall be governed by the bylaws and, to the extent applicable, the articles of incorporation of the incorporated association; and

(C) Shall be served by the members of the board of directors and the officers who served immediately prior to dissolution.

(2) A separate association is not created when an association is reinstated after administrative dissolution under ORS 65.654 or again incorporated following dissolution. The association automatically continues without any further action by incorporators, directors or officers that may otherwise be required under ORS chapter 65.

(3)(a) The association described in subsection (2) of this section has all the property, powers and obligations of the unincorporated association that existed immediately prior to incorporation or reinstatement.

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

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

(4) The provisions of this section apply notwithstanding any provision of a governing document of a planned community that appears to be contrary.

SECTION 3a. ORS 94.572 is amended to read:

94.572. (1)(a) A Class I or Class II planned community created before January 1, 2002, that was not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.630 (1), (3) and (4), 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 **and sections 2 and 3 of this 2009 Act** to the extent that those statutes are consistent with any governing documents. If the governing documents do not provide for the formation of an association, the requirements of this subsection are not effective until the formation of an association in accordance with paragraph (b) of this subsection. If a provision of the governing documents is inconsistent with this subsection, the owners may amend the governing documents using the procedures in this subsection:

(A) In accordance with the procedures for the adoption of amendments in the governing documents and subject to any limitations in the governing documents, the owners may amend the inconsistent provisions of the governing documents to conform to the extent feasible with this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.630 (1), (3) and (4), 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 **and sections 2 and 3 of this 2009 Act**. Nothing in this paragraph requires the owners to amend a declaration or bylaws to include the information required by ORS 94.580 or 94.635.

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

(i) For an amendment to a recorded governing document other than bylaws, the owners may amend the inconsistent provisions of the document to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.630 (1), (3) and (4), 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 **and sections 2 and 3 of this 2009 Act** by a vote of at least 75 percent of the owners in the planned community.

(ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the bylaws to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.630 (1), (3) and (4), 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662,

94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 **and sections 2 and 3 of this 2009 Act** by a vote of at least a majority of the owners in the planned community.

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

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

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

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

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

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

(i) Name the initiating owners or governing entity;

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

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

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

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

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

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

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

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

(C) At the organizational meeting:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The notice of planned community shall include:

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

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

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

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

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

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

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

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

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

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

(10) As used in this section:

(a) "Governing entity" means an incorporated or unincorporated association, committee, person or any other entity that has authority, under a governing document, to maintain commonly maintained property, impose assessments on lots or to act on behalf of lot owners within the planned community on matters of common concern.

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

SECTION 4. ORS 94.595 is amended to read:

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

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

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

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

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

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

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

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

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

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

(B) Other reliable information.

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

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

(3)(a) The board of directors of the association annually shall conduct a reserve study or review and update an existing study to determine the reserve account requirements. *[and may:]* **Subject to subsection (8) of this section, after review of the reserve study or reserve study update, the board of directors may, without any action by owners:**

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

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

(b) The reserve study shall:

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

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

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

(4)(a) The board of directors shall prepare a maintenance plan for the maintenance, repair and replacement of all property for which the association has maintenance, repair or replacement responsibility under the declaration or bylaws or ORS 94.550 to 94.783. The maintenance plan shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

subject to the requirements and restrictions of ORS 94.670 and any additional restrictions or requirements imposed by the declaration, bylaws or rules of the homeowners association.

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

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

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

(8)(a) Except as provided under paragraph (b) of this subsection, unless the board of directors under subsection (3) of this section determines that the reserve account will be adequately funded for the following year, the board of directors or the owners may not vote to eliminate funding a reserve account required under this section or under the declaration or bylaws.

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

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

SECTION 5. ORS 94.625 is amended to read:

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

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

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

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

(2) If the plat contains a conveyance of any property to the homeowners association, the declarant shall organize the homeowners association as a nonprofit corporation under ORS chapter 65 before the plat is recorded.

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

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

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

(B) Each amendment to the bylaws was duly adopted in accordance with the bylaws of the association.

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

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

(e) After the bylaws are recorded under this section, all amendments to the bylaws adopted thereafter must be recorded as provided in this section.

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

(5) Subject to subsection (6) of this section, an amendment is not effective unless the amendment is:

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

(b) Certified by the president and secretary of the association as having been adopted in accordance with the bylaws and this section and acknowledged in the manner provided for acknowledgment of deeds if the amendment is required to be recorded under paragraph (c) of this subsection; and

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

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

(7) Notwithstanding a provision in the bylaws, including bylaws adopted prior to July 14, 2003, that requires an amendment to be executed, or executed and acknowledged, by all owners approving the amendment, amendments to the bylaws under this section become effective after approval by the owners if executed and certified on behalf of the association by the president and secretary in accordance with subsection (5)(b) of this section.

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

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

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

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

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

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

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

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

SECTION 6. ORS 94.630 is amended to read:

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

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

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

(c) Hire and terminate managing agents and other employees, agents and independent contractors;

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

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

(A) Matters relating to the collection of assessments and the enforcement of governing documents;

- (B) Matters arising out of contracts to which the association is a party;
- (C) Actions seeking equitable or other nonmonetary relief regarding matters that affect the common interests of the owners, including but not limited to the abatement of nuisance;
- (D) Matters, including but not limited to actions for damage, destruction, impairment or loss of use, relating to or affecting:
 - (i) Individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or
 - (ii) Common property;
- (E) Matters relating to or affecting the lots or interests of the owners including but not limited to damage, destruction, impairment or loss of use of a lot or portion thereof, if:
 - (i) Resulting from a nuisance or a defect in or damage to common property or individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or
 - (ii) Required to facilitate repair to any common property; and
- (F) Any other matter to which the association has standing under law or pursuant to the declaration or bylaws;
 - (f) Make contracts and incur liabilities;
 - (g) Regulate the use, maintenance, repair, replacement and modification of common property;
 - (h) Cause additional improvements to be made as a part of the common property;
 - (i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common property may be conveyed or subjected to a security interest only pursuant to ORS 94.665;
 - (j) Grant easements, leases, licenses and concessions through or over the common property **as provided in ORS 94.665**;
 - (k) Modify, close, remove, eliminate or discontinue the use of common property, including any improvement or landscaping, regardless of whether the common property is mentioned in the declaration, provided that:
 - (A) Nothing in this paragraph is intended to limit the authority of the association to seek approval of the modification, closure, removal, elimination or discontinuance by the owners; and
 - (B) Modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreation or community building must be approved by at least a majority of owners voting on the matter at a meeting or by written ballot held in accordance with the declaration, bylaws or ORS 94.647;
 - (L) Impose and receive any payments, fees or charges for the use, rental or operation of the common property and services provided to owners;
 - (m) Adopt rules regarding the termination of utility services paid for out of assessments of the association and access to and use of recreational and service facilities available to owners. The rules must provide for written notice and an opportunity to be heard before the association may terminate the rights of any owners to receive the benefits or services until the correction of any violation covered by the rule has occurred;
 - (n) Impose charges for late payment of assessments and attorney fees related to the collection of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules and regulations of the association, provided that the charge imposed or the fine levied by the association is based:
 - (A) On a schedule contained in the declaration or bylaws, or an amendment to either that is delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing by the owners; or
 - (B) On a resolution of the association or its board of directors that is delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing by the owners;
 - (o) Impose reasonable charges for the preparation and recordation of amendments to the declaration;

(p) Provide for the indemnification of its officers and the board of directors and maintain liability insurance for directors and officers;

(q) Assign its right to future income, including the right to receive common expense assessments; and

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

(2) Notwithstanding subsection (1) of this section, a declaration may not impose any limitation on the ability of the association to deal with a declarant that is more restrictive than the limitations imposed on the ability of the association to deal with any other person, except during the period of declarant control under ORS 94.600.

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

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

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

(c) Identify, by the designations stated or referenced in the declaration or applicable supplemental declaration, all affected lots and common property; and

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

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

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

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

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

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

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

SECTION 7. ORS 94.635 is amended to read:

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

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

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

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

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

(b) The percentage of votes that [*shall constitute*] **constitutes** a quorum **in accordance with ORS 94.655**.

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

(b) The powers and duties of the board;

(c) Any compensation of the directors; and

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

(6) The terms of office of directors.

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

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

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

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

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

(c) The method of approving payment vouchers.

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

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

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

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

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

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

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

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

SECTION 8. ORS 94.640 is amended to read:

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

(2) Unless otherwise provided in the bylaws, the board of directors may fill vacancies in its membership for the unexpired portion of any term.

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

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

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

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

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

(b) Removal of a director is not effective unless the matter of removal is an item on the agenda and stated in the notice for the meeting required under ORS 94.650.

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

(A) *[Consultation]* **Consult** with legal counsel; **and** *[concerning the rights and duties of the association regarding existing or potential litigation, or criminal matters;]*

(B) Consider the following:

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

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

[(D)] (iii) Collection of unpaid assessments.

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

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

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

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

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

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

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

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

(10) The board of directors shall cause the information required to enable the association to comply with ORS 94.670 [(7)] **(8)** to be maintained and kept current.

(11) As used in this section, "meeting" means a convening of a quorum of members of the board of directors *[where]* **at which** *[matters relating to]* association business *[are]* **is** discussed, except a

convening of a quorum of members of the board of directors for the purpose of participating in litigation, mediation or arbitration proceedings.

SECTION 9. ORS 94.655 is amended to read:

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

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

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

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

(b) [*The quorum required in subsection (1) of this section*] **Twenty percent of the votes that may be cast by persons who are present in person, by proxy or by absentee ballot, if absentee ballots are permitted**.

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

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

(b) **The meeting notice specifies:**

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

(B) **The reduced quorum requirement.**

SECTION 10. ORS 94.657 is amended to read:

94.657. (1) Unless other rules of order are required by the declaration or bylaws or by a resolution of the association or its board of directors[:],

[*(1)*] meetings of the association and the board of directors shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association.

(2) A decision of the association or the board of directors may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(3) A decision of the association and the board of directors is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

SECTION 11. ORS 94.658 is amended to read:

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

(2) Unless the declaration or bylaws provide otherwise:

(a) An **attorney-in-fact**, executor, administrator, guardian, **conservator** or trustee may vote or grant consent with respect to a lot owned or held in a fiduciary capacity if the fiduciary satisfies the secretary of the board of directors that the person is the **attorney-in-fact**, executor, administrator, guardian, **conservator** or trustee holding the lot **in a fiduciary capacity**.

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

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

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

SECTION 12. ORS 94.665 is amended to read:

94.665. (1) Except as otherwise provided in the declaration, a homeowners association may sell, **transfer**, convey or subject to a security interest any portion of the common property if 80 percent or more of the votes in the homeowners association, including 80 percent of the votes of lots not owned by a declarant at the time of the vote, are cast in favor of *[that]* **the** action. *[The association shall treat proceeds of any sale under this section as an asset of the association.]*

(2) A sale, transfer, **conveyance** or encumbrance **by a security interest** of the common property or any portion of the common property made pursuant to a right reserved in the declaration under this section may provide that the common property be released from any restriction imposed on the common property by the declaration **or other governing document if the request for approval of the action also includes approval of the release.** However, a sale, transfer or encumbrance may not deprive any lot of its right of access to or support for the lot without the consent of the owner of the lot.

(3) **Subject to subsections (4) and (5) of this section, unless expressly limited or prohibited by the declaration, the homeowners association may execute, acknowledge and deliver leases, easements, rights of way, licenses and other similar interests affecting common property and consent to vacation of roadways within and adjacent to common property.**

(4)(a) Except as otherwise provided in the declaration and paragraph (b) of this subsection, the granting of a lease, easement, right of way, license or other similar interest pursuant to subsection (3) of this section shall be first approved by at least 75 percent of owners present at a meeting of the association or with the consent of at least 75 percent of all owners solicited by any means the board of directors determines is reasonable. If a meeting is held to conduct the vote, the meeting notice must include a statement that approval of the grant will be an item of business in the agenda of the meeting.

(b)(A) The granting of a lease, easement, right of way, license or other similar interest affecting common property for a term of two years or less requires the approval of a majority of the board of directors.

(B) The granting of a lease, easement, right of way, license or other similar interest affecting common property for a term of more than two years to a public body, as defined in ORS 174.109, or to a utility or a communications company for installation and maintenance of power, gas, electric, water or other utility and communication lines and services requires the approval of a majority of the board of directors.

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

(6) An instrument that sells, transfers, conveys or encumbers common property pursuant to subsection (1) of this section or grants an interest or consent pursuant to subsection (3) of this section shall:

(a) State that the action of the homeowners association was approved in accordance with this section; and

(b) Be executed by the president and secretary of the association and acknowledged in the manner provided for acknowledgment of the instruments by the officers.

(7) The association shall treat proceeds of any sale, transfer or conveyance under subsection (1) of this section, any grant under subsection (4) of this section or any consent to vacation under subsection (5) of this section as an asset of the association.

SECTION 13. ORS 94.670 is amended to read:

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

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

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

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

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

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

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

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

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

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

[(4)] (5) Subject to section 24, chapter 803, Oregon Laws 2003, the association of a planned community that has annual assessments exceeding \$75,000 shall cause the financial statement required under subsection [(3)] (4) of this section to be reviewed within 180 days after the end of the fiscal year by an independent certified public accountant licensed in the State of Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

[(5)] (6) The association of a planned community created on or after January 1, 2004, or the association of a planned community described in ORS 94.572 that has annual assessments of \$75,000 or less shall cause the most recent financial statement required by subsection [(3)] (4) of this section to be reviewed in the manner described in subsection [(4)] (5) of this section within 180 days after the association receives a petition requesting review signed by at least a majority of the owners.

[(6)] (7) An association subject to the requirements of subsection [(4)] (5) of this section may elect, on an annual basis, not to comply with the requirements of subsection [(4)] (5) of this section by an affirmative vote of at least 60 percent of the owners, not including the votes of the declarant with respect to lots owned by the declarant.

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

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

(i) Regular and special assessments;

(ii) Fines and other charges;

(iii) Accrued interest; and

(iv) Late payment charges.

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

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

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

[(8)] **(9)(a) Except as provided in paragraph (b) of this subsection**, the association shall make the documents, information and records described in subsections (1) and [(3)] **(4)** of this section and all other records of the association reasonably available for examination and, upon written request, available for duplication by an owner and any mortgagee of a lot that makes the request in good faith for a proper purpose., *except that*

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

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

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

[(c)] **(C)** Communications with legal counsel that relate to matters specified in [paragraphs (a) and (b)] **subparagraphs (A) and (B)** of this [subsection] **paragraph and the rights and duties of the association regarding existing or potential litigation or criminal matters.**

[(d)] **(D)** Disclosure of information in violation of law.

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

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

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

[(9)] **(10)** The association shall maintain a copy, suitable for the purpose of duplication, of the following:

(a) The declaration and bylaws, including amendments or supplements in effect, the recorded plat, if feasible, and the association rules and regulations currently in effect.

(b) The most recent financial statement prepared pursuant to subsection [(3)] **(4)** of this section.

(c) The current operating budget of the association.

(d) The reserve study, if any, described in ORS 94.595.

(e) Architectural standards and guidelines, if any.

[(10)] **(11)** The association, within 10 business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under subsection [(9)] **(10)** of this section.

[(11)] **(12)** The board of directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs for furnishing the documents, information or records.

SECTION 14. ORS 94.700 is amended to read:

94.700. (1) **Except as provided in subsection (2) of this section**, if entered into prior to the meeting called under ORS 94.609, no management agreement, service contract or employment contract which is directly made by or on behalf of the association, the board of directors or the owners as a group shall be in excess of three years.

(2)(a) Subject to paragraph (b) of this subsection, the limitations under subsection (1) of this section do not apply to:

(A) Performance-based energy or water efficiency contracts; or

(B) Contracts relating to renewable energy facilities or output serving the planned community, including facilities leased to the association.

(b) A contract described in paragraph (a) of this subsection:

(A) May not have an initial term of more than 20 years; and

(B) Must be recorded with the recording officer in each county in which the planned community is located.

(c) As used in this subsection, “renewable energy facilities” means facilities generating electricity, heat or cooling by means of:

(A) Solar, wind, ocean, hydropower, biomass or geothermal resources; or

(B) Biofuels or hydrogen derived from renewable resources.

[2] (3) Any contract or agreement subject to subsection (1) of this section and entered into after July 1, 1982, may terminate without penalty to the declarant, the association or the board of directors elected under ORS 94.616 if the board of directors gives not less than 30 days written notice of termination to the other party not later than 60 days after the meeting called under ORS 94.609.

SECTION 15. ORS 94.704 is amended to read:

94.704. (1) Subject to subsection (2) of this section, the declarant of a planned community shall pay all common expenses of the planned community until the individual lots subject to assessment are assessed for common expenses as specified in the declaration pursuant to ORS 94.580 (2).

(2) If the declaration expressly authorizes deferment, the declarant may defer payment of accrued assessments for reserves required under ORS 94.595 for a lot subject to assessment until the date the lot is conveyed. However, the declarant may not defer payment of accrued assessments for reserves:

(a) Beyond the date of the turnover meeting provided for in the bylaws in accordance with ORS 94.635 (3); or

(b) If a turnover meeting is not held, the date the owners assume administrative control of the association.

(3) Failure of the declarant to deposit the balance due within 30 days after the due date constitutes a violation of ORS 94.777.

(4) The books and records of the association shall reflect the amount the declarant owes for all reserve account assessments.

(5)(a) Except for assessments under subsections (6), (7) and (8) of this section, the board of directors shall assess all common expenses against all the lots that are subject to assessment according to the allocations stated in the declaration.

(b) Any assessment or any installment of the assessment past due shall bear interest at the rate established by resolution of the board of directors.

(c) Nothing in this section prohibits the board from making compromises on overdue assessments if the compromise benefits the association.

(6) Unless otherwise provided in the declaration or bylaws, any common expense or any part of a common expense benefiting fewer than all of the lots may be assessed exclusively against the lots or units benefited.

(7) Unless otherwise provided in the declaration or bylaws, assessments to pay a judgment against the association may be made only against the lots in proportion to their common expense liabilities.

(8) If the board of directors determines that any *[common expense]* **loss or cost incurred by the homeowners association** is the fault of *[any owner]* **one or more owners**, the homeowners association may assess the *[expense]* **loss or cost** exclusively against the *[lot of the owner]* **lots of the responsible owners**.

(9) If the homeowners association reallocates common expense liabilities, any common expense assessment and any installment of the assessment not yet due shall be recalculated according to the reallocated common expense liabilities.

(10)(a) A lot owner may not claim exemption from liability for contribution toward the common expenses by waiving the use or enjoyment of any of the common property or by abandoning the owner’s lot.

(b) An owner may not claim to offset an assessment for failure of the association to perform the association’s obligations.

(11)(a) During any period of declarant control, any special assessment for capital improvements or additions must be approved by not less than 50 percent of the voting rights, or such greater

percentage as may be specified in the declaration, without regard to any weighted right or special voting right in favor of the declarant.

(b) Nothing in this subsection is intended to prohibit a declarant from reserving a special declarant right to approve any such assessment.

SECTION 16. ORS 94.733 is amended to read:

94.733. (1) Subject to ORS 94.665, each owner of a lot has an easement through the common property:

(a) For access to the owner's lot; and

(b) For use of the common property consistent with the declaration and the bylaws.

(2) Except as provided in the declaration, a declarant has an easement through the common property as may be necessary for discharging the declarant's obligations or exercising any special declarant right.

(3) If an encroachment results from construction, reconstruction, repair, shifting, settlement or movement of any portion of the planned community, an easement for the encroachment exists to the extent that any lot or common property encroaches on any other lot or common property. An easement continues for maintaining the encroachment so long as the encroachment exists. Nothing in this section relieves an owner of liability in case of the owner's willful misconduct or relieves a declarant or any other person of liability for failure to adhere to the plat of the planned community.

(4)(a) Upon request given to the owner and any occupant, any person authorized by a homeowners association may enter a lot:

(A) To perform necessary maintenance, repair or replacement of any property for which the association has maintenance, repair or replacement responsibility under the declaration or bylaws or ORS 94.550 to 94.783; or

(B) To make emergency repairs to a lot that are necessary for the public safety or to prevent damage to common property or to another lot.

(b) Requests for entry under this subsection must be made in advance and for a reasonable time, except in the case of an emergency, when the right of entry is immediate. An emergency entry does not constitute a trespass or otherwise create a right of action in the owner of the lot.

SECTION 17. Sections 18 and 19 of this 2009 Act are added to and made a part of ORS chapter 100.

SECTION 18. (1) Each member of the board of directors of the association of unit owners must be an individual and, except as provided in subsections (2) and (3) of this section, an owner or co-owner of a unit in the condominium.

(2) A director appointed by a declarant under ORS 100.200 need not be an owner or co-owner of a unit in the condominium.

(3)(a) Except as otherwise provided in the bylaws, prior to election to the board of directors, an individual described in this subsection, upon request of the board, shall provide the board with documentation satisfactory to the board that the individual is qualified to represent the entity or is a trustee or is serving in a fiduciary capacity for the owner of a unit.

(b) If a corporation, limited liability company or partnership owns a unit in the condominium or owns an interest in an entity that owns a unit in the condominium, an officer, employee or agent of a corporation, a member, manager, employee or agent of a limited liability company, or a partner, employee or agent of a partnership may serve on the board of directors.

(c) A trustee may serve on the board of directors if the trustee holds legal title to a unit in the condominium in trust for the benefit of the owner of the beneficial interest in the unit.

(d) An executor, administrator, guardian, conservator, or other individual appointed by a court to serve in a fiduciary capacity for an owner of a unit, or an officer or employee of an entity if the person appointed is an entity, may serve on the board of directors.

(4) **The position of an individual serving on the board of directors under subsection (3) of this section automatically becomes vacant if the individual no longer meets the requirements of subsection (3) of this section.**

SECTION 19. (1) **A zoning, subdivision, building code or other real property law, ordinance or regulation may not prohibit the condominium form of ownership or impose any requirement upon a structure or development proposed to be submitted to the condominium form of ownership under this chapter that it would not impose upon a structure or development under a different form of ownership.**

(2) **Except as set forth in this section, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code or other real property use law, ordinance or regulation.**

(3) **Subsection (1) of this section does not prohibit any governmental approval required under this chapter.**

SECTION 20. ORS 100.020 is amended to read:

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

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

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

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

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

(A) A building or part of a building;

(B) A space used for the parking or storage of automobiles, trucks, boats, campers or other vehicles or equipment;

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

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

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

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

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

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

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

(b) ORS 100.635 (2), 100.640 (8) to (12), 100.655, 100.705, 100.720, 100.725, 100.730, 100.735, 100.740 and 100.745 do not apply to the sale of units to be used for nonresidential purposes **as provided in subsection (5) of this section** unless the units, including units used for parking or storage, are ancillary to the sale of units to be used for residential purposes.

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

(b) As used in this subsection, “nonresidential purposes” includes apartments within a condominium in which the apartments are not separate units or units that are restricted in use by the unit owner to less than full-time residential purposes.

(6) The units in a condominium described in subsection (3)(b)(C) and (D) of this section shall be considered real property for purposes of this chapter.

(7) Unless the declaration or bylaws provide otherwise, a condominium unit may be submitted to the condominium form of ownership under ORS 100.005 to 100.625.

(8) If an association creates not more than two additional units from common elements by an amendment to the declaration under ORS 100.135, then ORS 100.635 (2), 100.640 (8) to (12), 100.655, 100.705, 100.720, 100.725, 100.730, 100.735 and 100.745 do not apply to the sale of the units by the association.

SECTION 21. ORS 100.135 is amended to read:

100.135. (1) Unless otherwise provided in the declaration, an amendment to the declaration may be proposed by a majority of the board of directors of the association of unit owners or by at least 30 percent of the unit owners.

(2) Except as otherwise provided in ORS 100.005 to 100.625, an amendment of the declaration is not effective unless:

(a) The amendment is approved by the unit owners as provided in this section and the Real Estate Commissioner and county assessor according to ORS 100.110; and

(b) The amendment, certified by the chairperson and secretary of the association of unit owners as being adopted in accordance with the declaration and the provisions of this section and acknowledged in the manner provided for acknowledgment of deeds, is recorded notwithstanding a provision in a declaration, including a declaration recorded before January 1, 2002, that requires amendments to be executed and acknowledged by all owners approving the amendment.

(3) Except as otherwise provided in ORS 100.105 or 100.130 or this section, the declaration may be amended only with the approval of at least 75 percent of owners, or such greater percentage as may be required by the declaration.

(4) Unless the declaration requires a greater percentage:

(a) The declaration and plat may be amended to change a general common element to a limited common element or change the boundary of a limited common element with the approval of at least 75 percent of owners and approval of the owners of all units to which the limited common element appertains.

(b) The declaration may be amended to change a limited common element, or portion thereof, to a general common element with the approval of the owners of all units to which the limited common element appertains and the board of directors.

(5)(a)(A) Except as otherwise provided in ORS 100.120, 100.130, 100.515, 100.600, 100.605 and 100.625 and paragraph (b) of this subsection or other provisions of the Oregon Condominium Act, an amendment that changes the boundary of the property or a unit **or creates an additional unit from common elements** shall be approved by all unit owners.

(B) [Such] The amendment [shall constitute] constitutes a conveyance and shall include words of conveyance and, if an additional unit is created from common elements, shall state the name of the grantee and unit designation. If an additional unit is created from common elements, the association shall be named as the initial grantee of the additional unit.

(C) In addition to the certification required under subsection (2)(b) of this section, an amendment to the boundary of a unit shall also be executed by the owners of all affected units.

(b) An amendment that adds property owned by the association to the condominium as a common element *[shall constitute]* **constitutes** a conveyance and shall:

(A) Be approved by at least 75 percent of owners;

- (B) Contain words of conveyance;
- (C) Be executed by the chairperson and secretary of the association on behalf of the unit owners and be certified in accordance with subsection (2)(b) of this section; and
- (D) Be accompanied by a plat amendment in accordance with [ORS 100.115] **section 43 of this 2009 Act.**

(c) Nothing in paragraph (b) of this subsection is intended to require property acquired or held by the association pursuant to ORS 100.405 (4)(i) to be added to the condominium.

(6) Except as otherwise provided in ORS 100.005 to 100.625, an amendment may not change the allocation of undivided interest in the common elements, the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any unit unless such amendment has been approved by the owners of the affected units.

(7) The declaration may not be amended to limit or diminish any right of a declarant reserved under ORS 100.105 (2) or (7) or any other special declarant right without the consent of the declarant. However, the declarant may waive the declarant's right of consent.

(8) Nothing in this section shall affect any other approval that may be required by the declaration, bylaws or other instrument.

(9) During a period of declarant control reserved under ORS 100.200, voting on an amendment under this section must be without regard to any weighted vote or other special voting allocation reserved by the declarant unless the declaration provides that the declarant has the right to exercise the voting rights with respect to specifically described amendments. Nothing in this subsection prohibits a declarant from reserving the right that declarant's consent is required for an amendment during a period of declarant control reserved in the declaration.

(10) An amendment to a declaration or a supplemental declaration shall be conclusively presumed to have been regularly adopted in compliance with all applicable procedures relating to such amendment unless an action is brought within one year after the date such amendment was recorded or the face of the recorded amendment indicates that the amendment received the approval of fewer votes than are required for such approval. However, nothing in this subsection shall prevent the further amendment of an amended declaration or plat in accordance with ORS 100.005 to 100.625.

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

(b) A declaration restated under this subsection must:

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

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

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

(D) Include a certification by the chairperson and secretary of the association that the restated declaration includes all previously adopted amendments that are in effect, that amendments were approved by the county assessor and tax collector if required under ORS 100.110 and that no other changes were made except, if applicable, to correct scriveners' errors or to conform format and style;

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

(F) Be approved by the commissioner, and by the county assessor and the tax collector under ORS 100.110 if the restated declaration includes any amendments required to be approved by the county assessor and the tax collector under ORS 100.110 but not previously approved.

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

SECTION 22. ORS 100.155 is amended to read:

100.155. (1) If by the termination date specified in the declaration there is any remaining variable property:

(a) Any property designated nonwithdrawable variable property [*shall become*] **becomes** part of the common elements and any interest in [*such*] **the** property held for security purposes [*shall be*] **is** automatically extinguished by reclassification.

(b) Any property designated withdrawable variable property shall be automatically withdrawn from the condominium as of the termination date.

(c) Subject to paragraph (d) of this subsection, the association may record in the office of the recording officer in the county in which the condominium is located:

(A) For property reclassified under paragraph (a) of this subsection, a "Statement of Reclassification of Variable Property" stating that the remaining nonwithdrawable variable property has been reclassified to common elements pursuant to paragraph (a) of this subsection.

(B) For property withdrawn under paragraph (b) of this subsection, a "Statement of Withdrawal of Variable Property from Condominium" stating that remaining withdrawable variable property has been withdrawn from the condominium pursuant to paragraph (b) of this subsection.

(d) A statement described in paragraph (c) of this subsection shall:

(A) Include the name of the condominium, a reference to the recording index numbers and date of recording of the declaration, the plat creating the affected variable property and any applicable supplemental declaration.

(B) Include a description of the reclassified or withdrawn variable property complying with ORS 93.600.

(C) Be executed by the chairperson and secretary of the association and acknowledged in the manner provided for acknowledgment of deeds.

(e) After recording a statement under paragraph (c) of this subsection, the association shall provide a copy of the recorded statement to the county surveyor. [*Upon receipt of the copy or other notification, the county surveyor shall, upon the surveyor's copy of all previously recorded plats relating to the condominium and any copies of the plat filed under ORS 92.120 (3), make appropriate marks and notations, including the date and the surveyor's name or initials, with archival quality black ink in a manner that denotes the reclassification or withdrawal. The recording index numbers and date of recording of the statement shall also be referenced on the copy of each plat.*] The original plat may not be changed or corrected after it is recorded with the county clerk.

(2)(a) Unless expressly prohibited by the declaration, any variable property automatically withdrawn from the condominium under subsection (1)(b) of this section or voluntarily withdrawn under ORS 100.150 (1)(b) may be later annexed to the condominium by the recording of a supplemental declaration and plat in accordance with ORS 100.120 (2) if such action is first approved by at least 75 percent of all voting rights in the manner required for an amendment to the declaration.

(b) The supplemental declaration and plat shall be executed by the chairperson and secretary on behalf of the association and acknowledged in the manner provided for acknowledgment of deeds by such officers. Except for the termination date, the supplemental declaration shall comply with ORS 100.120 (1) and shall state that the annexation was approved by at least 75 percent of all voting rights.

(3)(a) Unless expressly prohibited by the declaration and notwithstanding the termination date, the association may, with respect to any variable property automatically reclassified, exercise any rights previously held by the declarant. The exercise of any right shall first be approved by at least a majority of all voting rights. All other actions relating to such reclassified general common elements shall be regulated and governed in like manner as other general common elements of the condominium.

(b) If a supplemental declaration and plat is required for any action, the plat shall be executed by the chairperson and secretary of the association and shall comply with the requirements of this chapter as to a supplemental declaration and the recording of plats.

(4) Title to any additional units created under subsection (3) of this section [shall] automatically [be vested] vests in the association upon the recording of a supplemental declaration and plat. The board of directors acting on behalf of the association [shall have] has the power to hold, convey, lease, encumber or otherwise deal with a unit or any interest therein in like manner as other property owned by the association.

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

(6) The county assessor shall cause the assessment and tax rolls to reflect the status of any variable property affected by automatic property reclassification under subsection (1)(a) of this section or automatically withdrawn under subsection (1)(b) of this section.

SECTION 23. ORS 100.175 is amended to read:

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

- (a) Conduct an initial reserve study as described in subsection (3) of this section;
- (b) Prepare an initial maintenance plan as described in subsection (4) of this section; and
- (c) Establish a reserve account as provided in subsection (2) of this section.

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

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

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

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

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

- (A) The reserve study described in subsection (3) of this section;
- (B) In the case of a conversion condominium, the statement described in ORS 100.655 (1)(g); or
- (C) Other reliable information.

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

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

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

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

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

(b) The reserve study shall:

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

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

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

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

(A) Describe the maintenance, repair and replacement to be conducted;
(B) Include a schedule for the maintenance, repair and replacement;
(C) Be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the association; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) *[Restrictions on the use of]* The reserve account *[do not prohibit its prudent investment subject to any constraints on investment of association funds]* **is subject to the requirements and restrictions of ORS 100.480 and any additional requirements or restrictions** imposed by the declaration, bylaws or rules of the association of unit owners.

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

[(10) In addition to the authority of the board of directors under subsection (3)(a) of this section, following turnover, the association may:]

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

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

(10)(a) Except as provided under paragraph (b) of this subsection, unless the board of directors under subsection (3) of this section determines that the reserve account will be adequately funded for the following year, the board of directors or the owners may not vote to eliminate funding a reserve account required under this section or under the declaration or bylaws.

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

SECTION 24. ORS 100.405 is amended to read:

100.405. (1)(a) An association of unit owners shall be organized to serve as a means through which the unit owners may take action with regard to the administration, management and operation of the condominium. *[The association of a condominium created on or after September 27, 2007, shall be organized as a corporation for profit or nonprofit corporation or, if the condominium consists of not more than four units, excluding units used for parking, storage or other use ancillary to a unit, as an unincorporated association.]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Hire and terminate managing agents and other employees, agents and independent contractors;

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

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

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

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

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

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

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

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

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

(F) Any other matter to which the association has standing under law or pursuant to the declaration, bylaws or any articles of incorporation;

(f) Make contracts and incur liabilities;

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

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

(i) Acquire by purchase, lease, devise, gift or voluntary grant real or personal property or any interest therein and take, hold, possess and convey real or personal property or any interest therein;

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

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

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

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

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

(m) Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of assessments;

(n) Assign its right to future income, including the right to receive common expense assessments;

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

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

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

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

(5) Subject to subsection (6) of this section, unless expressly limited or prohibited by the declaration, the association has the authority to grant, execute, acknowledge and deliver on behalf of the unit owners leases, easements, rights of way, licenses and other similar interests affecting the general common elements and consent to vacation of roadways within and adjacent to the condominium.

(6)(a)(A) Except as provided in subparagraph (B) of this paragraph, the granting of a lease, easement, right of way, license or other similar interest pursuant to subsection (5) of this section shall be first approved by at least 75 percent of owners **present at a meeting of the association or with the consent of at least 75 percent of all owners solicited by any means the board of directors determines is reasonable.** [*Unit owner approval may be solicited by any means the board of directors determines is reasonable and need not be at a meeting of the association.*] **If a meeting is held to conduct the vote, the meeting notice must include a statement that the approval of the grant will be an item of business on the agenda of the meeting.**

(B) Unless the declaration otherwise provides:

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

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

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

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

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

(8) Unless expressly prohibited by the declaration, any action permitted under subsections (5) and (6) of this section regarding a general common element may be taken with respect to any limited common element, provided that the owner of the unit to which the use of the limited common ele-

ment is reserved and the holder of any mortgage or trust deed affecting the unit consent to the action and also execute an instrument as provided under subsection (7) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 25. ORS 100.408 is amended to read:

100.408. (1) Unless the bylaws [*provide otherwise*] **specify a greater percentage**, a quorum for any meeting of the association of unit owners consists of the number of persons who are entitled to cast 20 percent of the voting rights and who are present in person, by proxy or by absentee ballot, if absentee ballots are permitted by the board of directors, at the beginning of the meeting.

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

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

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

(b) [*The quorum required in subsection (1) of this section.*] **Twenty percent of the votes that may be cast by persons who are present in person, by proxy or by absentee ballot, if absentee ballots are permitted.**

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

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

(b) The meeting notice specifies:

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

(B) The reduced quorum requirement.

SECTION 26. ORS 100.409 is amended to read:

100.409. (1) Unless other rules of order are required by the declaration or bylaws or by a resolution of the association or its board of directors, [:]

[*1*] meetings of the association and the board of directors shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association.

(2) A decision of the association or the board of directors may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(3) A decision of the association and the board of directors is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

SECTION 26a. ORS 100.410 is amended to read:

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

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

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

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

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

(4) In condominiums that are exclusively residential:

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

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

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

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

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

(c) If the amended bylaw approved by the commissioner under this subsection is not recorded as required in subsection (3) of this section within *[two years]* **one year** from the date of approval by the commissioner, the approval automatically expires and the amended bylaw must be resubmitted for approval as provided in this section. The commissioner's approval shall set forth the date on which the approval expires.

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

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

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

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

(b) Bylaws restated under this subsection must:

(A) Include all previously adopted amendments that are in effect, state that the amendments were approved by the commissioner as required under this section and state that no other changes were made except, if applicable, to correct scriveners' errors or to conform format and style;

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

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

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

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

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

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

SECTION 27. ORS 100.415 is amended to read:

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

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

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

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

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

(B) The percentage of owners that constitutes a quorum **under ORS 100.408.**

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

(B) The terms of office of directors;

(C) The powers and duties of the board;

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

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

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

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

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

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

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

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

(C) The method of approving payment vouchers.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 28. ORS 100.420 is amended to read:

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

(A) *[Consultation]* **Consult** with legal counsel *[concerning the rights and duties of the association regarding existing or potential litigation, or criminal matters]; and*

(B) **Consider the following:**

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

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

[(D)] (iii) Collection of unpaid assessments.

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

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

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

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

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

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

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

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

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

SECTION 29. ORS 100.480 is amended to read:

100.480. (1) An association of unit owners shall retain within this state the documents, information and records delivered to the association under ORS 100.210 and all other records of the association for not less than the period specified for the record in ORS 65.771 or any other applicable law, except that:

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

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

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

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

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

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

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

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

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

[4] (5) Subject to section 26, chapter 803, Oregon Laws 2003, the association of unit owners of a condominium that has annual assessments exceeding \$75,000 shall cause the financial statement required under subsection [3] (4) of this section to be reviewed within 180 days after the end of the fiscal year by an independent certified public accountant licensed in the State of Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

[5] (6) The association of unit owners of a condominium that has annual assessments of \$75,000 or less shall cause the most recent financial statement required by subsection [3] (4) of this section to be reviewed in the manner described in subsection [4] (5) of this section within 180 days after the board of directors receives the petition requesting review signed by at least a majority of the owners.

[6] (7) An association of unit owners subject to the requirements of subsection [4] (5) of this section may elect, on an annual basis, not to comply with the requirements of subsection [4] (5) of this section by an affirmative vote of at least 60 percent of the owners, not including the votes of the declarant with respect to units owned by the declarant.

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

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

(i) Regular and special assessments;

(ii) Fines and other charges;

(iii) Accrued interest; and

(iv) Late payment charges.

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

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

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

[(8)(a)] **(9)(a)** Except as provided in paragraph (b) of this subsection, the documents, information and records described in subsections (1) [to (3)] **to (4)** of this section and all other records of the association of unit owners must be reasonably available for examination and, upon written request, available for duplication by a unit owner and any mortgagee of a unit that makes the request in good faith for a proper purpose.

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

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

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

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

(D) Disclosure of information in violation of law.

(E) Documents, correspondence or management or board reports compiled for or behalf of the association or the board of directors by its agents or committees for consideration by the board of directors in executive session held in accordance with ORS 100.420 (1).

(F) Documents, correspondence or other matters considered by the board of directors in executive session held in accordance with ORS 100.420 (1).

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

[(9)] **(10)** The association of unit owners shall maintain a copy, suitable for the purpose of duplication, of the following:

(a) The declaration and bylaws, including amendments or supplements in effect, the recorded plat, if feasible, and the association rules and regulations currently in effect;

(b) The most recent annual financial statement prepared in accordance with subsection [(3)] **(4)** of this section;

(c) The current operating budget of the association;

(d) The reserve study, if any, described in ORS 100.175; and

(e) Architectural standards and guidelines, if any.

[(10)] **(11)** The association, within 10 business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under subsection [(9)] **(10)** of this section.

[(11)] **(12)** The board of directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

[(12)] **(13)** Subsection [(3)] **(4)** of this section first applies to property submitted to the provisions of this chapter before January 1, 1982, when the board of directors of the association of unit owners receives a written request from at least one unit owner that a copy of the annual financial statement be distributed in accordance with subsection [(3)] **(4)** of this section.

SECTION 30. ORS 100.485 is amended to read:

100.485. (1) **Except as provided in subsection (2) of this section**, if entered into prior to the turnover meeting of the condominium, no management agreement, service contract or employment contract that is directly made by or on behalf of the association, the board of directors or the unit owners as a group shall be in excess of three years.

(2)(a) Subject to paragraph (b) of this subsection, the limitations under subsection (1) of this section do not apply to:

(A) Performance-based energy or water efficiency contracts; or
(B) Contracts relating to renewable energy facilities or output serving the condominium, including facilities leased to the association.

(b) A contract described in paragraph (a) of this subsection:

(A) May not have an initial term of more than 20 years; and

(B) Must be recorded with the recording officer in each county in which the condominium is located.

(c) As used in this subsection, “renewable energy facilities” means facilities generating electricity, heat or cooling by means of:

(A) Solar, wind, ocean, hydropower, biomass or geothermal resources; or

(B) Biofuels or hydrogen derived from renewable resources.

[2] (3) Any contract or agreement that is subject to subsection (1) of this section entered into after January 1, 1982, may be terminated without penalty by the association or the board of directors upon not less than 30 days’ written notice to the other party given not later than 60 days after the turnover meeting.

[3] (4) The provisions of the Condominium and Cooperative Abuse Relief Act of 1980 (15 U.S.C. 3601 to 3616), except for 15 U.S.C. 3609 and 3610, shall not apply in the State of Oregon.

SECTION 31. ORS 100.510 is amended to read:

100.510. [(1)] Unless otherwise provided in the declaration[,]:

(1) The walls, floors and ceilings are the boundaries of a unit.

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

(3) The following [*shall be*] **are** a part of the unit:

(a) All spaces, nonbearing interior partitions, interior doors and all other fixtures and improvements within the boundaries of the unit;

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

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

SECTION 32. ORS 100.525 is amended to read:

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

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

(a) An **attorney-in-fact**, executor, administrator, guardian, **conservator** or trustee may vote or grant consent with respect to a unit owned or held in a fiduciary capacity[, *whether or not the specific right has been transferred to the fiduciary*], if the person satisfies the secretary that the person is the **attorney-in-fact**, executor, administrator, guardian, **conservator** or trustee holding the unit in a fiduciary capacity.

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

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

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

SECTION 33. ORS 100.530 is amended to read:

100.530. (1) Unless otherwise provided in the declaration, the common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners according to the allocation of undivided interest of each unit in the common elements.

(2) No unit owner by the owner's own action may claim exemption from liability for contribution towards the common expenses by waiver by the owner of the use or enjoyment of any of the common elements or by abandonment by the owner of the owner's unit. An owner may not claim an offset against an assessment for failure of the association to perform its obligations.

(3) Subject to subsection (4) of this section:

(a) The declarant shall pay assessments due for operating expenses on all unsold units:

(A) From the date of conveyance of the first unit in the condominium; and

(B) For a staged or flexible condominium, from the date of recording the applicable supplemental declaration and supplemental plat recorded pursuant to ORS 100.120.

(b) From the date of conveyance of the first unit in the condominium, the declarant shall pay assessments due for reserves on all unsold units.

(c) The declarant may defer payment of accrued assessments for reserves required under ORS 100.175 for a unit until the date the unit is conveyed. However, the declarant may not defer payment of accrued assessments for reserves:

(A) Beyond the date of the turnover meeting provided for in the bylaws in accordance with ORS 100.210; or

(B) If a turnover meeting is not held, the date the owners assume administrative control of the association.

(d) Failure of the declarant to deposit the balance due within 30 days after the due date constitutes a violation under ORS 100.545.

(e) The books and records of the association shall reflect the amount the declarant owes for all reserve account assessments.

(4)(a) The association *[shall]* **may** not assess units owned by the declarant for additional capital improvements without the written consent of the declarant as long as:

(A) In a single stage condominium, the declarant owns more than two units or five percent of the units, whichever is greater.

(B) In a staged or flexible condominium, the declarant owns more than two units or five percent of the units submitted to the provisions of this chapter, whichever is greater, or the termination date has not expired.

(b) The declarant may waive the declarant's right of consent provided in paragraph (a) of this subsection.

(5)(a) Except with respect to assessments for reserves required by ORS 100.175, a declaration or bylaws may provide that, until the turnover meeting, the declarant may elect to defer commencement of all or part of common expense assessments as to all units in a condominium or as to all units in a stage of a condominium or as to all units created by a supplemental declaration and plat pursuant to ORS 100.150.

(b) If a declarant so elects to defer commencement of all or part of common expense assessments, declarant shall pay as they accrue and be responsible for all or part of the common expenses attributable to the condominium or attributable to the stage of the condominium or the units and common elements created by such supplemental declaration and plat for which assessments have been deferred, until assessments commence for all common expenses.

(c) The declarant shall give not less than 10 days' written notice to all affected unit owners prior to the commencement of common expense assessments if such a deferral occurs.

(6) If the board of directors determines that any loss or cost incurred by the association is the fault of one or more owners, the association may assess the amount of the loss or cost exclusively against the units of the responsible owners.

SECTION 34. ORS 100.540 is amended to read:

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

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

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

(b) The cost of maintenance, repair and replacement is a common expense of the association.

(3) The necessary work of maintenance, repair and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the by-laws.

(4)(a) Upon request given to the owner and any occupant, [the association of unit owners] any person authorized by the association may enter a [shall have the right to have access to each] unit and any limited common element appertaining to a unit:

(A) As may be necessary for the maintenance, repair or replacement of the common elements[,] **or any unit for which the association has maintenance, repair or replacement responsibility under the declaration or bylaws or this chapter;** or

(B) To make emergency repairs [therein] **to the unit or common elements** necessary for the public safety or to prevent damage to the common elements or to another unit.

(b) Requests for entry under this subsection must be made in advance and for a reasonable time, except in the case of an emergency, when the right of entry is immediate. An emergency entry does not constitute a trespass or otherwise create any right of action in the owner of a unit.

SECTION 35. ORS 100.600 is amended to read:

100.600. (1)(a) Subject to ORS 100.605, the condominium may be terminated if all of the unit owners remove the property from the provisions of this chapter by executing and recording an instrument to that effect and the holders of all liens affecting the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after the termination. The instrument shall state the interest of each unit owner and lienholder as determined under ORS 100.610.

(b) The recording of an instrument of termination shall vacate the plat but shall not vacate or terminate any recorded covenants, restrictions, easements or other interests not imposed under the declaration or bylaws or any easement granted by the plat unless the instrument of termination otherwise provides.

(c) Before the instrument of termination may be recorded, it must be signed by the county assessor for the purpose of acknowledging that the county assessor has been notified of the proposed termination.

(d) The person offering the instrument of termination for recording shall cause a copy of the recorded instrument, including the recording information, to be filed with the commissioner, **the county assessor and the county surveyor.** [The county clerk shall promptly provide a certified copy of the recorded instrument of termination to the county assessor and the county surveyor.] Upon receipt of the instrument of termination, the county surveyor shall make appropriate annotations, including the date and surveyor's name or initials, with archival quality black ink on the surveyor's copy of the plat and any copies filed under ORS 92.120. Corrections or changes [shall] **are** not [be] allowed on the original plat once it is recorded with the county clerk.

(e) Failure to file the copies as required under paragraph (d) of this subsection [shall] **does** not invalidate the termination.

(2) A portion of the property may be removed from the provisions of this chapter by recording simultaneously with the recording officer an amendment to the declaration and an amended plat approved as required under ORS 100.110[, 100.115 and 100.135] **and 100.135 and section 43 of this 2009 Act.** The amendment to the declaration shall:

(a) Include a metes and bounds legal description of the property being removed;

(b) Include a metes and bounds legal description of the resulting boundaries of the condominium after the removal;

(c) State the interest of each owner [and lienholder] in the property being removed;

(d) State the **allocation of** interest of each unit [owner and lienholder] in the [condominium] **common elements** after the removal;

(e) Be approved and executed by *[all owners and lienholders]* **the owner of any unit being removed and the owner of any unit to which a limited common element being removed pertains** and acknowledged in the manner provided for acknowledgment of deeds; *[and]*

(f) Be approved by the holder of any first mortgage on a unit or limited common element being removed;

(g) Be approved by at least 90 percent of owners, including any owner whose approval is required under paragraph (e) of this subsection;

(h) Be approved by any other mortgagees whose approval is required under the declaration or bylaws;

(i) Include any other approvals required by the declaration or bylaws; and

[(f)] **(j)** Include a statement by the local governing body or appropriate department thereof that the removal will not violate any applicable planning or zoning regulation or ordinance. The statement may be attached as an exhibit to the amendment.

(3) The amended plat required under subsection (2) of this section shall:

(a) Comply with *[ORS 100.115 (9) and (10)]* **section 43 of this 2009 Act;**

(b) Include a "Statement of Removal" that the property described on the amended plat is removed from the condominium and that the condominium exists as described and depicted on the amended plat. *[Such]* **The** statement shall be made by the chairperson and secretary of the association and acknowledged in the manner provided for acknowledgment of deeds; and

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

(4) The tax collector for any taxing unit having a lien for taxes or assessments shall have authority to consent to such a transfer of any tax or assessment lien under subsection (1) of this section or the removal of a portion of the property under subsection (2) of this section.

SECTION 36. ORS 100.105 is amended to read:

100.105. (1) A declaration shall contain:

(a) A description of the property, including property on which a unit or a limited common element is located, whether held in fee simple, leasehold, easement or other interest or combination thereof, that is being submitted to the condominium form of ownership and that conforms to the 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 submitted to the condominium form of ownership, whether fee simple, leasehold, easement or other interest or combination thereof.

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

(d) The unit designation, a statement that the location of each unit is shown on the plat, a description of the boundaries and area in square feet of each unit and any other data necessary for proper identification. The area of a unit shall be the same as shown for that unit on the plat described in ORS 100.115 *[(2)]* (1).

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

NOTICE

THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION AND THE PLAT ARE BASED ON THE BOUNDARIES OF THE UNITS AS DESCRIBED IN THIS DECLARATION AND MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PURPOSES.

(f) A description of the general common elements.

(g) An allocation to each unit of an undivided interest in the common elements in accordance with ORS 100.515 and the method used to establish the allocation.

(h) The designation of any limited common elements including:

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

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

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

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

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

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

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

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

(n) A statement as to whether or not the association of unit owners pursuant to ORS 100.405 (5) and (8) has authority to grant leases, easements, rights of way, licenses and other similar interests affecting the general and limited common elements of the condominium and consent to vacation of roadways within and adjacent to the condominium.

(o) If the condominium contains a floating structure described in ORS 100.020 (3), a statement regarding the authority of the board of directors of the association, subject to ORS 100.410, to temporarily relocate the floating structure without a majority vote of affected unit owners.

(p) Any restrictions on alienation of units. Any such restrictions created by documents other than the declaration may be incorporated by reference in the declaration to the official records of the county in which the property is located.

(q) Any other details regarding the property that the person executing the declaration considers desirable. However, if a provision required to be in the bylaws under ORS 100.415 is included in the declaration, the voting requirements for amending the bylaws shall also govern the amendment of the provision in the declaration.

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

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

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

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

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

(e) Such other information as the Real Estate Commissioner shall require in order to carry out the purposes of ORS 100.015, 100.635 to 100.730 and 100.740 to 100.910 **and section 43 of this 2009 Act.**

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

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

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

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

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

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

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

(a) A statement that the rights provided for under ORS 100.150 (1) are being reserved.

(b) A statement:

(A) Of any limitations on rights reserved under ORS 100.150 (1), including whether the consent of any unit owner shall be required, and if so, a statement of the method by which the consent shall be ascertained; or

(B) That there are no limitations on rights reserved under ORS 100.150 (1).

(c) A statement of the total number of tracts of variable property within the condominium, including:

(A) A designation of each tract as withdrawable or nonwithdrawable variable property;

(B) Identification of each variable tract by a label in accordance with ORS 100.115 [(2)(i)] (1)(i);

(C) A statement of the method of labeling each tract depicted on the plat in accordance with ORS 100.115 [(2)(i)] (1)(i); and

(D) A statement of the total number of tracts of each type of variable property.

(d) The termination date, which is the date or time period after which any right reserved under ORS 100.150 (1) will terminate, and a statement of the circumstances, if any, that will terminate any right on or before the date or time period specified. The date or time period may not exceed seven years from the recording of the conveyance of the first unit in the condominium to a person other than the declarant. Recording shall be in the county in which the property is located.

(e) The maximum number of units that may be created.

(f) A statement that the method used to establish the allocations of undivided interest in the common elements, the method used to determine liability for common expenses and right to common profits and the method used to allocate voting rights as additional units are created shall be the same as stated in the declaration in accordance with subsection (1)(g), (i) and (j) of this section.

(g) A general description of all existing improvements and the nature and proposed use of any improvements that may be made on variable property if the improvements might substantially increase the proportionate amount of the common expenses payable by existing unit owners.

(h) A statement of whether or not the declarant reserves the right to create limited common elements within any variable property, and if so, a general description of the types that may be created.

(i) A statement that the plat shows the location and dimensions of all withdrawable variable property that is labeled “WITHDRAWABLE VARIABLE PROPERTY.”

(j) A statement that if by the termination date all or a portion of the withdrawable variable property has not been withdrawn or reclassified, the withdrawable property shall automatically be withdrawn from the condominium as of the termination date.

(k) A statement of the rights of the association under ORS 100.155 (2).

(L) A statement of whether or not all or any portion of the variable property may not be withdrawn from the condominium and, if so, with respect to the nonwithdrawable variable property:

(A) A statement that the plat shows the location and dimensions of all nonwithdrawable property that is labeled "NONWITHDRAWABLE VARIABLE PROPERTY."

(B) A description of all improvements that may be made and a statement of the intended use of each improvement.

(C) A statement that, if by the termination date all or a portion of the variable property designated as "nonwithdrawable variable property" has not been reclassified, the property shall automatically be reclassified as of the termination date as a general common element of the condominium and any interest in such property held for security purposes shall be automatically extinguished by such classification.

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

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

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

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

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

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

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

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

SECTION 37. ORS 100.417 is amended to read:

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

(2) Unless otherwise provided in the bylaws, the board of directors of an association may fill vacancies in its membership for the unexpired portion of any term.

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

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

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

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

(7) The board of directors shall cause to be maintained and kept current the information required to enable the association to comply with ORS 100.480 [(10)] (11).

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

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

(b) Removal of a member of the board of directors is not effective unless the matter of removal is an item on the agenda and stated in the notice for the meeting required under ORS 100.407.

SECTION 38. Section 24, chapter 803, Oregon Laws 2003, is amended to read:

Sec. 24. The requirements of ORS 94.670 [(4)] (5) first apply:

(1) Commencing with the fiscal year following the turnover meeting required by ORS 94.616 for the association of a planned community created under ORS 94.550 to 94.783 prior to January 1, 2004, if the turnover meeting has not yet occurred on January 1, 2004.

(2) Commencing with the fiscal year beginning in calendar year 2004 for the association of a planned community created under ORS 94.550 to 94.783 if the turnover meeting required by ORS 94.616 has occurred on or before January 1, 2004.

(3) Commencing with the fiscal year following the turnover meeting required by ORS 94.616 for the association of a planned community created under ORS 94.550 to 94.783 on or after January 1, 2004.

(4) Commencing with the fiscal year following the year in which owners assume responsibility for administration of a planned community described in ORS 94.572 if the owners have not assumed responsibility for administration of the planned community on January 1, 2004.

(5) Commencing with the fiscal year beginning in calendar year 2004 for the association of a planned community described in ORS 94.572 if the owners have assumed responsibility for administration of the planned community on or before January 1, 2004.

SECTION 39. Section 26, chapter 803, Oregon Laws 2003, is amended to read:

Sec. 26. The requirements of ORS 100.480 [(4)] (5) first apply:

(1) Commencing with the fiscal year following the turnover meeting for the association of unit owners of a condominium created prior to January 1, 2004, if the turnover meeting has not yet occurred on January 1, 2004.

(2) Commencing with the fiscal year beginning in calendar year 2004 for the association of unit owners of a condominium created prior to January 1, 2004, if the turnover meeting has occurred on or before January 1, 2004.

(3) Commencing with the fiscal year following the turnover meeting for the association of unit owners of a condominium created on or after January 1, 2004.

SECTION 40. ORS 100.110 is amended to read:

100.110. (1)(a) Before a declaration, supplemental declaration or an amendment thereto may be recorded, it must be approved as provided in this section by the county assessor **of the county in which the property is located** and the Real Estate Commissioner.

(b) Before a declaration, [or] supplemental declaration **or, if required under subsection (3) of this section, an amendment thereto** may be recorded, it must be approved by the tax collector of the county in which the property is located.

(c) A declaration, **supplemental declaration** or amendment thereto may not be approved unless the requirements of subsections (2) to [(6)] (7) of this section are met. Approval shall be evidenced by execution of the declaration or amendment or by a written approval attached thereto.

(2) The county assessor of the county in which the property is located shall approve a declaration, supplemental declaration or amendment thereto if:

(a) The name complies with ORS 100.105 (5) and (6); and

(b) The plat [*and floor plans comply*] **complies** with the requirements of ORS 100.115 **or the plat amendment complies with section 43 of this 2009 Act.**

(3) The tax collector of the county in which the property is located shall approve the declaration or supplemental declaration, or an amendment that adds property to the condominium, [*or*] changes the boundary of a unit **or creates an additional unit from common elements** for which a plat **amendment** is required under [ORS 100.115 (9)(a)] **section 43 of this 2009 Act**, if:

(a) All ad valorem taxes, special assessments, fees, or other charges required by law to be placed upon the tax roll which have or will become a lien upon the property during the tax year have been paid;

(b) Advance payment of ad valorem taxes, special assessments, fees or other charges which are not on the tax roll and for which payment is required under paragraph (a) of this subsection has been made to the tax collector utilizing the procedures contained in ORS 92.095 and 311.370; and

(c) The additional taxes, penalty, and any interest attributable thereto, required because of disqualification of the property from any special assessment have been paid.

(4) Subject to subsection [(5)] **(6)** of this section, the commissioner shall approve the declaration or amendment thereto if:

(a) The declaration or the amendment thereto complies with the requirements of ORS 100.105 and 100.135;

(b) The bylaws adopted under ORS 100.410 comply with the requirements of ORS 100.410 and 100.415;

(c) The plat [*and floor plans comply*] **complies** with the requirements of ORS 100.115 **or the plat amendment complies with section 43 of this 2009 Act;**

(d) The declaration is for a conversion condominium and the declarant has submitted:

(A) An affidavit that the notice of conversion was given in accordance with ORS 100.305 and that the notice period has expired;

(B) An affidavit that the notice of conversion was given in accordance with ORS 100.305 and copies of the written consent of any tenants [*who received the notice of conversion before expiration of the notice; or*] **as provided in ORS 100.305 (6) or a signed statement that no tenants were entitled to notice under ORS 100.305; or**

(C) Any applicable combination of the requirements of subparagraphs (A) and (B) of this paragraph; and

(e) A paper copy of the plat executed by the declarant and prepared in conformance with ORS 100.115 **or plat amendment prepared in conformance with section 43 of this 2009 Act** and a certification of plat execution, on a form prescribed and furnished by the commissioner, have been submitted stating that the paper copy is a true copy of the plat signed by the declarant. The certification may be executed by the declarant, the professional land surveyor who signed the surveyor's certificate on the plat, the attorney for the declarant, a representative of the title insurance company that issued the information required under ORS 100.640 (5) or 100.660 (2)(d) or another person authorized by the declarant in writing to execute the certification.

(5) The commissioner shall approve a supplemental declaration if:

(a) The supplemental declaration complies with the requirements of ORS 100.120;

(b) The supplemental plat complies with the requirements of ORS 100.115;

(c) The supplemental declaration is for a conversion condominium and the declarant has complied with the requirements of subsection (4)(d) of this section; and

(d) A paper copy of the supplemental plat and a certification of plat execution described in subsection (4)(e) of this section have been submitted.

[(5)] **(6)** Approval by the commissioner [*shall not be*] **is not** required for an amendment to a declaration transferring the right of use of a limited common element pursuant to ORS 100.515 (5).

[(6)] **(7)** Before the commissioner approves the declaration, **supplemental declaration** or amendment thereto under this section:

(a) The declarant **or other person requesting approval** shall pay to the commissioner a fee determined by the commissioner under ORS 100.670; and

(b) For an amendment **or supplemental declaration**, the Condominium Information Report and the Annual Report described in ORS 100.260 shall be designated current by the Real Estate Agency as provided in ORS 100.255 and the fee required under ORS 100.670 shall be paid.

[7] **(8)** If the declaration, **supplemental declaration** or amendment thereto approved by the commissioner under subsection (4) **or (5)** of this section is not recorded in accordance with ORS 100.115 within *[two years]* **one year** from the date of approval by the commissioner, the approval *[shall]* automatically *[expire]* **expires** and the declaration, **supplemental declaration** or amendment thereto must be resubmitted for approval in accordance with this section. The commissioner's approval shall set forth the date on which the approval *[will expire]* **expires**.

SECTION 41. ORS 100.115 is amended to read:

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

[(2)] (1) A plat of the land described in the declaration or a supplemental plat described in a supplemental declaration, complying with ORS 92.050, 92.060 (1) and (2), 92.080 and 92.120, shall be recorded simultaneously with the declaration or supplemental declaration. *[Upon request, the person offering the plat or supplemental plat for recording shall also file an exact copy, certified by the surveyor who made the plat to be an exact copy of the plat, with the county assessor and the county surveyor. The exact copy shall be made on suitable drafting material having the characteristics of strength, stability and transparency required by the county surveyor. The plat or supplemental]* **The plat or supplemental plat[,] shall be** titled in accordance with subsection *[(4)] (3)* of this section~~[,] and shall:~~

(a) Show the location of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(3)]~~ **(2)** The supplemental plat required under ORS 100.150 (1) shall be recorded simultaneously with the supplemental declaration. *[Upon request, the person offering the supplemental plat for recording shall also file an exact copy, certified by the surveyor who made the plat to be an exact copy of the plat, with the county assessor and the county surveyor. The exact copy shall be made on suitable drafting material having the characteristics of strength, stability and transparency required by the county surveyor.]* The supplemental plat[,] **shall be** titled in accordance with subsection ~~[(4)]~~ **(3)** of this section[,] **and** shall:

(a) Comply with ORS 92.050, 92.060 (1), (2) and (4), 92.080, 92.120 and ~~[subsections (4) and (5)]~~ **subsection (3)** of this section.

(b) If any property is withdrawn:

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

(B) Show the information required under subsection ~~[(2)(i)]~~ **(1)(i)** of this section as it relates to any remaining variable property.

(c) If any property is reclassified, show the information required under subsection ~~[(2)(a)]~~ **(1)(a)** to (d) of this section.

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

(e) Include a surveyor's *[affidavit]* **certificate** complying with ORS 92.070.

~~[(4)]~~ **(3)** The title of each supplemental plat described in ORS 100.120 shall include the complete name of the condominium, followed by the additional language specified in this subsection and the appropriate reference to the stage being annexed or tract of variable property being reclassified. Each supplemental plat for a condominium recorded on or after January 1, 2002, shall be numbered sequentially and shall:

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

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

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

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

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

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

(c) Determine that the following are consistent:

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

(B) Limited common elements identified on the plat and the information contained in the declaration in accordance with ORS 100.105 (1)(h);

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

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

(6) The person offering the plat **or supplemental plat** for approval shall:

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

(b) Submit the original or a copy of the executed declaration and bylaws or the applicable supplemental declaration approved by the commissioner if required by law prior to approval.

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

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

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

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

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

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

[(i) A graphic depiction of the change.]

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

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

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

[(C) The plat amendment shall be accompanied by an amendment to the declaration authorizing such plat amendment. The declaration amendment shall be executed, approved and recorded in accordance with ORS 100.110 and 100.135.]

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

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

[(ii) Submit the original or a copy of the executed amendment to the declaration approved by the commissioner if required by law prior to approval of the plat amendment.]

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

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

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

[(ii) A description of the change to the plat.]

[(iii) A statement that the amendment was approved in accordance with the declaration and ORS 100.135.]

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

[(C) Before the amendment may be recorded, it must be approved by the city or county surveyor as provided in ORS 92.100. The surveyor shall approve the amendment if it complies with this subsection. Such approval shall be evidenced by execution of the amendment or by written approval attached thereto.]

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

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

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

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

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

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

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

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

[(a) A plat, whenever recorded.]

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

SECTION 42. Section 43 of this 2009 Act is added to and made a part of ORS chapter 100.

SECTION 43. (1) A plat, including any floor plans that are a part of a plat, recorded before October 15, 1983, may be amended as provided in this section.

(2)(a) Except as otherwise provided in ORS 100.600, the following must be made by a plat entitled "Plat Amendment":

(A) A change to the boundary of the property, a unit or a limited common element;

(B) The creation of an additional unit from common elements; or

(C) A change to the configuration of other information required to be graphically depicted on the plat.

(b) The plat amendment shall reference in the title of the amendment the recording information of the original plat and any previous plat amendments.

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

(a) A graphic depiction of the change;

(b) For a change to the boundary of the property, a surveyor's certificate that complies with ORS 92.070;

(c) If the plat amendment is an amendment by correction under section 43b of this 2009 Act, a statement that the plat amendment is an amendment by correction under section 43b of this 2009 Act;

(d) A certification, including signature and official seal, of a registered professional land surveyor that:

(A) The plat amendment accurately depicts the amendments to the plat described in the declaration amendment recorded under subsection (5) of this section; and

(B) Any construction that changes the boundaries of a unit or limited common element or the construction of any additional unit or limited common element has been completed; and

(e) A declaration by the chairperson and secretary on behalf of the association of unit owners that the plat is being amended pursuant to this section. If the amendment to the declaration required under subsection (5) of this section is a correction amendment under section 43a of this 2009 Act, the declaration shall be by the declarant if the declarant adopts the correction amendment under section 43a of this 2009 Act.

(4) The declaration required under subsection (3)(e) of this section shall be executed and acknowledged in the manner provided for acknowledgment of deeds.

(5) The plat amendment shall be accompanied by an amendment to the declaration authorizing the plat amendment. The declaration amendment shall be executed, approved and recorded in accordance with ORS 100.110 and 100.135 or section 43a of this 2009 Act, if the declaration amendment is a correction amendment under section 43a of this 2009 Act.

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

(a) Submit a copy of the proposed amendment to the declaration required under subsections (3) to (5) of this section when the plat amendment is submitted.

(b) Submit the original or a copy of the executed amendment to the declaration approved by the Real Estate Commissioner if required by law prior to approval of the plat amendment.

(c) Upon request of the county assessor or county surveyor, file an exact copy, certified by the surveyor who made the plat to be an exact copy of the plat amendment, with the county assessor and the county surveyor. The exact copy shall be made on suitable drafting material having the strength, stability and transparency required by the county surveyor.

(7) A change to a restriction or other information not required to be graphically depicted on the plat may be made by amendment of the declaration without a plat amendment described in subsections (3) to (5) of this section. A declaration amendment under this subsection shall include:

(a) References to recording index numbers and date of recording of the declaration or plat and any applicable supplemental declarations, amendments, supplemental plats or plat amendments.

(b) A description of the change to the plat.

(c) A statement that the amendment was approved in accordance with the declaration and ORS 100.135.

(8) The declaration amendment described in subsection (7) of this section shall be executed, approved and recorded in accordance with ORS 100.110 and 100.135.

(9) Before the declaration amendment described in subsection (7) of this section may be recorded, it must be approved by the city or county surveyor as provided in ORS 92.100. The surveyor shall approve the declaration amendment if it complies with subsection (7) of this section. Such approval shall be evidenced by execution of the amendment or by written approval attached thereto.

(10) Floor plans of a condominium for which a plat was not required at the time of creation may be amended by amendment of the declaration. An amendment under this subsection shall include:

(a) References to recording index numbers and date of recording of the declaration and any applicable supplemental declarations or amendments.

(b) A description of the change to the floor plans.

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

(11) The declaration amendment described in subsection (10) of this section shall be approved and recorded in accordance with ORS 100.110 and 100.135 except that any change to the floor plans need only comply with the requirements of the unit ownership laws in effect at the time the floor plans were initially recorded.

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

(13) For performing the services described in subsections (6), (9) and (12) of this section, the county surveyor shall collect from the person offering the plat amendment or declaration amendment for approval a fee established by the county governing body.

SECTION 43a. (1) As used in this section and section 43b of this 2009 Act, "document" means the declaration, supplemental declaration or bylaws of a condominium.

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

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

- (b) Correct a mathematical mistake, including, but not limited to:
 - (A) The calculation of the stated interest of affected units in the common elements;
 - (B) The area in square feet of a unit specified in the declaration or supplement declaration; and
 - (C) Liability of a unit for common expenses or right to common profits.
- (c) Correct an inconsistency within a document or between or among the documents or a plat, supplemental plat or plat amendment.
- (d) Correct an ambiguity, inconsistency or error with respect to an objectively verifiable fact.
- (e) Authorize a plat amendment by correction under section 43b of this 2009 Act or an affidavit of correction under section 43b of this 2009 Act.
- (f) Correct a provision that was inconsistent with this chapter at the time the document was recorded.
 - (g) Correct the omission of a provision required under this chapter.
- (3) A correction amendment adopted under subsection (4) of this section shall include:
 - (a) The words "Correction Amendment" in or after the title;
 - (b) A reference to the recording index numbers and date of recording of the declaration, bylaws, plat, the document being corrected and any other applicable supplemental declarations, supplemental plats or amendments to the documents;
 - (c) A statement of the purpose of the correction; and
 - (d) A reference to this section.
- (4) The board of directors may adopt a correction amendment under this section after giving notice as provided in subsection (8) of this section. No action by the unit owners is required.
- (5) The declarant of the condominium may unilaterally adopt a correction amendment under this section to:
 - (a) A document or an amendment to a document, before the conveyance of the first unit in the condominium.
 - (b) A supplemental declaration or an amendment to the supplemental declaration, before conveyance of the first unit created by the supplemental declaration.
- (6) A correction amendment under this section is not effective unless:
 - (a) The amendment is approved by the Real Estate Commissioner under ORS 100.110 and, to the extent required, ORS 100.410, the county assessor in accordance with ORS 100.110 and, if required, the county tax collector;
 - (b) The amendment is certified by the chairperson and secretary of the association of unit owners as being adopted in accordance with subsection (4) of this section or is certified by the declarant under subsection (5) of this section and acknowledged in the manner provided for acknowledgement of deeds; and
 - (c) Is recorded.
- (7) A correction amendment that corrects the boundary of a unit, common element, variable property or other property interest constitutes a conveyance to the extent necessary to effectuate the correction.
- (8)(a) Except for a correction amendment adopted by a declarant under subsection (5) of this section, the notice of any meeting of the board of directors at which the board intends to consider adoption of a correction amendment under this section must:
 - (A) State that the board intends to consider the adoption of a correction amendment.
 - (B) Specify the document to be corrected.
 - (C) Include a description of the nature of the correction.
- (b) At least three days before the meeting of the board of directors, a notice of the meeting must be given to all owners in the manner described in ORS 100.420 (3).

(9) The owner of a unit materially affected by the correction must be given notice of the meeting of the board of directors under subsection (8) of this section in the manner required under ORS 100.407 (4).

(10) The board of directors shall provide a copy of the recorded correction amendment and any plat amendment by correction or by affidavit of correction under section 43b of this 2009 Act recorded concurrently with the correction amendment to any owner described under subsection (9) of this section and to any owner if the correction changes that owner's:

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

SECTION 43b. (1) Unless the context requires otherwise, as used in this section "plat" means:

- (a) A plat recorded under ORS 100.115.
- (b) Floor plans made part of a plat that was recorded before October 15, 1983.
- (c) A supplemental plat recorded under ORS 100.115.
- (d) A plat amendment recorded under section 43 of this 2009 Act.

(2) Notwithstanding a provision in a document of a condominium or this chapter, a plat may be corrected by a plat amendment under section 43 of this 2009 Act as provided in subsection (3) of this section or by an affidavit of correction as provided in subsection (4) of this subsection.

(3) Except as provided in subsection (4) of this section, a correction to a plat must be made by a plat amendment in accordance with section 43 of this 2009 Act. The plat amendment by correction may:

(a) Conform the designation, depiction or boundaries of a unit, common elements or variable property on the plat to the physical location or actual dimensions of the unit, common elements or variable property.

- (b) Correct a mathematical mistake.
- (c) Correct the designation of a unit or limited common element.
- (d) Make any other correction permitted under section 43a of this 2009 Act.

(4) An affidavit of correction may correct a plat to:

(a) Show any courses or distances omitted from the plat.

(b) Correct an error in any courses or distances shown on the plat.

(c) Correct an error in the description of the real property shown on the plat.

(d) Correct any other errors or omissions when the error or omission is ascertainable from the data shown on the plat.

(e) Correct any other errors or omissions on the plat determined by the county surveyor.

(5) Nothing in subsection (4) of this section may be construed to permit changes in courses or distances for the purpose of redesigning unit, common element or variable property configurations by affidavit of correction under this section.

(6) The affidavit of correction shall be prepared by the registered professional land surveyor whose signature and seal are on the plat. In the event of the death, disability or retirement from practice of the surveyor, the county surveyor may prepare and record the affidavit of correction.

(7) The affidavit of correction prepared under subsection (6) of this section shall:

(a) Set forth in detail the corrections made; and

(b) Contain the seal and signature of the registered professional land surveyor making the correction which shall be affixed to the affidavit of correction.

(8) The affidavit of correction shall be submitted to the county surveyor for examination and a determination that:

(a) The changes shown on the affidavit of correction are permitted under subsection (4) of this section; and

(b) The affidavit of correction complies with subsection (7) of this section.

(9) If the county surveyor determines that the affidavit of correction complies with subsection (7) of this section, the county surveyor shall sign a certification that the affidavit of correction has been examined and complies with this section. The certification shall be a part of or an attachment to the affidavit of correction.

(10)(a) Before an affidavit of correction is recorded, it must be approved by the Real Estate Commissioner. The affidavit of correction shall be filed with the commissioner under ORS 100.670.

(b) The commissioner shall approve the affidavit of correction if it complies with this section. The approval shall be evidenced by execution of the affidavit of correction.

(11)(a) The surveyor who prepared the affidavit of correction shall cause the affidavit of correction to be recorded by the recording officer of the county where the plat or supplemental plat is recorded.

(b) If a correction by an affidavit of correction requires a correction amendment to a document under section 43a of this 2009 Act, the affidavit of correction must be recorded concurrently with the correction amendment.

(12) The surveyor who prepared the affidavit of correction shall cause a copy of the recorded affidavit of correction to be provided to:

(a) The association of unit owners of the condominium, at the address shown in the Condominium Information Report filed in accordance with ORS 100.250 or such other address of which the surveyor has knowledge.

(b) The county surveyor, unless otherwise directed by the county surveyor.

(c) The commissioner.

(13)(a) Unless otherwise specified in the affidavit of correction, after recording the affidavit of correction, the county clerk shall return the affidavit of correction to the county surveyor.

(b) Upon receipt of the original recorded affidavit of correction or a copy, the county surveyor shall note the correction and the recorder's filing information, with permanent ink, upon any true and exact copies filed in accordance with ORS 92.120 (3). The corrections and filing information shall be marked in such a manner so as not to obliterate any portion of the plat.

(14) For recording the affidavit of correction under subsection (11) of this section, the county clerk shall collect a fee as provided in ORS 205.320. Corrections or changes are not allowed on the original plat once it is recorded.

(15) For performing the services described in this section, the county surveyor shall collect from the person submitting the affidavit of correction a fee established by the county governing body.

SECTION 44. ORS 100.120 is amended to read:

100.120. (1) To annex additional property to the condominium or to reclassify variable property under ORS 100.125 or 100.150, a supplemental declaration and a supplemental plat shall be executed, approved and recorded by declarant at the time of each annexation or reclassification. The supplemental plat shall comply with ORS 100.115 and the supplemental declarations shall:

(a) Include a reference to recording index numbers and date of recording of the initial declaration and bylaws.

(b) Be consistent with the provisions of the original declaration prepared pursuant to ORS 100.105 and any prior recorded supplemental declarations.

(c) Contain the information required by ORS 100.105 (1) insofar as that information relates to the property being annexed or reclassified.

(d) State the allocation of undivided interest in the common elements of each unit previously submitted to the provisions of this chapter upon the creation or annexation of the additional property.

(e) If the stage being annexed contains any variable property, include the information required under ORS 100.105 (7) insofar as that information relates to the property being annexed. The ter-

mination date shall be consistent with the information included in the declaration in accordance with ORS 100.105 (2)(b) but may not exceed seven years from the recording of the conveyance of the first unit in the stage to a person other than the declarant. Recording shall be in the county in which the property is located.

(2) If the Condominium Information Report and the Annual Report described in ORS 100.250 are designated current as provided in ORS 100.255, all such supplemental declarations and plats shall be approved, executed and recorded as provided in ORS 100.100, 100.110 and 100.115. No unit being annexed or created by a supplemental declaration shall be conveyed until after such recording.

(3) To withdraw all or a portion of variable property from a flexible condominium pursuant to ORS 100.150 (1)(b), a supplemental declaration and plat shall be recorded in accordance with subsection (2) of this section. The supplemental plat shall comply with ORS 100.115 [(3)] (2) and the supplemental declaration shall:

(a) Be consistent with the provisions of the declaration or supplemental declaration drawn pursuant to ORS 100.105 (7).

(b) Include a metes and bounds legal description of the variable property being withdrawn.

(c) Include a metes and bounds legal description of the resulting boundaries of the condominium after the withdrawal.

(d) State whether or not any variable property remains which may be reclassified or withdrawn from the condominium and, if property may be withdrawn, include the statement required under ORS 100.105 (7)(m).

(e) If any variable property is being redesignated as “nonwithdrawable variable property,” include the information required under ORS 100.105 (7)(L).

(4) Except as provided in subsection (5) of this section, as to property submitted to unit ownership after October 4, 1977, additional units may not be added within property previously submitted to unit ownership unless all unit owners consent to an amendment to the declaration, plat and any floor plans recorded pursuant to [ORS 100.115] **section 43 of this 2009 Act** in order to provide for such additional units.

(5) As to property submitted to unit ownership before September 27, 1987, if the declaration provides that additional property may be annexed to the condominium, any subsequent stage may contain variable property. The termination date may not be later than the earlier of:

(a) The date specified in the declaration under ORS 100.105 (2)(b); or

(b) Seven years from the recording of the conveyance of the first unit in the condominium to a person other than the declarant. Recording shall be in the county in which the property is located.

SECTION 45. ORS 100.125 is amended to read:

100.125. Subject to ORS 100.120 (4), if the declaration complies with ORS 100.105 (2), until the termination date, additional property may be annexed to the condominium by the recording of a supplemental declaration and supplemental plat in accordance with ORS **100.115** [100.115 and 100.120].

SECTION 46. ORS 100.130 is amended to read:

100.130. (1) Subject to any limitations contained in the declaration, the boundaries between adjoining units, including any intervening common elements, may be relocated or eliminated by an amendment to the declaration. The owners of the affected units shall submit to the board of directors of the association a proposed amendment which shall identify the units involved, state any reallocations of common element interest, voting rights, common expense liability and right to common profits and contain words of conveyance. The board of directors shall approve the amendment unless it determines within 45 days that the reallocations are unreasonable or the relocation or elimination will impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium.

(2) The board of directors of the association of unit owners may require the owners of the affected units to submit an opinion of a registered architect or registered professional engineer that the proposed relocation or elimination will not impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium.

(3) The board of directors of the association or any agent appointed by the board of directors may supervise the work necessary to effect the boundary relocation or elimination.

(4) Any expenses incurred under subsections (2) and (3) of this section shall be charged to the owners of the units requesting the boundary relocation or elimination.

(5) The amendment shall be executed by the owners and mortgagees or trust deed beneficiaries of the affected units, certified by the chairperson and secretary of the association and approved and recorded in accordance with ORS 100.135 (2)(b).

(6) An amendment to the plat and any floor plans necessary to show the altered boundaries between the adjoining units shall be recorded in accordance with [ORS 100.115] **section 43 of this 2009 Act.**

SECTION 47. ORS 100.515 is amended to read:

100.515. (1) Each unit shall be entitled to an undivided interest in the common elements in the allocation expressed in the declaration. Such allocation shall be expressed as a fraction or percentage of undivided interest in the common elements. Except as otherwise provided in this chapter, the allocation of undivided interest of each unit in the common elements as expressed in a declaration shall not be altered unless all unit owners having an interest in the particular common element agree thereto and record an amendment to the declaration setting forth the altered allocation of each unit having an interest.

(2) The sums of the undivided interest in the common elements shall equal one if stated as fractions or 100 percent if stated as percentages.

(3) The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(4) The common elements shall remain undivided and no unit owner shall bring any action for partition or division of any part thereof, except as provided in this chapter. Any covenant to the contrary is void.

(5) Notwithstanding subsections (1) and (3) of this section, except where expressly prohibited by the declaration or bylaws, the right of use of any unit in a limited common element may be transferred to any other unit. Such transfer shall occur only if the existing unit owner and all mortgagees of the unit for which the right of use of the limited common element is presently reserved and the unit owner to whom the right of use is being transferred agree to and record an amendment to the declaration setting forth the transfer.

(6) Notwithstanding subsections (1) and (3) of this section, in the case where a single unit is originally designed and constructed to be two or more separate hotel, motel or other similar living accommodations with separate bathrooms and separate entrances from a hallway, balcony, staircase or other common element, the owner, or owners, with the consent of the holder, or holders, of any recorded mortgage or lien on the unit, may separate such unit into two or more units each having such separate bathrooms and entrances from such common elements. Such persons may divide between such separate units the allocation of the common elements assigned to the original unit on substantially the basis that the square footage of such separated units bears to the total square footage of the original unit by recording an amendment to the declaration signed by such owner, or owners, of original unit together with an amendment to any plat and floor plan of such original unit recorded pursuant to [ORS 100.115] **section 43 of this 2009 Act** showing the division thereof into such two or more units. The amendment shall comply with [ORS 100.115] **section 43 of this 2009 Act.** Such separated parts of the original unit shall not be used for any purpose other than the purpose for which such separable parts were originally designed and constructed and thereafter have generally been used.

SECTION 48. ORS 100.640 is amended to read:

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

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

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

(3) A copy of the full size plat prepared in conformance with ORS 100.115 [(2)] (1) or the law applicable in the state where the condominium was created, or a copy of the site plan;

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

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

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

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

(8) The following sample forms:

(a) Unit sales agreement, including the notice to purchaser of cancellation rights in accordance with ORS 100.730 and 100.740, the statement required by ORS 93.040 (2) and any warranty required under ORS 100.185; and

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

(9) If required by ORS 100.680:

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

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

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

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

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

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

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

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

Passed by Senate May 7, 2009

Repassed by Senate June 17, 2009

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Secretary of Senate

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President of Senate

Passed by House June 10, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State