

B-Engrossed
House Bill 2823

Ordered by the Senate June 4
Including House Amendments dated April 17 and Senate Amendments
dated June 4

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

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.

Specifies individuals who may control association accounts of planned community or condominium. Requires regular review or audit of association accounts.

Allows accounts to be invested in federally insured account at financial institution in United States.

Specifies investment objectives for association.

Requires association to obtain insurance to protect against dishonest and criminal conduct of representatives of association.

Prevents association from prohibiting display of signs by owners based on content.

A BILL FOR AN ACT

1
2 Relating to communities governed by declaration; creating new provisions; and amending ORS
3 94.550, 94.572, 94.595, 94.616, 94.640, 94.670, 94.680, 100.005, 100.175, 100.210, 100.417, 100.435 and
4 100.480 and sections 24 and 26, chapter 803, Oregon Laws 2003.

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

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

7 94.550. As used in ORS 94.550 to 94.783:

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

11 **(2) "Association account" means an operating account or a reserve account.**

12 **(3) "Association account holder" means an individual:**

13 **(a) Who is designated and authorized to use an association account to transact business**
14 **on behalf of a homeowners association; and**

15 **(b) Whose signature is on file with the financial institution, as defined in ORS 706.008,**
16 **other than an extranational institution at which the association account is established.**

17 [(2)] **(4) "Blanket encumbrance" means a trust deed or mortgage or any other lien or**
18 **encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and af-**
19 **fecting more than one lot in a planned community, or an agreement affecting more than one lot by**
20 **which the developer holds such planned community under an option, contract to sell or trust**
21 **agreement.**

22 [(3)] **(5) "Class I planned community" means a planned community that:**

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

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

1 (b) Has an estimated annual assessment, including an amount required for reserves under ORS
2 94.595, exceeding \$10,000 for all lots or \$100 per lot, whichever is greater, based on:

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

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

9 [(4)] (6) "Class II planned community" means a planned community that:

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

11 (b) Contains at least five lots; and

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

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

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

19 [(5)] (7) "Class III planned community" means a planned community that is not a Class I or II
20 planned community.

21 [(6)] (8) "Common expenses" means expenditures made by or financial liabilities incurred by the
22 homeowners association and includes any allocations to the reserve account under ORS 94.595.

23 [(7)] (9) "Common property" means any real property or interest in real property within a
24 planned community which is owned, held or leased by the homeowners association or owned as
25 tenants in common by the lot owners, or designated in the declaration or the plat for transfer to the
26 association.

27 [(8)] (10) "Condominium" means property submitted to the provisions of ORS chapter 100.

28 [(9)] (11) "Declarant" means any person who creates a planned community under ORS 94.550 to
29 94.785.

30 [(10)] (12) "Declarant control" means any special declarant right relating to administrative
31 control of a homeowners association, including but not limited to:

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

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

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

40 [(11)] (13) "Declaration" means the instrument described in ORS 94.580 which establishes a
41 planned community, and any amendments to the instrument.

42 [(12)] (14) "Governing document" means an instrument or plat relating to common ownership
43 or common maintenance of a portion of a planned community and that is binding upon lots within
44 the planned community.

45 [(13)] (15) "Homeowners association" or "association" means the organization of owners of lots

1 in a planned community, created under ORS 94.625, required by a governing document or formed
2 under ORS 94.572.

3 [(14)] (16) “Majority” or “majority of votes” or “majority of owners” means more than 50 per-
4 cent of the votes in the planned community.

5 [(15)] (17) “Mortgagee” means any person who is:

- 6 (a) A mortgagee under a mortgage;
- 7 (b) A beneficiary under a trust deed; or
- 8 (c) The vendor under a land sale contract.

9 (18) **“Operating account” means an account established and maintained by the home-**
10 **owners association, as required by section 3 of this 2013 Act, to hold moneys of the associ-**
11 **ation other than moneys the association is required to hold in a reserve account.**

12 [(16)] (19) “Owner” means the owner of any lot in a planned community, unless otherwise spec-
13 ified, but does not include a person holding only a security interest in a lot.

14 [(17)] (20) “Percent of owners” or “percentage of owners” means the owners representing the
15 specified voting rights as determined under ORS 94.658.

16 [(18)(a)] (21)(a) “Planned community” means any subdivision under ORS 92.010 to 92.192 that
17 results in a pattern of ownership of real property and all the buildings, improvements and rights
18 located on or belonging to the real property, in which the owners collectively are responsible for
19 the maintenance, operation, insurance or other expenses relating to any property within the planned
20 community, including common property, if any, or for the exterior maintenance of any property that
21 is individually owned.

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

- 23 (A) A condominium under ORS chapter 100;
- 24 (B) A planned community that is exclusively commercial or industrial; or
- 25 (C) A timeshare plan under ORS 94.803 to 94.945.

26 [(19)] (22) “Purchaser” means any person other than a declarant who, by means of a voluntary
27 transfer, acquires a legal or equitable interest in a lot, other than as security for an obligation.

28 [(20)] (23) “Purchaser for resale” means any person who purchases from the declarant more than
29 two lots for the purpose of resale whether or not the purchaser for resale makes improvements to
30 the lots before reselling them.

31 (24) **“Records of an association” or “records kept by or on behalf of an association”**
32 **means information that is prepared, owned, used or retained by a member of the board of**
33 **directors of a homeowners association, or members of a committee formed by the associ-**
34 **ation, in the course of exercising responsibilities to the planned community, including infor-**
35 **mation:**

36 (a) **Provided to or by a member of the board, or a committee formed by the association,**
37 **concerning matters of the association;**

38 (b) **Submitted to a member of the board, or a committee, considering the adoption of**
39 **policies; and**

40 (c) **Documenting communications to or from a member of the board, or a committee,**
41 **concerning policies or practices of the association.**

42 (25) **“Reserve account” means an account established and maintained by the homeowners**
43 **association, as required by section 3 of this 2013 Act, to hold moneys of the association that**
44 **the association is required to hold as reserves.**

45 [(21)] (26) “Special declarant rights” means any rights, in addition to the rights of the declarant

1 as a lot owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to
2 94.783, including but not limited to:

3 (a) Constructing or completing construction of improvements in the planned community which
4 are described in the declaration;

5 (b) Expanding the planned community or withdrawing property from the planned community
6 under ORS 94.580 (3) and (4);

7 (c) Converting lots into common property;

8 (d) Making the planned community subject to a master association under ORS 94.695; or

9 (e) Exercising any right of declarant control reserved under ORS 94.600.

10 [(22)] (27) "Successor declarant" means the transferee of any special declarant right.

11 [(23)] (28) "Turn over" means the act of turning over administrative responsibility pursuant to
12 ORS 94.609 and 94.616.

13 [(24)] (29) "Unit" means a building or portion of a building located upon a lot in a planned
14 community and designated for separate occupancy or ownership, but does not include any building
15 or portion of a building located on common property.

16 [(25)] (30) "Votes" means the votes allocated to lots in the declaration under ORS 94.580 (2).

17 **SECTION 2. Sections 3, 4 and 4a of this 2013 Act are added to and made a part of ORS**
18 **94.550 to 94.783.**

19 **SECTION 3. (1) All moneys of a homeowners association, including assessments and**
20 **declarant subsidies, must be deposited and maintained in the name of the association in one**
21 **or more association accounts until disbursed.**

22 **(2) All expenses of the association must be paid from an association account.**

23 **(3) An association account must be held in a federally insured account, including a cer-**
24 **tificate of deposit, at a financial institution, as defined in ORS 706.008, other than an**
25 **extranational institution.**

26 **(4) An association may deposit assessments collected for reserves required under ORS**
27 **94.595 in the association's operating account, but must transfer the reserves to the**
28 **association's reserve account as soon as practicable.**

29 **(5) An association may not maintain moneys in an account, or at any one institution, in**
30 **an amount that exceeds the insurance limits applicable to the account or institution.**

31 **(6) Except as provided in subsection (8) of this section, an association may hold moneys**
32 **in an association account only in:**

33 **(a) Cash deposits;**

34 **(b) Certificates of deposit; or**

35 **(c) United States Treasury bills, notes or bonds.**

36 **(7) The investment objectives of an association must be:**

37 **(a) Preservation of capital; and**

38 **(b) Maintenance of sufficient liquidity to meet the financial obligations of the planned**
39 **community.**

40 **(8) After the effective date of this 2013 Act, the association:**

41 **(a) May maintain moneys in an investment established before the effective date of this**
42 **2013 Act that does not conform to the requirements of subsection (6) of this section until the**
43 **investment is sold or liquidated.**

44 **(b) May not roll over a mature investment that does not conform to the requirements**
45 **of subsection (6) of this section or reinvest the proceeds of a mature investment in an in-**

1 vestment that is not authorized by subsection (6) of this section.

2 **SECTION 4.** (1) Notwithstanding a provision in the declaration or bylaws of a planned
3 community, unless a resolution adopted by the board of directors of a homeowners associ-
4 ation provides otherwise, only the following individuals may be an association account holder:

5 (a) An individual who is a member of the board of directors, in accordance with ORS
6 94.639.

7 (b) An individual who is an officer of the association who is either:

8 (A) An owner or co-owner of a lot; or

9 (B) A representative of an owner or co-owner of a lot, if the individual meets the quali-
10 fications described in subsection (2) of this section.

11 (2) An individual who is an officer of the association under subsection (1)(b)(B) of this
12 section must meet one of the following qualifications:

13 (a) If a corporation, limited liability company or partnership is the owner or co-owner
14 of a lot, or owns an interest in an entity that owns the lot, the officer of the association
15 representing the entity must be:

16 (A) An officer, employee or agent of the corporation;

17 (B) A member, manager, employee or agent of the limited liability company; or

18 (C) A partner, employee or agent of the partnership.

19 (b) If a trustee holds legal title to a lot in trust for the benefit of the owner of the ben-
20 efiticial interest in the lot, the officer of the association representing the trust must be a
21 trustee.

22 (c) If a court has appointed an executor, administrator, guardian, conservator or other
23 individual to serve in a fiduciary capacity for an owner of a lot, the officer of the association
24 must be the executor, administrator, guardian, conservator or other individual appointed by
25 the court. If the court has appointed an entity to serve in a fiduciary capacity for an owner
26 of a lot, the officer of the association must be an officer or employee of the appointed entity.

27 (3) An association account holder may not delegate the holder's authority to use an as-
28 sociation account to transact business on behalf of the association.

29 **SECTION 4a.** (1) Notwithstanding contrary provisions of a governing document of a
30 planned community, the homeowners association, and the declarant during any period of
31 declarant control, may not prohibit an owner or occupant of a lot from displaying a sign
32 based on the content of the sign:

33 (a) On the lot; or

34 (b) On any other property or structure in the planned community that is under the ex-
35 clusive use and occupancy of the owner.

36 (2) A homeowners association may impose reasonable restrictions on the number and
37 size of signs or the time period during which signs may be displayed.

38 **SECTION 5.** ORS 94.595 is amended to read:

39 94.595. (1) The declarant, on behalf of a homeowners association, shall:

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

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

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

43 (2)(a) A reserve account shall be established to [fund] **provide moneys for** major maintenance,
44 repair or replacement of all items of common property [which] **that** will normally require major
45 maintenance, repair or replacement, in whole or in part, in more than one and less than 30 years,

1 for exterior painting if the common property includes exterior painted surfaces, for other items,
2 whether or not involving common property, if the association has responsibility to maintain the
3 items and for other items required by the declaration or bylaws.

4 (b) The reserve account need not include reserves for those items:

5 (A) That can reasonably be *[funded from the general budget or other funds or]* **provided for with**
6 **moneys in operating** accounts of the association; or

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

9 *[(b)]* (c) The reserve account *[shall be established in the name of the homeowners association. The*
10 *association is responsible for administering the account and for making periodic payments into the ac-*
11 *count]* **must be established and maintained as provided in section 3 of this 2013 Act.**

12 *[(c)]* (d) The reserve portion of the initial assessment determined by the declarant shall be based
13 on:

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

15 (B) Other reliable information.

16 *[(d)]* (e) A reserve account established under this section *[must be funded by]* **may hold only**
17 **moneys obtained from** assessments against the individual lots for which the reserves are estab-
18 lished.

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

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

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

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

28 (b) The reserve study shall:

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

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

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

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

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

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

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

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

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

45 (5)(a) If the declaration or bylaws require a reserve account, the reserve study requirements of

1 subsection (3) of this section and the maintenance plan requirements of subsection (4) of this section
2 first apply to the association of a subdivision that meets the definition of a planned community under
3 ORS 94.550 and is recorded prior to October 23, 1999, when:

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

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

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

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

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

16 [(A) *The board of directors may borrow funds from the reserve account to meet high seasonal de-*
17 *mands 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 a*
20 *reasonable period.*]

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

24 **(6) Except as provided in section 3 (4) of this 2013 Act, moneys in a reserve account must**
25 **be kept separate from other moneys.**

26 **(7) Except as provided in this subsection, moneys in a reserve account may be used only**
27 **for the purposes for which reserves have been established. After owners assume responsi-**
28 **bility for administration of the planned community under ORS 94.616, if the board of direc-**
29 **tors adopts a resolution, which may be an annual continuing resolution, authorizing the**
30 **borrowing of moneys:**

31 **(a) The board of directors may borrow moneys from the reserve account and transfer the**
32 **moneys to an operating account to meet high seasonal demands or unexpected increases in**
33 **operating expenses; and**

34 **(b) Not later than the adoption of the budget for the following year, the board of direc-**
35 **tors shall adopt by resolution a written payment plan providing for repayment of the bor-**
36 **rowed moneys within a reasonable period.**

37 (8)(a) Except as provided under paragraph (b) of this subsection, unless the board of directors
38 under subsection (3) of this section determines that the reserve account will [*be adequately funded*]
39 **have adequate reserves to meet the requirement for reserves** for the following year, the board
40 of directors or the owners may not vote to eliminate [*funding*] **assessment of lots for** a reserve
41 account required under this section or under the declaration or bylaws.

42 (b) Following the turnover meeting described in ORS 94.609, on an annual basis, the board of
43 directors, with the approval of all owners, may elect not to [*fund the reserve account*] **assess lots**
44 **for reserves** for the following year.

45 (9) Assessments paid into the reserve account are the property of the association and are not

1 refundable to sellers or owners of lots.

2 **SECTION 6.** ORS 94.616 is amended to read:

3 94.616. (1) At the meeting called under ORS 94.609, the declarant shall turn over to the home-
4 owners association the responsibility for the administration of the planned community, and the as-
5 sociation shall accept the administrative responsibility from the declarant.

6 (2) If a quorum of the owners is present, the owners shall elect not fewer than the number of
7 directors sufficient to constitute a quorum of the board of directors in accordance with the decla-
8 ration or bylaws of the association.

9 (3) At the meeting called under ORS 94.609, the declarant shall deliver to the association **all**
10 **of the following:**

11 (a) The original or a photocopy of the recorded declaration and copies of the bylaws and the
12 articles of incorporation, if any, of the planned community and any supplements and amendments to
13 the articles or bylaws[;].

14 (b) A deed to the common property in the planned community, unless otherwise provided in the
15 declaration[;].

16 (c) The minute books, including all minutes, and other books and records of the association and
17 the board of directors[;].

18 (d) All rules and regulations adopted by the declarant[;].

19 (e) Resignations of officers and members of the board of directors who are required to resign
20 because of the expiration of any period of declarant control reserved pursuant to ORS 94.600[;].

21 (f) A financial statement. The financial statement:

22 (A) Must consist of a balance sheet and an income and expense statement for the preceding
23 12-month period or the period following the recording of the declaration, whichever period is
24 shorter; and

25 (B) Must be reviewed, in accordance with the Statements on Standards for Accounting and Re-
26 view Services issued by the American Institute of Certified Public Accountants, by an independent
27 certified public accountant licensed in the State of Oregon if the annual assessments of an associ-
28 ation exceed \$75,000[;].

29 *[(g) All funds of the association and control of the funds, including all bank records;]*

30 **(g) All moneys of the association, all documents and records related to association ac-**
31 **counts and all moneys due the association from the declarant for the assessment of lots for**
32 **reserves as required under ORS 94.704.**

33 (h) All tangible personal property that is property of the association, and an inventory of the
34 property[;].

35 (i) Records of all property tax payments for the common property to be administered by the
36 association[;].

37 (j) Copies of any income tax returns filed by the declarant in the name of the association, and
38 supporting records for the returns[;].

39 (k) *[All bank signature cards;]* **Control of all moneys and association accounts.**

40 (L) The reserve account established in the name of the association under ORS 94.595[;].

41 (m) The reserve study and the maintenance plan required under ORS 94.595, including all up-
42 dates and other sources of information that serve as a basis for calculating reserves in accordance
43 with ORS 94.595[;].

44 (n) An operating budget for the portion of the planned community turned over to association
45 administration and a budget for replacement and maintenance of the common property[;].

- 1 (o) A copy of the following, if available:
- 2 (A) The as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;
- 3 (B) The original specifications, indicating all subsequent material changes;
- 4 (C) The plans for underground site service, site grading, drainage and landscaping together with
- 5 cable television drawings;
- 6 (D) Any other plans and information relevant to future repair or maintenance of the property;
- 7 and
- 8 (E) A list of the general contractor and the electrical, heating and plumbing subcontractors re-
- 9 sponsible for construction or installation of common property[;].
- 10 (p) Insurance policies[;].
- 11 (q) Copies of any occupancy permits issued for the planned community[;].
- 12 (r) Any other permits issued by governmental bodies applicable to the planned community in
- 13 force or issued within one year before the date on which the owners assume administrative
- 14 responsibility[;].
- 15 (s) A list of any written warranties on the common property that are in effect and the names
- 16 of the contractor, subcontractor or supplier who made the installation for which the warranty is in
- 17 effect[;].
- 18 (t) A roster of owners and their addresses and telephone numbers, if known, as shown on the
- 19 records of the declarant[;].
- 20 (u) Leases of the common property and any other leases to which the association is a party[;].
- 21 (v) Employment or service contracts in which the association is one of the contracting parties
- 22 or service contracts in which the association or the owners have an obligation or responsibility,
- 23 directly or indirectly, to pay some or all of the fee or charge of the person performing the
- 24 service[; *and*].
- 25 (w) Any other contracts to which the homeowners association is a party.
- 26 (4) [*In order*] To facilitate an orderly transition, during the three-month period following the
- 27 turnover meeting, the declarant or an informed representative shall be available to meet with the
- 28 board of directors on at least three mutually acceptable dates to review the documents delivered
- 29 under subsection (3) of this section.
- 30 (5) If the declarant has complied with this section and unless the declarant has sufficient voting
- 31 rights as a lot owner to control the association, the declarant is not responsible for the failure of
- 32 the owners to elect the number of directors sufficient to constitute a quorum of the board of direc-
- 33 tors and assume control of the association in accordance with subsection (1) of this section. The
- 34 declarant is relieved from further responsibility for the administration of the association, except as
- 35 a lot owner.
- 36 (6) If the owners present do not constitute a quorum or the owners fail to elect the number of
- 37 directors sufficient to constitute a quorum of the board of directors at the turnover meeting held in
- 38 accordance with this section:
- 39 (a) At any time before the election of the number of directors sufficient to constitute a quorum,
- 40 an owner or first mortgagee may call a special meeting for the purpose of election of directors and
- 41 shall give notice of the meeting in accordance with the notice requirements in the bylaws for special
- 42 meetings. The owners and first mortgagees present at the special meeting shall select a person to
- 43 preside over the meeting.
- 44 (b) An owner or first mortgagee may request a court to appoint a receiver as provided in ORS
- 45 94.642.

1 **SECTION 7.** ORS 94.640 is amended to read:

2 94.640. (1) The board of directors of an association may act on behalf of the association except
3 as limited by the declaration and the bylaws. In the performance of their duties, officers and mem-
4 bers of the board of directors are governed by this section and the applicable provisions of ORS
5 65.357, 65.361, 65.367, 65.369 and 65.377, whether or not the association is incorporated under ORS
6 chapter 65.

7 (2) Subject to subsection (7) of this section, unless otherwise provided in the bylaws, the board
8 of directors may fill 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)(a) Unless otherwise provided in the declaration or bylaws, at a meeting of the owners at
16 which a quorum is present, the owners may remove a director from the board of directors, other
17 than directors appointed by the declarant or individuals who are ex officio directors, with or without
18 cause, by a majority vote of owners who are present and entitled to vote.

19 (b) Notwithstanding contrary provisions in the declaration or bylaws:

20 (A) Before a vote to remove a director, owners must give the director whose removal has been
21 proposed an opportunity to be heard at the meeting.

22 (B) The owners must vote on the removal of each director whose removal is proposed as a sep-
23 arate question.

24 (C) Removal of a director by owners is effective only if the matter of removal was an item on
25 the agenda and was stated in the notice of the meeting if notice is required under ORS 94.650.

26 (c) A director who is removed by the owners remains a director until a successor is elected by
27 the owners or the vacancy is filled as provided in subsection (7) of this section.

28 (7) Unless the declaration or bylaws specifically prescribe a different procedure for filling a
29 vacancy created by the removal of a director by owners, the owners shall fill a vacancy created by
30 the removal of a director by the owners at a meeting of owners. The notice of the meeting must
31 state that filling a vacancy is an item on the agenda.

32 (8)(a) All meetings of the board of directors of the association shall be open to owners, except
33 that at the discretion of the board, the board may close the meeting to owners other than board
34 members and meet in executive session to:

35 (A) Consult with legal counsel.

36 (B) Consider the following:

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

38 (ii) Negotiation of contracts with third parties; or

39 (iii) Collection of unpaid assessments.

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

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

5 (9) The meeting and notice requirements in subsections (8) and (10) of this section may not be
6 circumvented by chance or social meetings or by any other means.

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

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

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

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

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

21 (12) The board of directors shall cause the information required to enable the association to
22 comply with ORS 94.670 [(8)] (9) to be maintained and kept current.

23 (13) As used in this section, "meeting" means a convening of a quorum of members of the board
24 of directors at which association business is discussed, except a convening of a quorum of members
25 of the board of directors for the purpose of participating in litigation, mediation or arbitration pro-
26 ceedings.

27 **SECTION 8.** ORS 94.670 is amended to read:

28 94.670. (1) A homeowners association shall retain within this state the documents, information
29 and records delivered to the association under ORS 94.616 and all other records of the association
30 for not less than the period specified for the record in ORS 65.771 or any other applicable law ex-
31 cept that:

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

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

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

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

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

1 [(3)] (2) The association shall keep financial records, **including all records of association ac-**
2 **counts, that are** sufficiently detailed for proper accounting purposes.

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

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

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

8 [(5)] (4) Subject to section 24, chapter 803, Oregon Laws 2003, the association of a planned
9 community that has annual assessments [*exceeding*] **greater than \$75,000 and less than \$500,000**
10 shall cause the financial statement required under subsection [(4)] (3) of this section to be reviewed
11 **in the manner required by subsection (8) of this section** within 180 days after the end of [*the*]
12 **each** fiscal year [*by an independent certified public accountant licensed in the State of Oregon in ac-*
13 *cordance with the Statements on Standards for Accounting and Review Services issued by the Ameri-*
14 *can Institute of Certified Public Accountants*].

15 [(6)] (5) **Subject to section 24, chapter 803, Oregon Laws 2003**, the association of a planned
16 community created on or after January 1, 2004, or the association of a planned community described
17 in ORS 94.572 that has annual assessments of \$75,000 or less, shall cause the most recent financial
18 statement required by subsection [(4)] (3) of this section to be reviewed:

19 (a) In the manner [*described in subsection (5)*] **required by subsection (8)** of this section; **and**

20 (b) Within 180 days after the association receives a petition [*requesting review*] signed by at
21 least a majority of the owners **that requests review of the most recent financial statement**
22 **required by subsection (3) of this section.**

23 (6) **The association of a planned community that has annual assessments of \$500,000 or**
24 **more shall cause the financial statement required under subsection (3) of this section to be**
25 **audited within 180 days after the end of each fiscal year in the manner required by sub-**
26 **section (8) of this section.**

27 (7) An association subject to the [*requirements of subsection (5)*] **review requirements of sub-**
28 **section (4)** of this section may elect, on an annual basis, not to comply with the requirements [*of*]
29 *subsection (5) of this section*] by an affirmative vote of at least 60 percent of the owners, not in-
30 cluding the votes of the declarant with respect to lots owned by the declarant.

31 (8) **The review of financial statements required under subsection (4) or (5) of this section**
32 **and the audits required under subsection (6) of this section must be performed, in accord-**
33 **ance with standards issued by the American Institute of Certified Public Accountants, by an**
34 **independent certified public accountant licensed in Oregon.**

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

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

39 (i) Regular and special assessments;

40 (ii) Fines and other charges;

41 (iii) Accrued interest; and

42 (iv) Late payment charges.

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

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

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

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

9 **(10)(a) An association, and the declarant during any period of declarant control, may not
10 make information confidential or exempt from disclosure to owners that is not made confi-
11 dential or exempt from disclosure by ORS 94.550 to 94.783.**

12 **(b) Except as provided in paragraph (c) of this subsection, the association shall make the
13 documents, information and records described in subsections (1) to (3) of this section and
14 all other records of the association reasonably available for examination and, upon written
15 request, including written requests by electronic mail, facsimile or other electronic commu-
16 nications, available for duplication by an owner and any mortgagee of a lot that makes the
17 request in good faith for a proper purpose.**

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

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

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

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

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

27 (E) Documents, correspondence or management or board reports compiled for or on behalf of the
28 association or the board of directors by its agents or committees for consideration by the board of
29 directors in executive session held in accordance with ORS 94.640 (8).

30 (F) Documents, correspondence or other matters considered by the board of directors in execu-
31 tive session held in accordance with ORS 94.640 (8).

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

34 *[(10)] (11) The association shall maintain a copy, suitable for the purpose of duplication, of the
35 following:*

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

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

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

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

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

42 *[(11)] (12) 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 *[(10)] (11)*
44 of this section.*

45 *[(12)] (13) 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 for furnishing the docu-
4 ments, information or records.

5 **SECTION 9.** ORS 94.680 is amended to read:

6 94.680. (1) If a declaration or bylaws provide that the homeowners association has the sole au-
7 thority to decide whether to repair or reconstruct a unit that has suffered damage or whether a unit
8 must be repaired or reconstructed, the board of directors **of the association** shall obtain blanket
9 all-risk insurance for the full replacement cost of all structures in the planned community. Cost of
10 the coverage shall be a common expense to the association.

11 (2) If the declaration or bylaws contain a provision described in subsection (1) of this section,
12 the declaration or bylaws also shall provide:

13 (a) Requirements of or limitations on repairing or reconstructing damaged or destroyed property;

14 (b) The time within which the repair or reconstruction must begin; and

15 (c) The actions the board of directors must take if:

16 (A) Damage or destruction is not repaired or replaced; or

17 (B) Insurance proceeds exceed or fall short of the costs of repair or reconstruction.

18 **(3) Notwithstanding a provision in the declaration or bylaws, the board of directors, or**
19 **a declarant as provided in subsection (4) of this section, shall obtain and maintain insurance:**

20 **(a) That covers acts of dishonesty, embezzlement and theft by officers, directors, asso-**
21 **ciation employees, contracted community association managers, bookkeepers and other pers-**
22 **sons authorized by the association to handle moneys of the association; and**

23 **(b) In an amount equal to or greater than the sum of assessments on all lots for three**
24 **months plus the total amount of moneys in reserve accounts.**

25 **(4) The declarant, on behalf of the association, shall obtain insurance required under**
26 **subsection (3) of this section within 30 days after the date of conveyance of the first lot in**
27 **the planned community and maintain the insurance until the declarant turns over responsi-**
28 **bility for the administration of the planned community under ORS 94.616.**

29 **SECTION 10.** Section 24, chapter 803, Oregon Laws 2003, as amended by section 38, chapter
30 641, Oregon Laws 2009, is amended to read:

31 **Sec. 24.** The requirements of ORS 94.670 **(4) and (5)** first apply:

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

35 (2) Commencing with the fiscal year beginning in calendar year 2004 for the association of a
36 planned community created under ORS 94.550 to 94.783 if the turnover meeting required by ORS
37 94.616 has occurred on or before January 1, 2004.

38 (3) Commencing with the fiscal year following the turnover meeting required by ORS 94.616 for
39 the association of a planned community created under ORS 94.550 to 94.783 on or after January 1,
40 2004.

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

44 (5) Commencing with the fiscal year beginning in calendar year 2004 for the association of a
45 planned community described in ORS 94.572 if the owners have assumed responsibility for adminis-

1 tration of the planned community on or before January 1, 2004.

2 **SECTION 11.** ORS 94.572 is amended to read:

3 94.572. (1)(a) A Class I or Class II planned community created before January 1, 2002, that was
4 not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 (5)
5 to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652,
6 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695,
7 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 **and**
8 **sections 3, 4 and 4a of this 2013 Act** to the extent that those statutes are consistent with any
9 governing documents. If the governing documents do not provide for the formation of an association,
10 the requirements of this subsection are not effective until the formation of an association in ac-
11 cordance with paragraph (b) of this subsection. If a provision of the governing documents is incon-
12 sistent with this subsection, the owners may amend the governing documents using the procedures
13 in this subsection:

14 (A) In accordance with the procedures for the adoption of amendments in the governing docu-
15 ments and subject to any limitations in the governing documents, the owners may amend the in-
16 consistent provisions of the governing documents to conform to the extent feasible with this section
17 and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641,
18 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670,
19 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733,
20 94.770, 94.775, 94.777 and 94.780 **and sections 3, 4 and 4a of this 2013 Act**. Nothing in this para-
21 graph requires the owners to amend a declaration or bylaws to include the information required by
22 ORS 94.580 or 94.635.

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

24 (i) For an amendment to a recorded governing document other than bylaws, the owners may
25 amend the inconsistent provisions of the document to conform to this section and ORS 94.550, 94.590,
26 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647,
27 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680,
28 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and
29 94.780 **and sections 3, 4 and 4a of this 2013 Act** by a vote of at least 75 percent of the owners in
30 the planned community.

31 (ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the
32 bylaws to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1),
33 (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660,
34 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716,
35 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 **and sections 3, 4 and 4a of this 2013**
36 **Act** by a vote of at least a majority of the owners in the planned community.

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

40 (iv) An amendment to a recorded declaration shall be executed, certified and recorded as pro-
41 vided in ORS 94.590 (2) and (3) and shall be subject to ORS 94.590 (5). An amendment to the bylaws
42 and any other governing document shall be executed and certified as provided in ORS 94.590 (3) and
43 shall be recorded in the office of the recording officer of every county in which the planned com-
44 munity is located if the bylaws or other governing document to which the amendment relates were
45 recorded.

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

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

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

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

11 (i) Name the initiating owners or governing entity;

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

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

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

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

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

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

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

29 (B) At least five business days before the organizational meeting, the initiating owners or gov-
30 erning entity shall cause articles of incorporation and bylaws to be drafted. The bylaws shall in-
31 clude, to the extent applicable, the information required by ORS 94.635.

32 (C) At the organizational meeting:

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

36 (ii) The initiating owners or governing entity shall make available copies of the proposed arti-
37 cles of incorporation and the proposed bylaws.

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

41 (iv) If the owners vote to form an association, the owners shall adopt articles of incorporation
42 and may elect the initial board of directors as provided in the articles of incorporation, adopt bylaws
43 and conduct any other authorized business by an affirmative vote of at least a majority of the
44 owners present. If the owners do not elect the initial board of directors, owners shall elect an in-
45 terim board of directors by an affirmative vote of at least a majority of the owners present to serve

1 until the initial board of directors is elected.

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

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

6 (i) Cause the articles of incorporation to be filed with the Secretary of State under ORS chapter
7 65;

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

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

15 (iv) Cause a statement of association information to be prepared, executed and recorded in ac-
16 cordance with ORS 94.667.

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

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

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

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

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

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

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

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

42 (c) Recorded in the office of the recording officer of every county in which the property is lo-
43 cated.

44 (5) The notice of planned community shall include:

45 (a) The name of the planned community and association as identified in the recorded declaration,

1 conditions, covenants and restrictions or other governing document and, if different, the current
2 name of the association;

3 (b) A list of the properties, described as required for recordation in ORS 93.600, within the ju-
4 risdiction of the association;

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

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

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

13 (f) If an association is formed under subsection (1)(b)(A) of this section, a statement to that ef-
14 fect.

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

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

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

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

26 (10) As used in this section:

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

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

34 **SECTION 12.** ORS 100.005 is amended to read:

35 100.005. As used in this chapter, unless the context requires otherwise:

36 (1) "Assessment" means any charge imposed or levied by the association of unit owners on or
37 against a unit owner or unit pursuant to provisions of the declaration or the bylaws of the condo-
38 minium or provisions of ORS 100.005 to 100.910.

39 **(2) "Association account" means an operating account or a reserve account.**

40 **(3) "Association account holder" means an individual:**

41 **(a) Who is designated and authorized to use an association account to transact business**
42 **on behalf of an association of unit owners; and**

43 **(b) Whose signature is on file with the financial institution, as defined in ORS 706.008,**
44 **other than an extranational institution at which the account is established.**

45 [(2)] **(4) "Association of unit owners" or "association" means the association provided for under**

1 ORS 100.405.

2 [(3)] (5) "Association property" means any real property or interest in real property acquired,
3 held or possessed by the association under ORS 100.405.

4 [(4)] (6) "Blanket encumbrance" means a trust deed or mortgage or any other lien or
5 encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and af-
6 fecting more than one unit in a condominium, or an agreement affecting more than one such unit
7 by which the developer holds such condominium under an option, contract to sell or trust agree-
8 ment.

9 [(5)] (7) "Building" means a multiple-unit building or single-unit buildings, or any combination
10 thereof, comprising a part of the property. "Building" also includes a floating structure described
11 in ORS 100.020 (3)(b)(D).

12 [(6)] (8) "Commissioner" means the Real Estate Commissioner.

13 [(7)] (9) "Common elements" means the general common elements and the limited common ele-
14 ments.

15 [(8)] (10) "Common expenses" means:

- 16 (a) Expenses of administration, maintenance, repair or replacement of the common elements;
17 (b) Expenses agreed upon as common by all the unit owners; and
18 (c) Expenses declared common by ORS 100.005 to 100.625 or by the declaration or the bylaws
19 of the particular condominium.

20 [(9)] (11) "Condominium" means:

- 21 (a) With respect to property located within this state:
22 (A) The land, if any, whether fee simple, leasehold, easement or other interest or combination
23 thereof, and whether contiguous or noncontiguous;
24 (B) Any buildings, improvements and structures on the property; and
25 (C) Any easements, rights and appurtenances belonging to the property submitted to the pro-
26 visions of ORS 100.005 to 100.625; and
27 (b) With respect to property located outside this state, the property that has been committed to
28 the condominium form of ownership in accordance with the jurisdiction within which the property
29 is located.

30 [(10)] (12) "Conversion condominium" means a condominium in which there is a building, im-
31 provement or structure that was occupied prior to any negotiation and that is:

- 32 (a) Residential in nature, at least in part; and
33 (b) Not wholly commercial or industrial, or commercial and industrial, in nature.

34 [(11)] (13) "Declarant" means a person who records a declaration under ORS 100.100 or a sup-
35 plemental declaration under ORS 100.110.

36 [(12)] (14) "Declaration" means the instrument described in ORS 100.100 by which the condo-
37 minium is created and as modified by any amendment recorded in accordance with ORS 100.135 or
38 supplemental declaration recorded in accordance with ORS 100.120.

39 [(13)] (15) "Developer" means a declarant or any person who purchases an interest in a condo-
40 minium from declarant, successor declarant or subsequent developer for the primary purpose of re-
41 sale.

42 [(14)] (16) "Flexible condominium" means a condominium containing property that may be re-
43 classified or withdrawn from the condominium pursuant to ORS 100.150 (1).

44 [(15)] (17) "General common elements," unless otherwise provided in a declaration, means all
45 portions of the condominium that are not part of a unit or a limited common element, including but

1 not limited to the following:

2 (a) The land, whether fee simple, leasehold, easement, other interest or combination thereof,
3 together with any rights and appurtenances;

4 (b) The foundations, columns, girders, beams, supports, bearing and shear walls, windows, except
5 glazing and screening, unit access doors, except glazing and screening, roofs, halls, corridors, lob-
6 bies, stairs, fire escapes, entrances and exits of a building;

7 (c) The basements, yards, gardens, parking areas and outside storage spaces;

8 (d) Installations of central services such as power, light, gas, hot and cold water, heating, re-
9 frigeration, air conditioning, waste disposal and incinerating;

10 (e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus
11 and installations existing for common use;

12 (f) The premises for the lodging of janitors or caretakers of the property; and

13 (g) All other elements of a building and the condominium necessary or convenient to their ex-
14 istence, maintenance and safety, or normally in common use.

15 [(16)] (18) "Leasehold" means the interest of a person, firm or corporation who is the lessee
16 under a lease from the owner in fee and who files a declaration creating a condominium under ORS
17 100.100.

18 [(17)] (19) "Limited common elements" means those common elements designated in the decla-
19 ration, as reserved for the use of a certain unit or number of units, to the exclusion of the other
20 units.

21 [(18)] (20) "Majority" or "majority of unit owners" means more than 50 percent of the voting
22 rights allocated to the units by the declaration.

23 [(19)] (21) "Mortgagee" means any person who is:

24 (a) A mortgagee under a mortgage;

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

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

27 [(20)] (22) "Negotiation" means any activity preliminary to the execution by either developer
28 or purchaser of a unit sales agreement, including but not limited to advertising, solicitation and
29 promotion of the sale of a unit.

30 [(21)] (23) "Nonwithdrawable property" means property which pursuant to ORS 100.150 (1)(b):

31 (a) Is designated nonwithdrawable in the declaration and on the plat; and

32 (b) Which may not be withdrawn from the condominium without the consent of all of the unit
33 owners.

34 (24) "Operating account" means an account established and maintained by the associ-
35 ation of unit owners, as required by section 14 of this 2013 Act, to hold moneys of the asso-
36 ciation other than moneys the association is required to hold in a reserve account.

37 [(22)] (25) "Percent of owners" or "percentage of owners" means the percent of the voting rights
38 determined under ORS 100.525.

39 [(23)] (26) "Purchaser" means an actual or prospective purchaser of a condominium unit pursu-
40 ant to a sale.

41 [(24)] (27) "Recording officer" means the county officer charged with the duty of filing and re-
42 cording deeds and mortgages or any other instruments or documents affecting the title to real
43 property.

44 (28) "Records of an association" or "records kept by or on behalf of an association"
45 means information that is prepared, owned, used or retained by a member of the board of

1 **directors of an association of unit owners, or members of a committee formed by the asso-**
2 **ciation, in the course of exercising responsibilities to the condominium, including informa-**
3 **tion:**

4 (a) **Provided to or by a member of the board, or a committee formed by the association,**
5 **concerning matters of the association;**

6 (b) **Submitted to a member of the board, or a committee, considering the adoption of**
7 **policies; and**

8 (c) **Documenting communications to or from a member of the board, or a committee,**
9 **concerning policies or practices of the association.**

10 [(25)] (29) "Reservation agreement" means an agreement relating to the future sale of a unit
11 which is not binding on the purchaser and which grants purchaser the right to cancel the agreement
12 without penalty and obtain a refund of any funds deposited at any time until purchaser executes a
13 unit sales agreement.

14 (30) **"Reserve account" means an account established and maintained by the association**
15 **of unit owners, as required by section 14 of this 2013 Act, to hold moneys of the association**
16 **that the association is required to hold as reserves.**

17 [(26)] (31) "Sale" includes every disposition or transfer of a condominium unit, or an interest
18 or estate therein, by a developer, including the offering of the property as a prize or gift when a
19 monetary charge or consideration for whatever purpose is required by the developer. "Interest or
20 estate" includes a lessee's interest in a unit for more than three years or less than three years if
21 the interest may be renewed under the terms of the lease for a total period of more than three years.
22 "Interest or estate" does not include any interest held for security purposes or a timeshare regu-
23 lated or otherwise exempt under ORS 94.803 and 94.807 to 94.945.

24 [(27)] (32) "Special declarant right" means any right, in addition to the regular rights of the
25 declarant as a unit owner, reserved for the benefit of or created by the declarant under the decla-
26 ration, bylaws or the provisions of this chapter.

27 [(28)] (33) "Staged condominium" means a condominium which provides for annexation of addi-
28 tional property pursuant to ORS 100.115 and 100.120.

29 [(29)] (34) "Successor declarant" means the transferee of any special declarant right.

30 [(30)] (35) "Termination date" means that date described in ORS 100.105 (2)(b) or (7)(d).

31 [(31)] (36) "Transitional committee" means the committee provided for under ORS 100.205.

32 [(32)] (37) "Turnover meeting" means the meeting provided for under ORS 100.210.

33 [(33)] (38) "Unit" or "condominium unit" means a part of the property which:

34 (a) Is described in ORS 100.020 (3);

35 (b) Is intended for any type of independent ownership; and

36 (c) The boundaries of which are described pursuant to ORS 100.105 (1)(d).

37 [(34)] (39) "Unit designation" means the number, letter or combination thereof designating a unit
38 in the declaration and on the plat.

39 [(35)] (40) "Unit owner" means, except to the extent the declaration or bylaws provide other-
40 wise, the person owning fee simple interest in a unit, the holder of a vendee's interest in a unit
41 under a recorded installment contract of sale and, in the case of a leasehold condominium, the
42 holder of the leasehold estate in a unit.

43 [(36)] (41) "Unit sales agreement" means a written offer or agreement for the sale of a condo-
44 minium unit which when fully executed will be binding on all parties. "Unit sales agreement" in-
45 cludes but is not limited to an earnest money receipt and agreement to purchase and other such

1 agreements which serve as an agreement of sale for a cash transaction or which are preliminary to
2 the execution of an installment contract of sale, but does not include a reservation agreement.

3 [(37)] (42) "Variable property" means property described in ORS 100.150 (2) and designated as
4 variable property in the declaration and on the plat.

5 [(38)] (43) "Voting rights" means the portion of the votes allocated to a unit by the declaration
6 in accordance with ORS 100.105 (1)(j).

7 **SECTION 13.** Sections 14, 15 and 15a of this 2013 Act are added to and made a part of
8 ORS chapter 100.

9 **SECTION 14.** (1) All moneys of an association of unit owners, including assessments and
10 declarant subsidies, must be deposited and maintained in the name of the association in one
11 or more association accounts until disbursed.

12 (2) All expenses of the association must be paid from an association account.

13 (3) An association account must be held in a federally insured account, including a cer-
14 tificate of deposit, at a financial institution, as defined in ORS 706.008, other than an
15 extranational institution.

16 (4) An association may deposit assessments collected for reserves required under ORS
17 100.175 in the association's operating account, but must transfer the reserves to the
18 association's reserve account as soon as practicable.

19 (5) The association may not maintain moneys in an account, or at any one institution,
20 in an amount that exceeds the insurance limits applicable to the account or institution.

21 (6) Except as provided in subsection (8) of this section, an association may hold moneys
22 in an association account only in:

23 (a) Cash deposits;

24 (b) Certificates of deposit; or

25 (c) United States Treasury bills, notes or bonds.

26 (7) The investment objectives of an association must be:

27 (a) Preservation of capital; and

28 (b) Maintenance of sufficient liquidity to meet the financial obligations of the condomin-
29 ium.

30 (8) After the effective date of this 2013 Act, the association:

31 (a) May maintain moneys in an investment established before the effective date of this
32 2013 Act that does not conform to the requirements of subsection (6) of this section until the
33 investment is sold or liquidated.

34 (b) May not roll over a mature investment that does not conform with the requirements
35 of subsection (6) of this section or reinvest the proceeds of a mature investment in an in-
36 vestment that is not authorized by subsection (6) of this section.

37 **SECTION 15.** (1) Notwithstanding a provision in the declaration or bylaws of a condo-
38 minium, unless a resolution adopted by the board of directors of an association of unit
39 owners provides otherwise, only the following individuals may be an association account
40 holder:

41 (a) An individual who is a member of the board of directors in accordance with ORS
42 100.416; and

43 (b) An individual who is an officer of the association who is either:

44 (A) An owner or co-owner of a unit; or

45 (B) A representative of an owner or co-owner of a unit, if the individual meets the qual-

1 **ifications described in subsection (2) of this section.**

2 **(2) An individual who is an officer of the association under subsection (1)(b)(B) of this**
3 **section must meet one of the following qualifications:**

4 **(a) If a corporation, limited liability company or partnership is the owner or co-owner**
5 **of a unit, or owns an interest in an entity that owns the unit, the officer of the association**
6 **representing the entity must be:**

7 **(A) An officer, employee or agent of the corporation;**

8 **(B) A member, manager, employee or agent of the limited liability company; or**

9 **(C) A partner, employee or agent of the partnership.**

10 **(b) If a trustee holds legal title to a unit in trust for the benefit of the owner of the**
11 **beneficial interest in the unit, the officer of the association representing the trust must be**
12 **a trustee.**

13 **(c) If a court has appointed an executor, administrator, guardian, conservator or other**
14 **individual to serve in a fiduciary capacity for a unit owner, the officer of the association**
15 **must be the executor, administrator, guardian, conservator or other individual appointed by**
16 **the court. If the court appointed an entity to serve in a fiduciary capacity for a unit owner,**
17 **the officer of the association must be an officer or employee of the appointed entity.**

18 **(3) An association account holder may not delegate the holder's authority to use an as-**
19 **sociation account to transact business on behalf of the association.**

20 **SECTION 15a. (1) Notwithstanding contrary provisions of the declaration and bylaws of**
21 **a condominium, the association of unit owners, and the declarant during any period of**
22 **declarant control, may not prohibit a unit owner or occupant of a unit from displaying a sign**
23 **based on the content of the sign:**

24 **(a) From within the unit;**

25 **(b) In a space assigned to the unit;**

26 **(c) In a limited common element with the written approval of the unit owner of each unit**
27 **to which use of the limited common element is reserved; or**

28 **(d) On any other property or structures in the condominium that are under the exclusive**
29 **use and occupancy of the owner.**

30 **(2) An association of unit owners may impose reasonable restrictions on the number and**
31 **size of signs or the time period during which signs may be displayed.**

32 **SECTION 16. ORS 100.175 is amended to read:**

33 100.175. (1) The declarant, on behalf of the association of unit owners, shall:

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

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

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

37 (2)(a) A reserve account shall be established to [*fund*] **provide moneys for** major maintenance,
38 repair or replacement of those common elements all or part of which will normally require major
39 maintenance, repair or replacement in more than one and less than 30 years, for exterior painting
40 if the common elements include exterior painted surfaces, and for such other items as may be re-
41 quired by the declaration or bylaws.

42 (b) The reserve account need not include:

43 (A) **Reserves for those** items that can reasonably be [*funded from the general budget or other*
44 *funds or*] **provided for with moneys in operating** accounts of the association; or

45 (B) A reserve for limited common elements for which maintenance and replacement are the re-

1 sponsibility of one or more, but less than all, unit owners under the provisions of the declaration
2 or bylaws.

3 [(b)] (c) The reserve account *[shall be established in the name of the association of unit owners.*
4 *The association is responsible for administering the account and for making periodic payments into the*
5 *account]* **must be established and maintained as provided in section 14 of this 2013 Act.**

6 [(c)] (d) The reserve portion of the initial assessment determined by the declarant shall be based
7 on:

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

11 [(d)] (e) The reserve account *[must be funded by]* **may hold only moneys obtained from** as-
12 **essments** against the individual units for the purposes for which the reserve account is established.

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

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

- 19 (A) Adjust the amount of payments in accordance with the study or review; and
- 20 (B) Provide for other reserve items that the board of directors, in its discretion, may deem ap-
21 propriate.

22 (b) The reserve study shall:

- 23 (A) Identify all items for which reserves are or will be established;
- 24 (B) Include the estimated remaining useful life of each item as of the date of the reserve study;
25 and
- 26 (C) Include for each item, as applicable, an estimated cost of maintenance and repair and re-
27 placement at the end of the item's useful life.

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

- 31 (A) Describe the maintenance, repair and replacement to be conducted;
- 32 (B) Include a schedule for the maintenance, repair and replacement;
- 33 (C) Be appropriate for the size and complexity of the maintenance, repair and replacement re-
34 sponsibility of the association; and
- 35 (D) Address issues that include but are not limited to warranties and the useful life of the items
36 for which the association has maintenance, repair or replacement responsibility.

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

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

- 43 (A) After the sale of the first unit to a person other than a successor declarant, if the condo-
44 minium is created on or after September 27, 2007; or
- 45 (B) If the condominium was created before September 27, 2007, notwithstanding any requirement

1 in the declaration or bylaws.

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

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

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

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

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

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

18 [(b) *After the individual unit owners have assumed administrative responsibility for the association*
19 *under ORS 100.210, if the board of directors has adopted a resolution, which may be an annual con-*
20 *tinuing resolution, authorizing the borrowing of funds:*]

21 [(A) *The board of directors may borrow funds from the reserve account to meet high seasonal de-*
22 *mands on the regular operating funds or to meet unexpected increases in expenses.*]

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

26 [(8) *The reserve account is subject to the requirements and restrictions of ORS 100.480 and any*
27 *additional requirements or restrictions imposed by the declaration, bylaws or rules of the association*
28 *of unit owners.*]

29 **(7) Except as provided in section 14 (4) of this 2013 Act, moneys in a reserve account**
30 **must be kept separate from other moneys.**

31 **(8) Except as provided in this subsection, moneys in a reserve account may be used only**
32 **for the purposes for which reserves have been established. After unit owners assume re-**
33 **sponsibility for administration of the association under ORS 100.210, if the board of directors**
34 **adopts a resolution, which may be an annual continuing resolution, authorizing the borrow-**
35 **ing of moneys:**

36 **(a) The board of directors may borrow moneys from the reserve account and transfer the**
37 **moneys to an operating account to meet high seasonal demands or unexpected increases in**
38 **operating expenses; and**

39 **(b) Not later than the adoption of the budget for the following year, the board of direc-**
40 **tors shall adopt by resolution a written payment plan providing for repayment of the bor-**
41 **rowed moneys within a reasonable period.**

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

44 (10)(a) Except as provided under paragraph (b) of this subsection, unless the board of directors
45 under subsection (3) of this section determines that the reserve account will [*be adequately funded*]

1 **have adequate reserves to meet the requirement for reserves** for the following year, the board
2 of directors or the **unit** owners may not vote to eliminate [*funding*] **assessment of units for a re-**
3 **serve account** required under this section or under the declaration or bylaws.

4 (b) Following the turnover meeting described in ORS 100.210, on an annual basis, the board of
5 directors, with the approval of all **unit** owners, may elect not to [*fund the reserve account*] **assess**
6 **units for reserves** for the following year.

7 **SECTION 17.** ORS 100.210 is amended to read:

8 100.210. (1) A turnover meeting shall be called by the declarant within 90 days of the expiration
9 of any period of declarant control reserved in the declaration or bylaws under ORS 100.200. If no
10 control has been reserved, the declarant shall call the turnover meeting within 90 days of the earlier
11 of:

12 (a) In a single stage condominium, three years from the date of conveyance of the first unit to
13 a person other than a successor declarant or conveyance of 50 percent of the units.

14 (b) In a staged or flexible condominium, seven years from the date of conveyance of the first
15 unit to a person other than the declarant or conveyance to persons other than a successor declarant
16 of 50 percent of the total number of units which the declarant may submit to the provisions of this
17 chapter under ORS 100.125 or 100.150.

18 (2) The declarant shall give notice of the turnover meeting in accordance with the bylaws of the
19 condominium to each unit owner at least 10 but not more than 50 days prior to the meeting. The
20 notice shall state the purpose of the meeting and the time and place where it is to be held.

21 (3) If the meeting required under subsection (1) of this section is not called by the declarant
22 within the time specified, the meeting may be called and notice given by a unit owner or any first
23 mortgagee of a unit.

24 (4) At the turnover meeting:

25 (a) The declarant shall relinquish control of the administration of the association of unit owners
26 and the unit owners shall assume the control;

27 (b) If a quorum of the unit owners is present, the unit owners shall elect not fewer than the
28 number of directors sufficient to constitute a quorum of the board of directors in accordance with
29 the declaration or bylaws of the condominium; and

30 (c) The declarant shall deliver to the association the items specified in subsection (5) of this
31 section.

32 (5) At the turnover meeting the declarant shall deliver to the association all property of the unit
33 owners and the association of unit owners held or controlled by the declarant including, but not
34 limited to, the following items, if applicable:

35 (a) The original or a photocopy of the recorded declaration and bylaws of the condominium and
36 any supplements and amendments thereto.

37 (b) A copy of the articles of incorporation.

38 (c) The minute books, including all minutes, and other books and records of the association.

39 (d) The reserve study, the maintenance plan and all updates described in ORS 100.175 and other
40 sources of information that serve as a basis for calculating reserves in accordance with ORS 100.175.

41 (e) Any rules and regulations which have been promulgated.

42 (f) Resignations of officers and members of the board of directors who are required to resign
43 because of the expiration of any period of declarant control reserved under ORS 100.200.

44 (g) A financial statement. The financial statement:

45 (A) Must consist of a balance sheet and an income and expense statement for the preceding

1 12-month period or the period following the recording of the declaration, whichever period is
2 shorter.

3 (B) Must be reviewed, in accordance with the Statements on Standards for Accounting and Re-
4 view Services issued by the American Institute of Certified Public Accountants, by an independent
5 certified public accountant licensed in the State of Oregon if the annual assessments of an associ-
6 ation of unit owners exceed \$75,000.

7 *[(h) Association funds or control thereof, including, but not limited to, funds for reserve required*
8 *under ORS 100.530 (3)(b) and any bank signature cards.]*

9 **(h) All moneys of the association and control of all moneys and association accounts, all**
10 **documents and records related to association accounts and all moneys due the association**
11 **from the declarant for the assessment of units for reserves as required under ORS 100.530.**

12 (i) All tangible personal property that is property of the association and an inventory of such
13 property.

14 (j) A copy of the following, if available:

15 (A) The as-built architectural, structural, engineering, mechanical, electrical and plumbing plans.

16 (B) The original specifications indicating thereon all material changes.

17 (C) The plans for underground site service, site grading, drainage and landscaping together with
18 cable television drawings.

19 (D) Any other plans and information relevant to future repair or maintenance of the property.

20 (k) Insurance policies.

21 (L) Copies of any occupancy permits which have been issued for the condominium.

22 (m) Any other permits issued by governmental bodies applicable to the condominium in force
23 or issued within one year prior to the date the unit owners assume control of the administration
24 of the association of unit owners.

25 (n) A list of the general contractor and the subcontractors responsible for construction or in-
26 stallation of the major plumbing, electrical, mechanical and structural components of the common
27 elements.

28 (o) A roster of unit owners and their addresses and telephone numbers, if known, as shown on
29 the records of the declarant.

30 (p) Leases of the common elements and any other leases to which the association is a party.

31 (q) Employment or service contracts in which the association is one of the contracting parties
32 or service contracts in which the association or the unit owners have an obligation or responsibility,
33 directly or indirectly, to pay some or all of the fee or charge of the person performing the service.

34 (r) Any other contracts to which the association of unit owners is a party.

35 (6) *[In order]* To facilitate an orderly transition, during the three-month period following the
36 turnover meeting, the declarant or an informed representative shall be available to meet with the
37 board of directors on at least three mutually acceptable dates to review the documents delivered
38 under subsection (5) of this section.

39 (7) If the declarant has complied with this section, unless the declarant otherwise has sufficient
40 voting rights as a unit owner to control the association, the declarant is not responsible for the
41 failure of the unit owners to elect the number of directors sufficient to constitute a quorum of the
42 board of directors and assume control of the association in accordance with subsection (4) of this
43 section. The declarant shall be relieved of any further responsibility for the administration of the
44 association except as a unit owner of any unsold unit.

45 (8) If the unit owners present do not constitute a quorum or the unit owners fail to elect the

1 number of directors sufficient to constitute a quorum of the board of directors at the turnover
2 meeting held in accordance with subsection (1) of this section:

3 (a) At any time before the election of the number of directors sufficient to constitute a quorum,
4 a unit owner or first mortgagee of a unit may call a special meeting for the purpose of election of
5 directors and shall give notice of the meeting in accordance with the notice requirements in the
6 bylaws for special meetings. The unit owners and first mortgagees present at the special meeting
7 shall select a person to preside over the meeting.

8 (b) A unit owner or first mortgagee of a unit may request a court to appoint a receiver as pro-
9 vided in ORS 100.418.

10 **SECTION 18.** ORS 100.417 is amended to read:

11 100.417. (1) The board of directors of an association of unit owners may act on behalf of the
12 association except as limited by the declaration or bylaws. In the performance of their duties, offi-
13 cers and members of the board of directors shall be governed by this section and the applicable
14 provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377 whether or not the association is incor-
15 porated under ORS chapter 65.

16 (2) Subject to subsection (8) of this section, unless otherwise provided in the bylaws, the board
17 of directors of an association may fill vacancies in its membership for the unexpired portion of any
18 term.

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

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

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

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

27 (7) The board of directors shall cause to be maintained and kept current the information re-
28 quired to enable the association to comply with ORS 100.480 [(11)] (12).

29 (8)(a) Unless otherwise provided in the declaration or bylaws, at a meeting of the unit owners
30 at which a quorum is present, the unit owners may remove a director from the board of directors,
31 other than directors appointed by the declarant or individuals who are ex officio directors, with or
32 without cause, by a majority vote of unit owners who are present and entitled to vote.

33 (b) Notwithstanding contrary provisions in the declaration or bylaws:

34 (A) Before a vote to remove a director, unit owners must give the director whose removal has
35 been proposed an opportunity to be heard at the meeting.

36 (B) The unit owners must vote on the removal of each director whose removal is proposed as
37 a separate question.

38 (C) Removal of a director by unit owners is effective only if the matter of removal was an item
39 on the agenda and was stated in the notice of the meeting required under ORS 100.407.

40 (c) A director who is removed by the unit owners remains a director until a successor is elected
41 by the unit owners or the vacancy is filled as provided in subsection (9) of this section.

42 (9) Unless the declaration or bylaws specifically prescribe a different procedure for filling a
43 vacancy created by the removal of a director by unit owners, the unit owners shall fill a vacancy
44 created by the removal of a director by the unit owners at a meeting of unit owners. The notice of
45 the meeting must state that filling a vacancy is an item on the agenda.

1 **SECTION 19.** ORS 100.435 is amended to read:

2 100.435. (1) If the bylaws provide that *[the]* **an** association of unit owners has the sole authority
3 to decide whether to repair or reconstruct a unit that has suffered damage or that a unit must be
4 repaired or reconstructed, the board of directors **of the association** shall obtain, *[and]* maintain at
5 all times and *[shall pay for]* **pay**, out of the common expense funds, **for** the following insurance
6 covering both the common elements and individual units:

7 (a) Property insurance including, but not limited to, fire, extended coverage, vandalism and ma-
8 licious mischief; and

9 (b) Insurance covering the legal liability of the association of unit owners, the unit owners in-
10 dividually and the manager including, but not limited to, the board of directors, the public and the
11 unit owners and their invitees or tenants, incident to ownership, supervision, control or use of the
12 property. There may be excluded from the policy required under this paragraph, coverage of a unit
13 owner, other than coverage as a member of the association of unit owners or board of directors, for
14 liability arising out of acts or omissions of that unit owner and liability incident to the ownership
15 or use of the part of the property as to which that unit owner has the exclusive use or occupancy.
16 Liability insurance required under this paragraph shall be issued on a comprehensive liability basis
17 and shall provide a cross liability indorsement providing that the rights of a named insured under
18 the policy do not prejudice any action against another named insured.

19 (2) If the bylaws require the individual unit owners to obtain insurance for their units, the by-
20 laws also shall contain a provision requiring the board of directors to obtain the following insurance
21 covering the common elements:

22 (a) Property insurance including, but not limited to, fire, extended coverage, vandalism and ma-
23 licious mischief; and

24 (b) Insurance covering the legal liability of the association of unit owners and the manager in-
25 cluding, but not limited to, the board of directors, to the public or the unit owners and their invitees
26 or tenants, incident to supervision, control or use of the property.

27 (3) The board of directors shall obtain, if reasonably available, terms in insurance policies under
28 this section that provide a waiver of subrogation by the insurer as to any claims against the board
29 of directors of the association.

30 (4) Notwithstanding a provision in the declaration or bylaws of a condominium, including a
31 condominium created before September 27, 2007, that imposes a maximum deductible amount of
32 \$10,000 or less in an association insurance policy, if the board of directors determines that it is in
33 the best interest of the association of unit owners and of the unit owners, as provided in subsection
34 (5) of this section, the board may adopt a resolution authorizing the association to obtain and
35 maintain an insurance policy with a deductible amount exceeding the specified maximum, but not
36 in excess of the greater of:

37 (a) The maximum deductible acceptable to the Federal National Mortgage Association; or

38 (b) \$10,000.

39 (5) In making the determination under subsection (4) of this section, the board of directors shall
40 consider such factors as the availability and cost of insurance and the loss experience of the asso-
41 ciation.

42 (6) If the declaration or bylaws of a condominium created before September 27, 2007, do not
43 assign the responsibility for payment of the amount of the deductible in an association insurance
44 policy, the board of directors may adopt a resolution that assigns the responsibility for payment of
45 the amount of the deductible. The resolution must include, but need not be limited to:

- 1 (a) The circumstances under which the deductible will be charged against:
2 (A) A unit owner or the unit owners affected by a loss; or
3 (B) All unit owners;
4 (b) The allocation of the deductible charged under paragraph (a) of this subsection; and
5 (c) If a unit owner and the association have duplicate insurance coverage, the insurance policy
6 that is primary, unless otherwise provided in the declaration or bylaws.
- 7 (7) If the board of directors adopts a resolution described in subsection (6) of this section, the
8 resolution may require that a unit owner, in addition to any other insurance required by the decla-
9 ration or bylaws, obtain and maintain:
- 10 (a) An insurance policy that insures the unit owner's unit and appurtenant limited common el-
11 ements for not less than the amount of the deductible in the association's insurance policy for which
12 the unit owner may be responsible and that insures the unit owner's personal property for any loss
13 or damage; and
14 (b) Comprehensive liability insurance that includes, but is not limited to, coverage for negligent
15 acts of unit owners and tenants, guests of unit owners and tenants and occupants of other units for
16 damage to the general and limited common elements, to other units and to the personal property
17 of other persons that is located in other units or the common elements.
- 18 (8) Unless otherwise provided in the declaration or bylaws, the board of directors may adopt a
19 resolution that:
- 20 (a) Prescribes a procedure for processing insurance claims. The procedure may require that all
21 claims against the association's insurance policy be processed through and coordinated by the board
22 of directors or the managing agent, if authorized by the board.
- 23 (b) Assigns the responsibility for payment of charges for handling claims, including any charges
24 by a managing agent.
- 25 (9) Not later than 10 days after adoption of a resolution under subsection (4), (6) or (8) of this
26 section, the board of directors shall ensure that a copy of the resolution and a notice described in
27 subsection (10) of this section are:
- 28 (a) Delivered to each unit owner; or
29 (b) Mailed to the mailing address of each unit owner or to the mailing address designated in
30 writing by the unit owner.
- 31 (10) The notice required under subsection (9) of this section shall:
- 32 (a) Advise the unit owner to contact the unit owner's insurance agent to determine the effect
33 of the resolution on the unit owner's individual insurance coverage; and
34 (b) Be in a form and style reasonably calculated to inform the unit owner of the importance of
35 the notice.
- 36 (11) Failure to provide a copy of a resolution or a notice required under this section does not
37 affect the responsibility of a unit owner to comply with a resolution adopted under this section.
- 38 **(12) Notwithstanding a provision in the declaration or bylaws, the board of directors of**
39 **an association, or a declarant as provided in subsection (13) of this section, shall obtain and**
40 **maintain insurance:**
- 41 **(a) That covers acts of dishonesty, embezzlement and theft by officers, directors, asso-**
42 **ciation employees, contracted community association managers, bookkeepers and other per-**
43 **sons authorized by the association to handle moneys of the association; and**
44 **(b) In an amount equal to or greater than the sum of assessments on all units for three**
45 **months plus the total amount of moneys in reserve accounts.**

1 **(13) The declarant, on behalf of the association, shall obtain insurance required under**
2 **subsection (12) of this section within 30 days after the date of conveyance of the first unit**
3 **in the condominium and maintain the insurance until the declarant relinquishes control of**
4 **the administration of the association under ORS 100.210.**

5 **SECTION 20.** ORS 100.480 is amended to read:

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

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

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

16 (2) The association of unit owners shall keep financial records, **including all records of asso-**
17 **ciation accounts, that are** sufficient for proper accounting purposes.

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

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

26 [(c) *All expenses of the association shall be paid from the association account.*]

27 [(4) **(3)** Within 90 days after the end of the fiscal year, the board of directors shall:

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

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

31 [(5) **(4)** Subject to section 26, chapter 803, Oregon Laws 2003, the association of unit owners
32 of a condominium that has annual assessments [*exceeding*] **greater than \$75,000 and less than**
33 **\$500,000** shall cause the financial statement required under subsection [(4) **(3)**] of this section to be
34 reviewed **in the manner required by subsection (8) of this section** within 180 days after the end
35 of [*the*] **each** fiscal year [*by an independent certified public accountant licensed in the State of Oregon*
36 *in accordance with the Statements on Standards for Accounting and Review Services issued by the*
37 *American Institute of Certified Public Accountants*].

38 [(6) **(5)** **Subject to section 26, chapter 803, Oregon Laws 2003,** the association of unit owners
39 of a condominium that has annual assessments of \$75,000 or less shall cause the most recent finan-
40 cial statement required by subsection [(4) **(3)**] of this section to be reviewed:

41 **(a)** In the manner [*described in subsection (5)*] **required by subsection (8)** of this section; **and**

42 **(b)** Within 180 days after the board of directors receives the petition [*requesting review*] signed
43 by at least a majority of the owners **that requests review of the most recent financial state-**
44 **ment required by subsection (3) of this section.**

45 **(6) The association of unit owners of a condominium that has annual assessments of**

1 **\$500,000 or more shall cause the financial statement required under subsection (3) of this**
2 **section to be audited within 180 days after the end of each fiscal year in the manner required**
3 **by subsection (8) of this section.**

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

8 **(8) The review of financial statements required under subsection (4) or (5) of this section**
9 **and the audits required under subsection (6) of this section must be performed, in accord-**
10 **ance with standards issued by the American Institute of Certified Public Accountants, by an**
11 **independent certified public accountant licensed in Oregon.**

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

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

- 16 (i) Regular and special assessments;
- 17 (ii) Fines and other charges;
- 18 (iii) Accrued interest; and
- 19 (iv) Late payment charges.

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

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

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

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

31 **(10)(a) An association of unit owners, and the declarant during any period of declarant**
32 **control, may not make information confidential or exempt from disclosure to unit owners**
33 **that is not made confidential or exempt from disclosure by ORS chapter 100.**

34 **(b) Except as provided in paragraph (c) of this subsection, the association shall make the**
35 **documents, information and records described in subsections (1) to (3) of this section and**
36 **all other records of the association reasonably available for examination and, upon written**
37 **request, including written requests by electronic mail, facsimile or other electronic commu-**
38 **nications, available for duplication by a unit owner and any mortgagee of a unit that makes**
39 **the request in good faith for a proper purpose.**

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

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

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

45 (C) Communications with legal counsel that relate to matters specified in subparagraphs (A) and

1 (B) of this paragraph and the rights and duties of the association regarding existing or potential
2 litigation or criminal matters.

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

4 (E) Documents, correspondence or management or board reports compiled for or behalf of the
5 association or the board of directors by its agents or committees for consideration by the board of
6 directors in executive session held in accordance with ORS 100.420 (1) and (2).

7 (F) Documents, correspondence or other matters considered by the board of directors in execu-
8 tive session held in accordance with ORS 100.420 (1) and (2).

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

11 [(10)] (11) The association of unit owners shall maintain a copy, suitable for the purpose of du-
12 plication, of the following:

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

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

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

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

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

20 [(11)] (12) The association, within 10 business days after receipt of a written request by an
21 owner, shall furnish the requested information required to be maintained under subsection [(10)] (11)
22 of this section.

23 [(12)] (13) The board of directors, by resolution, may adopt reasonable rules governing the fre-
24 quency, time, location, notice and manner of examination and duplication of association records and
25 the imposition of a reasonable fee for furnishing copies of any documents, information or records
26 described in this section. The fee may include reasonable personnel costs incurred to furnish the
27 information.

28 [(13)] (14) Subsection [(4)] (3) of this section first applies to property submitted to the provisions
29 of this chapter before January 1, 1982, when the board of directors of the association of unit owners
30 receives a written request from at least one unit owner that a copy of the annual financial statement
31 be distributed in accordance with subsection [(4)] (3) of this section.

32 **SECTION 21.** Section 26, chapter 803, Oregon Laws 2003, as amended by section 39, chapter
33 641, Oregon Laws 2009, is amended to read:

34 **Sec. 26.** The requirements of ORS 100.480 (4) and (5) first apply:

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

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

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

43