

Senate Bill 963

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

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

Revises various provisions governing condominiums and planned communities.

A BILL FOR AN ACT

1
2 Relating to properties governed by declarations; creating new provisions; and amending ORS 94.595,
3 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,
4 100.105, 100.135, 100.155, 100.175, 100.405, 100.408, 100.409, 100.415, 100.417, 100.420, 100.480,
5 100.485, 100.510, 100.525, 100.530, 100.540 and 100.600 and sections 24 and 26, chapter 803,
6 Oregon Laws 2003.

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

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

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

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

15 **(3) Subject to any limitation under the bylaws:**

16 **(a)(A) An officer, employee or agent of a corporation, a member of a limited liability**
17 **company or a partner in a partnership may serve on the board of directors if the corpo-**
18 **ration, limited liability company or partnership owns a lot in the planned community, with-**
19 **out regard to the number of tiers of ownership.**

20 **(B) A trustee may serve on the board of directors if the trustee holds legal title to a lot**
21 **in the planned community in trust for the benefit of the owner of the beneficial interest in**
22 **the lot.**

23 **(C) An officer, employee, agent or trustee shall provide the board of directors with doc-**
24 **umentary evidence that the person is qualified to represent the entity or beneficiary owning**
25 **an interest in the lot.**

26 **(b) An executor, administrator, guardian, conservator or other person appointed by a**
27 **court to serve in a fiduciary capacity, or an officer or employee if the person is an entity,**
28 **for an owner of a lot may serve on the board of directors.**

29 **(4) Prior to an election of members of the board of directors, an individual described in**
30 **subsection (3) of this section shall provide the board with documented evidence that the in-**
31 **dividual is qualified to serve on the board of directors.**

32 **(5) The position of an individual serving on the board of directors under subsection (3)**

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

1 **this section becomes vacant if the individual no longer meets the requirements of subsection**
 2 **(3) of this section.**

3 **SECTION 3. (1) If a homeowners association is at any time dissolved, whether inadvert-**
 4 **ently or deliberately:**

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

7 (b) **The unincorporated association:**

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

10 (B) **Shall be governed by the bylaws and, to the extent applicable, the articles of incor-**
 11 **poration of the incorporated association; and**

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

14 (2) **A separate association is not created when an association is reinstated after admin-**
 15 **istrative dissolution under ORS 65.654 or again incorporated following dissolution. The asso-**
 16 **ciation automatically continues without any further action by incorporators, directors or**
 17 **officers that may otherwise be required under ORS chapter 65.**

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

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

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

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

27 **SECTION 4.** ORS 94.595 is amended to read:

28 94.595. (1) The declarant, on behalf of a homeowners association, shall:

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

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

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

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

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

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

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

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

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

2 (B) Other reliable information.

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

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

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

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

12 (B) Provide for other reserve items that the board of directors, in its discretion, may deem ap-
13 propriate.

14 (b) The reserve study shall:

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

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

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

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

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

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

25 (C) Be appropriate for the size and complexity of the maintenance, repair and replacement re-
26 sponsibility of the association; and

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

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

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

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

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

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

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

44 (b) After the individual lot owners have assumed responsibility for administration of the planned
45 community under ORS 94.616, if the board of directors has adopted a resolution, which may be an

1 annual continuing resolution, authorizing the borrowing of funds:

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

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

7 (7) *[Nothing in this section prohibits prudent investment of reserve account funds subject to any*
8 *constraints imposed by the declaration, bylaws or rules of the association.]* **The reserve account is**
9 **subject to the requirements and restrictions of ORS 94.670 and any additional restrictions**
10 **or requirements imposed by the declaration, bylaws or rules of the homeowners association.**

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

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

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

18 **(8)(a) Except as provided under paragraph (b) of this subsection, unless the board of di-**
19 **rectors under subsection (3) of this section determines that the reserve account will be ad-**
20 **equately funded for the following year, the board of directors or the owners may not vote**
21 **to eliminate funding a reserve account required under this section or under the declaration**
22 **or bylaws.**

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

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

28 **SECTION 5.** ORS 94.625 is amended to read:

29 94.625. (1) Except as provided in subsection (2) of this section, not later than the date on which
30 the first lot in the planned community is conveyed, the declarant shall:

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

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

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

36 (2) If the plat contains a conveyance of any property to the homeowners association, the
37 declarant shall organize the homeowners association as a nonprofit corporation under ORS chapter
38 65 before the plat is recorded.

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

45 (b) The president and secretary of the association shall certify and acknowledge, in the manner

1 provided for acknowledgment of deeds, that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) Include a statement that the board of directors has adopted a resolution in accordance with

1 this subsection and is causing the bylaws to be restated and recorded under this subsection;

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

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

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

9 **SECTION 6.** ORS 94.630 is amended to read:

10 94.630. (1) Subject to subsection (2) of this section and except as otherwise provided in its dec-
 11 laration or bylaws, a homeowners association may:

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

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

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

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

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

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

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

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

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

27 (i) Individually owned real property, the expenses for which, including maintenance, repair or
 28 replacement, insurance or other expenses, the association is responsible; or

29 (ii) Common property;

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

32 (i) Resulting from a nuisance or a defect in or damage to common property or individually
 33 owned real property, the expenses for which, including maintenance, repair or replacement, insur-
 34 ance or other expenses, the association is responsible; or

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

36 (F) Any other matter to which the association has standing under law or pursuant to the dec-
 37 laration or bylaws;

38 (f) Make contracts and incur liabilities;

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

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

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

44 (j) Grant easements, leases, licenses and concessions through or over the common property **as**
 45 **provided in ORS 94.665;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 **SECTION 7.** ORS 94.635 is amended to read:

36 94.635. The bylaws of an association adopted under ORS 94.625, or amended or adopted under
37 ORS 94.630, shall provide for the following:

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

40 (2) If a Class I planned community, the formation of a transitional advisory committee in ac-
41 cordance with ORS 94.604.

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

45 (4)(a) The method of calling the annual meeting and all other meetings of the owners in ac-

1 cordance with ORS 94.650; and

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

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

6 (b) The powers and duties of the board;

7 (c) Any compensation of the directors; and

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

9 (6) The terms of office of directors.

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

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

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

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

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

18 (c) The method of approving payment vouchers.

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

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

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

23 (14) The preparation and distribution of the annual financial statement required under ORS
 24 94.670.

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

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

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

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

35 **SECTION 8.** ORS 94.640 is amended to read:

36 94.640. (1) The board of directors of an association may act on behalf of the association except
 37 as limited by the declaration and the bylaws. In the performance of their duties, officers and mem-
 38 bers of the board of directors are governed by this section and the applicable provisions of ORS
 39 65.357, 65.361, 65.367, 65.369 and 65.377, whether or not the association is incorporated under ORS
 40 chapter 65.

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

43 (3) At least annually, the board of directors of an association shall review the insurance cover-
 44 age of the association.

45 (4) The board of directors of the association annually shall cause to be filed the necessary in-

1 come tax returns for the association.

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

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

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

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

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

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

16 **(B) Consider the following:**

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

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

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

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

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

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

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

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

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

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

44 (9) The board of directors, in the name of the association, shall maintain a current mailing ad-
45 dress of the association.

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

3 (11) As used in this section, “meeting” means a convening of a quorum of members of the board
 4 of directors [where] **at which** [matters relating to] association business [are] **is** discussed, except a
 5 convening of a quorum of members of the board of directors for the purpose of participating in liti-
 6 gation, mediation or arbitration proceedings.

7 **SECTION 9.** ORS 94.655 is amended to read:

8 94.655. (1) Unless the declaration or bylaws of a homeowners association [provide otherwise]
 9 **specify a greater percentage**, a quorum for any meeting of the association consists of the number
 10 of persons who are entitled to cast 20 percent of the votes and who are present in person, by proxy
 11 or by absentee ballot, if absentee ballots are permitted by the board of directors, at the beginning
 12 of the meeting.

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

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

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

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

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

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

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

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

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

29 **SECTION 10.** ORS 94.657 is amended to read:

30 94.657. (1) Unless other rules of order are required by the declaration or bylaws or by a resol-
 31 ution of the association or its board of directors[:],

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

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

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

40 **SECTION 11.** ORS 94.658 is amended to read:

41 94.658. (1) Unless the declaration provides otherwise, each lot of a planned community shall be
 42 entitled to one vote.

43 (2) Unless the declaration or bylaws provide otherwise:

44 (a) An **attorney-in-fact**, executor, administrator, guardian, **conservator** or trustee may vote
 45 or grant consent with respect to a lot owned or held in a fiduciary capacity if the fiduciary satisfies

1 the secretary of the board of directors that the person is the **attorney-in-fact**, executor, adminis-
 2 trator, guardian, **conservator** or trustee holding the lot **in a fiduciary capacity**.

3 (b) When a lot is owned by two or more persons jointly, according to the records of the asso-
 4 ciation:

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

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

10 **SECTION 12.** ORS 94.665 is amended to read:

11 94.665. (1) Except as otherwise provided in the declaration, a homeowners association may sell,
 12 **transfer**, convey or subject to a security interest any portion of the common property if 80 percent
 13 or more of the votes in the homeowners association, including 80 percent of the votes of lots not
 14 owned by a declarant at the time of the vote, are cast in favor of [*that*] **the** action. The association
 15 shall treat proceeds of any sale under this section as an asset of the association.

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

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

27 (4)(a) **Except as otherwise provided in the declaration and paragraph (b) of this sub-
 28 section, the granting of a lease, easement, right of way, license or other similar interest
 29 pursuant to subsection (3) of this section shall be first approved by at least 75 percent of
 30 owners present at a meeting of the association. The meeting notice must include a statement
 31 that approval of the grant will be an item of business in the agenda of the meeting.**

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

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

40 (5) **Unless the declaration otherwise provides, the consent to vacation of roadways within
 41 and adjacent to common property must be approved first by at least a majority of owners
 42 present at a meeting of the association. The meeting notice must include a statement that
 43 the roadway vacation will be an item of business in the agenda of the meeting.**

44 (6) **Owner approval required under sections (4) and (5) of this section may be solicited
 45 by any means the board of directors determines is reasonable and need not be at a meeting**

1 of the association. However, the approval by at least 75 percent of owners is required.

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

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

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

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

12 **SECTION 13.** ORS 94.670 is amended to read:

13 94.670. (1) A homeowners association shall retain within this state the documents, information
 14 and records delivered to the association under ORS 94.616 and all other records of the association
 15 for not less than the period specified for the record in ORS 65.771 or any other applicable law ex-
 16 cept that:

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

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

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

28 (b) **Subject to any limitations imposed by the declaration or bylaws, funds of the associ-**
 29 **ation maintained in accounts established under this subsection may be used to purchase ob-**
 30 **ligations of the United States government.**

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

32 (3) The association shall keep financial records sufficiently detailed for proper accounting pur-
 33 poses.

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

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

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

39 [(4)] (5) Subject to section 24, chapter 803, Oregon Laws 2003, the association of a planned
 40 community that has annual assessments exceeding \$75,000 shall cause the financial statement re-
 41 quired under subsection [(3)] (4) of this section to be reviewed within 180 days after the end of the
 42 fiscal year by an independent certified public accountant licensed in the State of Oregon in ac-
 43 cordance with the Statements on Standards for Accounting and Review Services issued by the
 44 American Institute of Certified Public Accountants.

45 [(5)] (6) The association of a planned community created on or after January 1, 2004, or the

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

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

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

11 (A) The amount of assessments due from the owner and unpaid at the time the request was re-
 12 ceived, including:

- 13 (i) Regular and special assessments;
- 14 (ii) Fines and other charges;
- 15 (iii) Accrued interest; and
- 16 (iv) Late payment charges.

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

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

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

23 [(8)] (9)(a) **Except as provided in paragraph (b) of this subsection**, the association shall make
 24 the documents, information and records described in subsections (1) and [(3)] (4) of this section and
 25 all other records of the association reasonably available for examination and, upon written request,
 26 available for duplication by an owner and any mortgagee of a lot that makes the request in good
 27 faith for a proper purpose. [*except that*]

28 (b) Records kept by or on behalf of the association may be withheld from examination and du-
 29 plication to the extent the records concern:

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

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

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

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

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

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

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

45 [(9)] (10) The association shall maintain a copy, suitable for the purpose of duplication, of the

1 following:

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

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

5 (c) The current operating budget of the association.

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

7 (e) Architectural standards and guidelines, if any.

8 [(10)] (11) The association, within 10 business days after receipt of a written request by an
9 owner, shall furnish the requested information required to be maintained under subsection [(9)] (10)
10 of this section.

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

16 **SECTION 14.** ORS 94.700 is amended to read:

17 94.700. (1) **Except as provided in subsection (2) of this section**, if entered into prior to the
18 meeting called under ORS 94.609, no management agreement, service contract or employment con-
19 tract which is directly made by or on behalf of the association, the board of directors or the owners
20 as a group shall be in excess of three years.

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

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

24 **(B) Contracts relating to renewable energy facilities or output serving the planned com-
25 munity, including facilities leased to the association.**

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

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

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

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

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

33 **(B) Biofuels or hydrogen derived from renewable resources.**

34 [(2)] (3) Any contract or agreement subject to subsection (1) of this section and entered into
35 after July 1, 1982, may terminate without penalty to the declarant, the association or the board of
36 directors elected under ORS 94.616 if the board of directors gives not less than 30 days written no-
37 tice of termination to the other party not later than 60 days after the meeting called under ORS
38 94.609.

39 **SECTION 15.** ORS 94.704 is amended to read:

40 94.704. (1) Subject to subsection (2) of this section, the declarant of a planned community shall
41 pay all common expenses of the planned community until the individual lots subject to assessment
42 are assessed for common expenses as specified in the declaration pursuant to ORS 94.580 (2).

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

1 reserves:

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

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

6 (3) Failure of the declarant to deposit the balance due within 30 days after the due date con-
7 stitutes a violation of ORS 94.777.

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

10 (5)(a) Except for assessments under subsections (6), (7) and (8) of this section, the board of di-
11 rectors shall assess all common expenses against all the lots that are subject to assessment ac-
12 cording to the allocations stated in the declaration.

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

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

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

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

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

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

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

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

34 (11)(a) During any period of declarant control, any special assessment for capital improvements
35 or additions must be approved by not less than 50 percent of the voting rights, or such greater
36 percentage as may be specified in the declaration, without regard to any weighted right or special
37 voting right in favor of the declarant.

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

40 **SECTION 16.** ORS 94.733 is amended to read:

41 94.733. (1) Subject to ORS 94.665, each owner of a lot has an easement through the common
42 property:

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

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

45 (2) Except as provided in the declaration, a declarant has an easement through the common

1 property as may be necessary for discharging the declarant's obligations or exercising any special
2 declarant right.

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

9 (4)(a) Upon request, any person authorized by a homeowners association may enter a lot:

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

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

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

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

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

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

26 (3) Subject to any limitation under the bylaws:

27 (a)(A) An officer, employee or agent of a corporation, a member of a limited liability
28 company or a partner of a partnership may serve on the board of directors if the corpo-
29 ration, limited liability company or partnership owns a unit in the condominium, without
30 regard to the number of tiers of ownership.

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

33 (C) An officer, employee, agent or trustee shall provide the board of directors with doc-
34 umentary evidence that the person is qualified to represent the entity or beneficiary owning
35 an interest in the unit.

36 (b) An executor, administrator, guardian, conservator or other person appointed by a
37 court to serve in a fiduciary capacity, or an officer or employee if the person is an entity,
38 for an owner of a unit may serve on the board of directors if, prior to the election, the in-
39 dividual satisfies the board of directors that the individual is serving in a fiduciary capacity.

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

43 **SECTION 19.** (1) A zoning, subdivision, building code or other real property law, ordi-
44 nance or regulation may not prohibit the condominium form of ownership or impose any
45 requirement upon a structure proposed to be submitted to the condominium form of owner-

1 **ship under this chapter that it would not impose upon a physically identical structure or**
 2 **development under a different form of ownership.**

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

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

8 **SECTION 20.** ORS 100.020 is amended to read:

9 100.020. (1) Except as otherwise provided in subsections (2) and (3) of this section, ORS 100.100
 10 to 100.625 apply only to property located within this state which a person elects to submit to the
 11 condominium form of ownership as provided in ORS 100.005 to 100.625.

12 (2) Unless the declarant elects otherwise, ORS 100.175, 100.185, 100.200 (2), 100.205, 100.210,
 13 100.300, 100.305, 100.310, 100.315 and 100.320 apply only to condominiums that include units to be
 14 used for residential purposes.

15 (3) Property may not be submitted to the condominium form of ownership under ORS 100.005 to
 16 100.625 unless:

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

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

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

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

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

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

27 (i) Is permanently moored to structures in a river, lake or other waterway pursuant to a long-
 28 term lease with a remaining term at the time the declaration and plat are recorded of not less than
 29 15 years;

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

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

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

39 (4)(a) Except as otherwise provided in subsection (5) of this section, ORS 100.015 and 100.635 to
 40 100.910 apply to condominiums having units to be used for residential purposes which are not offered
 41 for sale as a security pursuant to ORS 59.005 to 59.451.

42 (b) ORS 100.635 (2), 100.640 (8) to (12), 100.655, 100.705, 100.720, 100.725, 100.730, 100.735, 100.740
 43 and 100.745 do not apply to the sale of units to be used for *[nonresidential]* **other than residential**
 44 purposes unless the units, including units used for parking or storage, are ancillary to the sale of
 45 units to be used for residential purposes.

1 (5) ORS 100.650, 100.660, 100.670, 100.675, 100.750, 100.770, 100.775, 100.780, 100.900, 100.905 and
 2 100.990 apply to a condominium located in this state that consists exclusively of units to be used for
 3 *[nonresidential]* **other than residential** purposes or that consists of units to be offered for sale as
 4 a security under ORS 59.005 to 59.451.

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

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

9 **(8) If the association creates a unit from common elements by an amendment to the**
 10 **declaration under ORS 100.135, the association is not subject to the requirements of ORS**
 11 **100.015 and 100.635 to 100.910.**

12 **(9) As used in subsections (2) and (4) of this section, “residential purposes” means use**
 13 **as a residential dwelling, but does not include apartments that are not separate condominium**
 14 **units subject to individual ownership.**

15 **SECTION 21.** ORS 100.135 is amended to read:

16 100.135. (1) Unless otherwise provided in the declaration, an amendment to the declaration may
 17 be proposed by a majority of the board of directors of the association of unit owners or by at least
 18 30 percent of the unit owners.

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

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

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

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

31 (4) Unless the declaration requires a greater percentage:

32 (a) The declaration and plat may be amended to change a general common element to a limited
 33 common element or change the boundary of a limited common element with the approval of at least
 34 75 percent of owners and approval of the owners of all units to which the limited common element
 35 appertains.

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

39 (5)(a)(A) Except as otherwise provided in ORS 100.120, 100.130, 100.515, 100.600, 100.605 and
 40 100.625 and paragraph (b) of this subsection or other provisions of the Oregon Condominium Act,
 41 an amendment that changes the boundary of the property or a unit **or creates an additional unit**
 42 **from common elements** shall be approved by all unit owners.

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

1 **of the additional unit.**

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

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

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

7 (B) Contain words of conveyance;

8 (C) Be executed by the chairperson and secretary of the association on behalf of the unit owners
9 and be certified in accordance with subsection (2)(b) of this section; and

10 (D) Be accompanied by a plat amendment in accordance with ORS 100.115.

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

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

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

21 (8) Nothing in this section shall affect any other approval that may be required by the declara-
22 tion, bylaws or other instrument.

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

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

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

38 (b) A declaration restated under this subsection must:

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

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

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

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

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

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

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

13 **SECTION 22.** ORS 100.155 is amended to read:

14 100.155. (1) If by the termination date specified in the declaration there is any remaining vari-
 15 able property:

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

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

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

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

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

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

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

33 (B) Include a description of the reclassified or withdrawn variable property complying with ORS
 34 93.600.

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

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

45 (2)(a) Unless expressly prohibited by the declaration, any variable property automatically with-

1 drawn from the condominium under subsection (1)(b) of this section or voluntarily withdrawn under
 2 ORS 100.150 (1)(b) may be later annexed to the condominium by the recording of a supplemental
 3 declaration and plat in accordance with ORS 100.120 (2) if such action is first approved by at least
 4 75 percent of all voting rights in the manner required for an amendment to the declaration.

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

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

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

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

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

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

29 **SECTION 23.** ORS 100.175 is amended to read:

30 100.175. (1) The declarant, on behalf of the association of unit owners, shall:

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

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

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

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

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

1 account.

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

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

4 (B) In the case of a conversion condominium, the statement described in ORS 100.655 (1)(g); or

5 (C) Other reliable information.

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

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

10 (3)(a) The board of directors of the association annually shall conduct a reserve study or review
11 and update an existing study to determine the reserve account requirements. *[and may]* **After con-**
12 **ducting the reserve study or reviewing the reserve study update, the board may, without any**
13 **action by the unit owners:**

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

15 (B) Provide for other reserve items that the board of directors, in its discretion, may deem ap-
16 propriate.

17 (b) The reserve study shall:

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

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

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

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

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

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

28 (C) Be appropriate for the size and complexity of the maintenance, repair and replacement re-
29 sponsibility of the association; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 **SECTION 24.** ORS 100.405 is amended to read:

34 100.405. (1)(a) An association of unit owners shall be organized to serve as a means through
 35 which the unit owners may take action with regard to the administration, management and opera-
 36 tion of the condominium.

37 (b) The association of a condominium created on or after September 27, 2007, shall be organized
 38 as a corporation for profit or nonprofit corporation *[or]* **except**, if the condominium consists of not
 39 more than four units, excluding units used for parking, storage or other use ancillary to a unit,
 40 *[as]* **the association need not be organized as a corporation or** an unincorporated association.

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

43 *[(b)]* (d) Notwithstanding a provision in the declaration or bylaws of a condominium created
 44 before September 27, 2007, that states that the association shall be unincorporated or that requires
 45 approval of owners to incorporate as a nonprofit corporation under ORS chapter 65, an

1 unincorporated association may be incorporated as a nonprofit corporation under ORS chapter 65
2 if the board of directors adopts a resolution that states the association will be incorporated.

3 **(e) A separate association is not created when an unincorporated association formed**
4 **under this section is incorporated, reinstated after administrative dissolution under ORS**
5 **60.654 or 65.654 or again incorporated following dissolution. The association automatically**
6 **continues and, without any further action by incorporators, directors or officers that may**
7 **otherwise be required under Oregon corporation laws:**

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

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

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

15 **(f) If an incorporated association is at any time dissolved, whether inadvertently or de-**
16 **liberately:**

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

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

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

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

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

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

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

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

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

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

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

35 (e) Subject to subsection [(11)] (12) of this section, initiate or intervene in litigation or admin-
36 istrative proceedings in its own name, and without joining the individual unit owners, in the fol-
37 lowing:

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

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

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

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

45 (E) Matters relating to or affecting the units or interests of unit owners including but not lim-

1 ited to damage, destruction, impairment or loss of use of a unit or portion thereof, if:

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

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

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

6 (f) Make contracts and incur liabilities;

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

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

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

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

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

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

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

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

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

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

32 (o) Provide for the indemnification of its officers and executive board, as may be limited by ORS
33 61.218 (3)(d) (1987 Replacement Part), and maintain directors' and officers' liability insurance;

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

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

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

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

42 (6)(a)(A) Except as provided in subparagraph (B) of this paragraph, the granting of a lease,
43 easement, right of way, license or other similar interest pursuant to subsection (5) of this section
44 shall be first approved by at least 75 percent of owners **present at a meeting of the association.**

45 *[Unit owner approval may be solicited by any means the board of directors determines is reasonable*

1 *and need not be at a meeting of the association.] The meeting notice must include a statement*
 2 **that the approval of the grant will be an item of business on the agenda of the meeting.**

3 (B) Unless the declaration otherwise provides:

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

7 (ii) The granting of a lease, easement, right of way, license or other similar interest affecting
 8 the general common elements for a term of more than two years to a public body, as defined in ORS
 9 174.109, or to a utility or a communications company for installation and maintenance of power, gas,
 10 electric, water or other utility and communication lines and services requires the approval of a
 11 majority of the board of directors.

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

21 (b) Unless the declaration otherwise provides, the consent to vacation of roadways within and
 22 adjacent to the condominium must be approved first by at least a majority of unit owners present
 23 voting *[in person or by proxy]* at a *[duly constituted]* meeting of the association *[called for the*
 24 *purpose]*. **The meeting notice must include a statement that the roadway vacation will be an**
 25 **item of business on the agenda of the meeting.**

26 **(7) Owner approval required under subsection (6) of this section may be solicited by any**
 27 **means the board of directors determines is reasonable and need not be at a meeting of the**
 28 **association. However, the approval by at least 75 percent of the owners is required.**

29 [(7)] (8) The instrument granting an interest or consent pursuant to subsection (5) of this section
 30 shall be executed by the chairperson and secretary of the association and acknowledged in the
 31 manner provided for acknowledgment of such instruments by such officers and shall state that such
 32 grant or consent was approved, if appropriate, by at least the percent of owners required under
 33 subsection (6) of this section.

34 [(8)] (9) Unless expressly prohibited by the declaration, any action permitted under subsections
 35 (5) and (6) of this section regarding a general common element may be taken with respect to any
 36 limited common element, provided that the owner of the unit to which the use of the limited common
 37 element is reserved and the holder of any mortgage or trust deed affecting the unit consent to the
 38 action and also execute an instrument as provided under subsection [(7)] (8) of this section.

39 [(9)] (10) Except as otherwise provided in the association's declaration or bylaws, the board of
 40 directors of the association may modify, close, remove, eliminate or discontinue the use of a general
 41 common element facility or improvement or portion of the common element landscaping, regardless
 42 of whether such facility, improvement or landscaping is mentioned in the declaration or shown on
 43 the plat provided that:

44 (a) Nothing in this subsection shall be construed as limiting the authority of the board of di-
 45 rectors, in its discretion, to seek approval of such modification, closure, removal, elimination or

1 discontinuance by the unit owners; and

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

6 [(10)(a)] (11)(a) A permit or authorization issued by the board of directors pursuant to authority
7 granted to the board under law, the declaration or the bylaws, may be recorded in the deed records
8 of the county where the condominium is located. An instrument recorded under this subsection shall:

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

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

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

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

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

22 [(11)(a)] (12)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an ad-
23 ministrative proceeding in which the association and an owner have an adversarial relationship, the
24 party that intends to initiate litigation or an administrative proceeding shall offer to use any dispute
25 resolution program available within the county in which the condominium is located that is in sub-
26 stantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer
27 must be hand-delivered or mailed by certified mail, return receipt requested, to the address, con-
28 tained in the records of the association, for the other party.

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

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

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

44 (e) Once made, the decision of the court or administrative body arising from litigation or an
45 administrative proceeding may not be set aside on the grounds that an offer to use a dispute resol-

1 ution program was not made.

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

5 **SECTION 25.** ORS 100.408 is amended to read:

6 100.408. (1) Unless the bylaws [*provide otherwise*] **specify a greater percentage**, a quorum for
7 any meeting of the association of unit owners consists of the number of persons who are entitled to
8 cast 20 percent of the voting rights and who are present in person, by proxy or by absentee ballot,
9 if absentee ballots are permitted by the board of directors, at the beginning of the meeting.

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

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

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

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

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

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

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

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

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

24 **SECTION 26.** ORS 100.409 is amended to read:

25 100.409. (1) Unless other rules of order are required by the declaration or bylaws or by a re-
26 solution of the association or its board of directors, [-]

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

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

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

35 **SECTION 27.** ORS 100.415 is amended to read:

36 100.415. (1) The bylaws shall include a reference to the declaration to which the bylaws relate
37 and shall provide for:

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

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

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

45 (d)(A) The method of calling the annual meeting and all other meetings of the unit owners in

- 1 accordance with ORS 100.407; and
- 2 (B) The percentage of owners that constitutes a quorum **under ORS 100.408**.
- 3 (e)(A) The election [*from among the unit owners*] of a board of directors and the number of per-
- 4 sons constituting the board;
- 5 (B) The terms of office of directors;
- 6 (C) The powers and duties of the board;
- 7 (D) The compensation, if any, of the directors;
- 8 (E) The method of removal from office of directors; and
- 9 (F) The method of filling vacancies on the board.
- 10 (f) The method of calling meetings of the board of directors in accordance with ORS 100.420 and
- 11 a statement that all meetings of the board of directors of the association of unit owners shall be
- 12 open to unit owners.
- 13 (g) The election of a chairperson, a secretary, a treasurer and any other officers of the associ-
- 14 ation.
- 15 (h) The preparation and adoption of a budget in accordance with ORS 100.412.
- 16 (i)(A) The maintenance, repair and replacement of the common elements and association prop-
- 17 erty;
- 18 (B) Payment for the expense of maintenance, repair and replacement of common elements and
- 19 association property and other expenses of the condominium in accordance with ORS 100.530; and
- 20 (C) The method of approving payment vouchers.
- 21 (j) The employment of personnel necessary for the maintenance and repair of the common ele-
- 22 ments.
- 23 (k) The manner of collecting assessments from the unit owners.
- 24 (L) Insurance coverage in accordance with ORS 100.435 and the responsibility for payment of
- 25 the amount of the deductible in an association insurance policy.
- 26 (m) The preparation and distribution of the annual financial statement in accordance with ORS
- 27 100.480.
- 28 (n) The reserve account and the preparation, review and update of the reserve study and the
- 29 maintenance plan required under ORS 100.175.
- 30 (o) The filing of an Annual Report and any amendment with the Real Estate Agency in accord-
- 31 ance with ORS 100.250.
- 32 (p) The method of adopting and of amending administrative rules and regulations governing the
- 33 details of the operation of the condominium and use of the common elements.
- 34 (q) Restrictions on and requirements respecting the enjoyment and maintenance of the units and
- 35 the common elements as are designed to prevent unreasonable interference with the use of their
- 36 respective units and of the common elements by the several unit owners.
- 37 (r) Any restrictions on use or occupancy of units. Any such restrictions created by documents
- 38 other than the bylaws may be incorporated by reference in the bylaws to the official records of the
- 39 county in which the property is located.
- 40 (s) The method of amending the bylaws in accordance with ORS 100.410.
- 41 (t) Any other details regarding the property that the declarant considers desirable. However, if
- 42 a provision required to be in the declaration under ORS 100.105 is included in the bylaws, the voting
- 43 requirements for amending the declaration shall also govern the amendment of the provision in the
- 44 bylaws.
- 45 (u) In the event additional units are proposed to be annexed or created pursuant to ORS 100.125

1 or 100.150, the method of apportioning common expenses in the event new units are added during
2 the course of the fiscal year.

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

5 **SECTION 28.** ORS 100.420 is amended to read:

6 100.420. (1)(a) All meetings of the board of directors of the association of unit owners shall be
7 open to unit owners except that, in the discretion of the board, the [*following matters may be con-*
8 *sidered*] **the board may close the meeting to unit owners and meet** in executive session **to:**

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

11 **(B) Consider the following:**

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

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

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

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

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

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

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

32 (3) In condominiums where the majority of the units are the principal residences of the occu-
33 pants, meetings of the board of directors shall comply with the following:

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

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

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

43 (5) As used in this section, "meeting" means a convening of a quorum of members of the board
44 of directors [*where matters relating to*] **at which** association business [*are*] **is** discussed, except a
45 convening of a quorum of members of the board of directors for the purpose of participating in liti-

1 gation, mediation or arbitration proceedings.

2 **SECTION 29.** ORS 100.480 is amended to read:

3 100.480. (1) An association of unit owners shall retain within this state the documents, infor-
4 mation and records delivered to the association under ORS 100.210 and all other records of the as-
5 sociation for not less than the period specified for the record in ORS 65.771 or any other applicable
6 law, except that:

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

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

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

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

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

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

24 [(3)] (4) Within 90 days after the end of the fiscal year, the board of directors shall:

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

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

28 [(4)] (5) Subject to section 26, chapter 803, Oregon Laws 2003, the association of unit owners
29 of a condominium that has annual assessments exceeding \$75,000 shall cause the financial statement
30 required under subsection [(3)] (4) of this section to be reviewed within 180 days after the end of
31 the fiscal year by an independent certified public accountant licensed in the State of Oregon in ac-
32 cordance with the Statements on Standards for Accounting and Review Services issued by the
33 American Institute of Certified Public Accountants.

34 [(5)] (6) The association of unit owners of a condominium that has annual assessments of \$75,000
35 or less shall cause the most recent financial statement required by subsection [(3)] (4) of this section
36 to be reviewed in the manner described in subsection [(4)] (5) of this section within 180 days after
37 the board of directors receives the petition requesting review signed by at least a majority of the
38 owners.

39 [(6)] (7) An association of unit owners subject to the requirements of subsection [(4)] (5) of this
40 section may elect, on an annual basis, not to comply with the requirements of subsection [(4)] (5)
41 of this section by an affirmative vote of at least 60 percent of the owners, not including the votes
42 of the declarant with respect to units owned by the declarant.

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

45 (A) The amount of assessments due from the owner and unpaid at the time the request was re-

1 ceived, including:

2 (i) Regular and special assessments;

3 (ii) Fines and other charges;

4 (iii) Accrued interest; and

5 (iv) Late payment charges.

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

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

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

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

17 (b) Records kept by or on behalf of the association may be withheld from examination and du-
18 plication to the extent the records concern:

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

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

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

25 (D) Disclosure of information in violation of law.

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

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

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

33 [(9)] **(10)** The association of unit owners shall maintain a copy, suitable for the purpose of du-
34 plication, of the following:

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

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

39 (c) The current operating budget of the association;

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

41 (e) Architectural standards and guidelines, if any.

42 [(10)] **(11)** The association, within 10 business days after receipt of a written request by an
43 owner, shall furnish the requested information required to be maintained under subsection [(9)] **(10)**
44 of this section.

45 [(11)] **(12)** The board of directors, by resolution, may adopt reasonable rules governing the fre-

1 quency, time, location, notice and manner of examination and duplication of association records and
 2 the imposition of a reasonable fee for furnishing copies of any documents, information or records
 3 described in this section. The fee may include reasonable personnel costs incurred to furnish the
 4 information.

5 [(12)] (13) Subsection [(3)] (4) of this section first applies to property submitted to the provisions
 6 of this chapter before January 1, 1982, when the board of directors of the association of unit owners
 7 receives a written request from at least one unit owner that a copy of the annual financial statement
 8 be distributed in accordance with subsection [(3)] (4) of this section.

9 **SECTION 30.** ORS 100.485 is amended to read:

10 100.485. (1) **Except as provided in subsection (2) of this section,** if entered into prior to the
 11 turnover meeting of the condominium, no management agreement, service contract or employment
 12 contract that is directly made by or on behalf of the association, the board of directors or the unit
 13 owners as a group shall be in excess of three years.

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

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

17 (B) **Contracts relating to renewable energy facilities or output serving the condominium,
 18 including facilities leased to the association.**

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

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

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

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

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

26 (B) **Biofuels or hydrogen derived from renewable resources.**

27 [(2)] (3) Any contract or agreement that is subject to subsection (1) of this section entered into
 28 after January 1, 1982, may be terminated without penalty by the association or the board of direc-
 29 tors upon not less than 30 days’ written notice to the other party given not later than 60 days after
 30 the turnover meeting.

31 [(3)] (4) The provisions of the Condominium and Cooperative Abuse Relief Act of 1980 (15 U.S.C.
 32 3601 to 3616), except for 15 U.S.C. 3609 and 3610, shall not apply in the State of Oregon.

33 **SECTION 31.** ORS 100.510 is amended to read:

34 100.510. [(1)] Unless otherwise provided in the declaration[,]:

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

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

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

42 (a) All spaces, nonbearing interior partitions, interior doors and all other fixtures and improve-
 43 ments within the boundaries of the unit;

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

45 (c) All outlets of utility service lines, including but not limited to power, light, gas, hot and cold

1 water, heating, refrigeration, air conditioning and waste disposal within the boundaries of the unit.

2 **SECTION 32.** ORS 100.525 is amended to read:

3 100.525. (1) Unless otherwise provided in the declaration, each unit of a condominium [*shall be*]
4 **is** entitled to one vote.

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

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

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

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

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

18 **SECTION 33.** ORS 100.530 is amended to read:

19 100.530. (1) Unless otherwise provided in the declaration, the common profits of the property
20 shall be distributed among, and the common expenses shall be charged to, the unit owners according
21 to the allocation of undivided interest of each unit in the common elements.

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

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

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

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

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

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

33 (c) The declarant may defer payment of accrued assessments for reserves required under ORS
34 100.175 for a unit until the date the unit is conveyed. However, the declarant may not defer payment
35 of accrued assessments for reserves:

36 (A) Beyond the date of the turnover meeting provided for in the bylaws in accordance with ORS
37 100.210; or

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

40 (d) Failure of the declarant to deposit the balance due within 30 days after the due date con-
41 stitutes a violation under ORS 100.545.

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

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

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

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

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

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

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

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

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

23 **SECTION 34.** ORS 100.540 is amended to read:

24 100.540. (1) Each unit owner may use the common elements in accordance with the purposes for
 25 which they are intended, but may not hinder or encroach upon the lawful rights of the other unit
 26 owners.

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

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

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

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

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

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

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

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

1 **SECTION 35.** ORS 100.600 is amended to read:

2 100.600. (1)(a) Subject to ORS 100.605, the condominium may be terminated if all of the unit
3 owners remove the property from the provisions of this chapter by executing and recording an in-
4 strument to that effect and the holders of all liens affecting the units consent thereto or agree, in
5 either case by instruments duly recorded, that their liens be transferred to the undivided interest
6 of the unit owner in the property after the termination. The instrument shall state the interest of
7 each unit owner and lienholder as determined under ORS 100.610.

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

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

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

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

25 (2) A portion of the property may be removed from the provisions of this chapter by recording
26 simultaneously with the recording officer an amendment to the declaration and an amended plat
27 approved as required under ORS 100.110, 100.115 and 100.135. The amendment to the declaration
28 shall:

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

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

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

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

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

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

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

42 (h) **Be approved by any other mortgagees whose approval is required under the declara-**
43 **tion or bylaws;**

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

45 [*f*] (j) Include a statement by the local governing body or appropriate department thereof that

1 the removal will not violate any applicable planning or zoning regulation or ordinance. The state-
 2 ment may be attached as an exhibit to the amendment.

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

4 (a) Comply with ORS 100.115 (9) and (10);

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

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

10 (4) The tax collector for any taxing unit having a lien for taxes or assessments shall have au-
 11 thority to consent to such a transfer of any tax or assessment lien under subsection (1) of this sec-
 12 tion or the removal of a portion of the property under subsection (2) of this section.

13 **SECTION 36.** ORS 100.105 is amended to read:

14 100.105. (1) A declaration shall contain:

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

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

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

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

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

32
 33
 34 NOTICE

35
 36 THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION AND THE PLAT ARE
 37 BASED ON THE BOUNDARIES OF THE UNITS AS DESCRIBED IN THIS DECLARATION AND
 38 MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PURPOSES.
 39

40
 41 (f) A description of the general common elements.

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

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

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

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

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

4 (i) The method of determining liability for common expenses and right to common profits in ac-
5 cordance with ORS 100.530.

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

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

11 (L) A statement that the designated agent to receive service of process in cases provided in ORS
12 100.550 (1) is named in the Condominium Information Report which will be filed with the Real Estate
13 Agency in accordance with ORS 100.250 (1)(a).

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

16 (n) A statement as to whether or not the association of unit owners pursuant to ORS 100.405 (5)
17 and [(8)] (9) has authority to grant leases, easements, rights of way, licenses and other similar in-
18 terests affecting the general and limited common elements of the condominium and consent to va-
19 cation of roadways within and adjacent to the condominium.

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

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

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

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

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

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

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

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

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

44 (3) Except where expressly prohibited by the declaration and subject to the requirements of ORS
45 100.135 (2) and subsections (9) and (10) of this section:

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

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

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

11 (5) The name of the property shall include the word "condominium" or "condominiums" or the
12 words "a condominium."

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

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

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

18 (b) A statement:

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

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

23 (c) A statement of the total number of tracts of variable property within the condominium, in-
24 cluding:

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (A) A statement that the plat shows the location and dimensions of all nonwithdrawable prop-
10 erty that is labeled “NONWITHDRAWABLE VARIABLE PROPERTY.”

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

13 (C) A statement that, if by the termination date all or a portion of the variable property desig-
14 nated as “nonwithdrawable variable property” has not been reclassified, the property shall auto-
15 matically be reclassified as of the termination date as a general common element of the
16 condominium and any interest in such property held for security purposes shall be automatically
17 extinguished by such classification.

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

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

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

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

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

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

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

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

1 **SECTION 37.** ORS 100.417 is amended to read:

2 100.417. (1) The board of directors of an association of unit owners may act on behalf of the
3 association except as limited by the declaration or bylaws. In the performance of their duties, offi-
4 cers and members of the board of directors shall be governed by this section and the applicable
5 provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377 whether or not the association is incor-
6 porated under ORS chapter 65.

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

9 (3) At least annually, the board of directors of an association shall review the insurance cover-
10 age of the association.

11 (4) The board of directors of the association annually shall cause to be filed the necessary in-
12 come tax returns for the association.

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

15 (6) The board of directors, in the name of the association, shall maintain a current mailing ad-
16 dress.

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

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

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

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

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

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

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

31 (2) Commencing with the fiscal year beginning in calendar year 2004 for the association of a
32 planned community created under ORS 94.550 to 94.783 if the turnover meeting required by ORS
33 94.616 has occurred on or before January 1, 2004.

34 (3) Commencing with the fiscal year following the turnover meeting required by ORS 94.616 for
35 the association of a planned community created under ORS 94.550 to 94.783 on or after January 1,
36 2004.

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

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

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

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

45 (1) Commencing with the fiscal year following the turnover meeting for the association of unit

1 owners of a condominium created prior to January 1, 2004, if the turnover meeting has not yet oc-
2 curred on January 1, 2004.

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

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

8
