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April 10, 2013

VIA E-MAIL (Rep.GeneWhisnant@state.or.us)
and FIRST CLASS MAIL

Representative Gene Whisnant
900 Court St NE, H-471
Salem, Oregon 97301

Re: HB 3007


Dear Rep. Whisnant:

This is to attempt to address concerns I understand you may have relative to a possible conflict between HB 3007 and ORS 94.595. ORS 94.595 requires a homeowners' association declarant to conduct a reserve study; prepare an initial maintenance plan; and establish a reserve account. Attached for your review is a copy of ORS 94.595.

It is unlikely all of these functions could be completed within the timelines offered under HB 3007; alternatively, they may form the basis of an argument that a court can or must extend the 100-day deadline against the will of the park owner.

I would therefore again request that you vote against HB 3007. Thanks again for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Charles M. Greeff', with a long horizontal flourish extending to the right.

Charles M. Greeff

CMG:eg
Attachment
Alliance\Letter Whisnant 01

94.595 Reserve account for maintaining, repairing and replacing common property; reserve study; maintenance plan. (1) The declarant, on behalf of a homeowners association, shall:

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

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

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

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

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

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

- (A) The reserve study described in subsection (3) of this section; or
- (B) Other reliable information.

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

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

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

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

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

(b) The reserve study shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) The reserve account is subject to the requirements and restrictions of ORS 94.670 and any additional restrictions or requirements imposed by the declaration, bylaws or rules of the homeowners association.

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

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

(9) Assessments paid into the reserve account are the property of the association and are not refundable to sellers or owners of lots. [1981 c.782 §15; 1999 c.677 §7; 2001 c.756 §10; 2003 c.569 §8; 2005 c.543 §1; 2007 c.409 §7; 2009 c.641 §4]

(Declarant Control; Turnover of Administrative Control)