

# House Bill 2823

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 **as introduced**.

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

Allows reserve accounts to be invested in accounts insured by Securities Investor Protection Corporation.

Specifies investment objectives for association.

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

## A BILL FOR AN ACT

1  
2 Relating to communities governed by declaration; creating new provisions; and amending ORS  
3 94.550, 94.640, 94.670, 94.680, 100.005, 100.417, 100.435 and 100.480 and sections 24 and 26, chap-  
4 ter 803, Oregon Laws 2003.

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

6 **SECTION 1.** ORS 94.670 is amended to read:

7 94.670. (1) A homeowners association shall retain within this state the documents, information  
8 and records delivered to the association under ORS 94.616 and all other records of the association  
9 for not less than the period specified for the record in ORS 65.771 or any other applicable law ex-  
10 cept that:

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

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

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

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

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

25 **(2)(a) Except as provided otherwise in paragraph (e) of this subsection, all funds of the**  
26 **association, including assessments and declarant subsidies, must be deposited and main-**  
27 **tained in the name of the association in one or more association accounts until disbursed.**

28 **(b) An operating account must be held in a federally insured account, including a certif-**

**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 icate of deposit, at a financial institution, as defined in ORS 706.008, other than an  
2 extranational institution.

3 (c) A reserve account, as described in ORS 94.595, must be held in:

4 (A) A federally insured account, including a certificate of deposit, at a financial institu-  
5 tion, as defined in ORS 706.008, other than an extranational institution; or

6 (B) An account insured by the Securities Investor Protection Corporation.

7 (d) The association may not maintain funds in an account, or at any one institution, in  
8 an amount that exceeds the insurance limits applicable to the account or institution.

9 (e) Subject to limitations imposed by the declaration or bylaws, if any, funds of the as-  
10 sociation may be used to purchase obligations of the United States Government.

11 (f) The investment objectives of an association are:

12 (A) Preservation of capital; and

13 (B) Maintaining sufficient liquidity to meet the financial obligations of the planned com-  
14 munity.

15 (g) The association may maintain a nonconforming investment of association funds es-  
16 tablished before the effective date of this 2013 Act. When the nonconforming investment is  
17 liquidated, future investments of the association funds must conform with the requirements  
18 of this subsection.

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

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

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

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

26 (5) Subject to section 24, chapter 803, Oregon Laws 2003, the association of a planned commu-  
27 nity that has annual assessments [*exceeding*] **greater than \$75,000 and less than \$500,000** shall  
28 cause the financial statement required under subsection (4) of this section to be reviewed **in the**  
29 **manner required by subsection (9) of this section** within 180 days after the end of the fiscal year  
30 [*by an independent certified public accountant licensed in the State of Oregon in accordance with the*  
31 *Statements on Standards for Accounting and Review Services issued by the American Institute of*  
32 *Certified Public Accountants*].

33 (6) **Subject to section 24, chapter 803, Oregon Laws 2003**, the association of a planned com-  
34 munity created on or after January 1, 2004, or the association of a planned community described in  
35 ORS 94.572 that has annual assessments of \$75,000 or less shall cause the most recent financial  
36 statement required by subsection (4) of this section to be reviewed in the manner [*described in sub-*  
37 *section (5)*] **required by subsection (9)** of this section within 180 days after the association receives  
38 a petition requesting review signed by at least a majority of the owners.

39 (7) **The association of a planned community that has annual assessments of \$500,000 or**  
40 **more shall cause the financial statement required under subsection (4) of this section to be**  
41 **audited within 180 days after the end of the fiscal year in the manner required by subsection**  
42 **(9) of this section.**

43 [(7)] (8) An association subject to the [*requirements of subsection (5)*] **review requirements of**  
44 **subsection (5) or (6)** of this section may elect, on an annual basis, not to comply with the re-  
45 quirements [*of subsection (5) of this section*] by an affirmative vote of at least 60 percent of the

1 owners, not including the votes of the declarant with respect to lots owned by the declarant.

2 **(9) The reviews of financial statements required under subsection (5) or (6) of this section**  
 3 **and the audits required under subsection (7) of this section must be performed in accordance**  
 4 **with standards issued by the American Institute of Certified Public Accountants by an in-**  
 5 **dependent certified public accountant licensed in Oregon.**

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

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

- 10 (i) Regular and special assessments;
- 11 (ii) Fines and other charges;
- 12 (iii) Accrued interest; and
- 13 (iv) Late payment charges.

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

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

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

20 ~~[(9)(a)]~~ **(11)(a)** Except as provided in paragraph (b) of this subsection, the association shall make  
 21 the documents, information and records described in subsections (1) and (4) of this section and all  
 22 other records of the association reasonably available for examination and, upon written request,  
 23 available for duplication by an owner and any mortgagee of a lot that makes the request in good  
 24 faith for a proper purpose.

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

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

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

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

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

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

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

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

41 ~~[(10)]~~ **(12)** The association shall maintain a copy, suitable for the purpose of duplication, of the  
 42 following:

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

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

- 1 (c) The current operating budget of the association.
- 2 (d) The reserve study, if any, described in ORS 94.595.
- 3 (e) Architectural standards and guidelines, if any.

4 [(11)] (13) The association, within 10 business days after receipt of a written request by an  
5 owner, shall furnish the requested information required to be maintained under subsection [(10)] (12)  
6 of this section.

7 [(12)] (14) The board of directors, by resolution, may adopt reasonable rules governing the fre-  
8 quency, time, location, notice and manner of examination and duplication of association records and  
9 the imposition of a reasonable fee for furnishing copies of any documents, information or records  
10 described in this section. The fee may include reasonable personnel costs for furnishing the docu-  
11 ments, information or records.

12 **SECTION 2.** ORS 94.680 is amended to read:

13 94.680. (1) If a declaration or bylaws provide that the homeowners association has the sole au-  
14 thority to decide whether to repair or reconstruct a unit that has suffered damage or whether a unit  
15 must be repaired or reconstructed, the board of directors **of the association** shall obtain blanket  
16 all-risk insurance for the full replacement cost of all structures in the planned community. Cost of  
17 the coverage shall be a common expense to the association.

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

- 20 (a) Requirements of or limitations on repairing or reconstructing damaged or destroyed property;
- 21 (b) The time within which the repair or reconstruction must begin; and
- 22 (c) The actions the board of directors must take if:
  - 23 (A) Damage or destruction is not repaired or replaced; or
  - 24 (B) Insurance proceeds exceed or fall short of the costs of repair or reconstruction.

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

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

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

32 (4) **During a period of declarant control of the association, the declarant, on behalf of the**  
33 **association, shall obtain and maintain insurance required under subsection (3) of this section**  
34 **within 30 days after the date of conveyance of the first unit in the condominium.**

35 **SECTION 3.** Section 4 of this 2013 Act is added to and made a part of ORS 94.550 to 94.783.

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

- 39 (a) **A member of the board of directors.**
- 40 (b) **An officer of the association who is either:**
  - 41 (A) **An owner or co-owner of a lot; or**
  - 42 (B) **A representative of an owner or co-owner of a lot who meets the qualifications de-**  
43 **scribed in subsection (2) of this section.**

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

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

- 4 (A) An officer, employee or agent of the corporation;  
5 (B) A member, manager, employee or agent of the limited liability company; or  
6 (C) A partner, employee or agent of the partnership.

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

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

15 (3) An association account holder may not delegate the holder's authority to transact  
16 business on behalf of the association or to access an association account.

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

18 94.550. As used in ORS 94.550 to 94.783:

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

22 (2) "Association account" means an operating account, as described in ORS 94.670, or a  
23 reserve account, as described in ORS 94.595.

24 (3) "Association account holder" means an individual:

25 (a) Who is designated and authorized to transact business on behalf of a homeowners  
26 association by accessing moneys in an association account required by ORS 94.670; and

27 (b) Whose signature is on file with the financial institution that maintains the associ-  
28 ation account.

29 [(2)] (4) "Blanket encumbrance" means a trust deed or mortgage or any other lien or  
30 encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and af-  
31 fecting more than one lot in a planned community, or an agreement affecting more than one lot by  
32 which the developer holds such planned community under an option, contract to sell or trust  
33 agreement.

34 [(3)] (5) "Class I planned community" means a planned community that:

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

37 (b) Has an estimated annual assessment, including an amount required for reserves under ORS  
38 94.595, exceeding \$10,000 for all lots or \$100 per lot, whichever is greater, based on:

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

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

45 [(4)] (6) "Class II planned community" means a planned community that:

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

2 (b) Contains at least five lots; and

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

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

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

10 [(5)] (7) "Class III planned community" means a planned community that is not a Class I or II  
11 planned community.

12 [(6)] (8) "Common expenses" means expenditures made by or financial liabilities incurred by the  
13 homeowners association and includes any allocations to the reserve account under ORS 94.595.

14 [(7)] (9) "Common property" means any real property or interest in real property within a  
15 planned community which is owned, held or leased by the homeowners association or owned as  
16 tenants in common by the lot owners, or designated in the declaration or the plat for transfer to the  
17 association.

18 [(8)] (10) "Condominium" means property submitted to the provisions of ORS chapter 100.

19 [(9)] (11) "Declarant" means any person who creates a planned community under ORS 94.550 to  
20 94.785.

21 [(10)] (12) "Declarant control" means any special declarant right relating to administrative  
22 control of a homeowners association, including but not limited to:

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

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

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

31 [(11)] (13) "Declaration" means the instrument described in ORS 94.580 which establishes a  
32 planned community, and any amendments to the instrument.

33 [(12)] (14) "Governing document" means an instrument or plat relating to common ownership  
34 or common maintenance of a portion of a planned community and that is binding upon lots within  
35 the planned community.

36 [(13)] (15) "Homeowners association" or "association" means the organization of owners of lots  
37 in a planned community, created under ORS 94.625, required by a governing document or formed  
38 under ORS 94.572.

39 [(14)] (16) "Majority" or "majority of votes" or "majority of owners" means more than 50 per-  
40 cent of the votes in the planned community.

41 [(15)] (17) "Mortgagee" means any person who is:

42 (a) A mortgagee under a mortgage;

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

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

45 (18) "Obligations of the United States Government" means Treasury bills, notes or bonds.

1        [(16)] (19) "Owner" means the owner of any lot in a planned community, unless otherwise spec-  
 2        ified, but does not include a person holding only a security interest in a lot.

3        [(17)] (20) "Percent of owners" or "percentage of owners" means the owners representing the  
 4        specified voting rights as determined under ORS 94.658.

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

11       (b) "Planned community" does not mean:

12       (A) A condominium under ORS chapter 100;

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

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

15       [(19)] (22) "Purchaser" means any person other than a declarant who, by means of a voluntary  
 16       transfer, acquires a legal or equitable interest in a lot, other than as security for an obligation.

17       [(20)] (23) "Purchaser for resale" means any person who purchases from the declarant more than  
 18       two lots for the purpose of resale whether or not the purchaser for resale makes improvements to  
 19       the lots before reselling them.

20       [(21)] (24) "Special declarant rights" means any rights, in addition to the rights of the declarant  
 21       as a lot owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to  
 22       94.783, including but not limited to:

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

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

27       (c) Converting lots into common property;

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

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

30       [(22)] (25) "Successor declarant" means the transferee of any special declarant right.

31       [(23)] (26) "Turn over" means the act of turning over administrative responsibility pursuant to  
 32       ORS 94.609 and 94.616.

33       [(24)] (27) "Unit" means a building or portion of a building located upon a lot in a planned  
 34       community and designated for separate occupancy or ownership, but does not include any building  
 35       or portion of a building located on common property.

36       [(25)] (28) "Votes" means the votes allocated to lots in the declaration under ORS 94.580 (2).

37       **SECTION 6.** Section 24, chapter 803, Oregon Laws 2003, as amended by section 38, chapter 641,  
 38       Oregon Laws 2009, is amended to read:

39       **Sec. 24.** The requirements of ORS 94.670 (5) **and** (6) first apply:

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

43       (2) Commencing with the fiscal year beginning in calendar year 2004 for the association of a  
 44       planned community created under ORS 94.550 to 94.783 if the turnover meeting required by ORS  
 45       94.616 has occurred on or before January 1, 2004.

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

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

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

10 **SECTION 7.** ORS 100.435 is amended to read:

11 100.435. (1) If the bylaws provide that *[the]* **an** association of unit owners has the sole authority  
 12 to decide whether to repair or reconstruct a unit that has suffered damage or that a unit must be  
 13 repaired or reconstructed, the board of directors shall obtain, *[and]* maintain at all times and *[shall*  
 14 *pay for]* **pay**, out of the common expense funds, **for** the following insurance covering both the com-  
 15 mon elements and individual units:

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

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

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

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

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

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

39 (4) Notwithstanding a provision in the declaration or bylaws of a condominium, including a  
 40 condominium created before September 27, 2007, that imposes a maximum deductible amount of  
 41 \$10,000 or less in an association insurance policy, if the board of directors determines that it is in  
 42 the best interest of the association of unit owners and of the unit owners, as provided in subsection  
 43 (5) of this section, the board may adopt a resolution authorizing the association to obtain and  
 44 maintain an insurance policy with a deductible amount exceeding the specified maximum, but not  
 45 in excess of the greater of:



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

2 (b) \$10,000.

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

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

10 (a) The circumstances under which the deductible will be charged against:

11 (A) A unit owner or the unit owners affected by a loss; or

12 (B) All unit owners;

13 (b) The allocation of the deductible charged under paragraph (a) of this subsection; and

14 (c) If a unit owner and the association have duplicate insurance coverage, the insurance policy  
15 that is primary, unless otherwise provided in the declaration or bylaws.

16 (7) If the board of directors adopts a resolution described in subsection (6) of this section, the  
17 resolution may require that a unit owner, in addition to any other insurance required by the decla-  
18 ration or bylaws, obtain and maintain:

19 (a) An insurance policy that insures the unit owner's unit and appurtenant limited common el-  
20 ements for not less than the amount of the deductible in the association's insurance policy for which  
21 the unit owner may be responsible and that insures the unit owner's personal property for any loss  
22 or damage; and

23 (b) Comprehensive liability insurance that includes, but is not limited to, coverage for negligent  
24 acts of unit owners and tenants, guests of unit owners and tenants and occupants of other units for  
25 damage to the general and limited common elements, to other units and to the personal property  
26 of other persons that is located in other units or the common elements.

27 (8) Unless otherwise provided in the declaration or bylaws, the board of directors may adopt a  
28 resolution that:

29 (a) Prescribes a procedure for processing insurance claims. The procedure may require that all  
30 claims against the association's insurance policy be processed through and coordinated by the board  
31 of directors or the managing agent, if authorized by the board.

32 (b) Assigns the responsibility for payment of charges for handling claims, including any charges  
33 by a managing agent.

34 (9) Not later than 10 days after adoption of a resolution under subsection (4), (6) or (8) of this  
35 section, the board of directors shall ensure that a copy of the resolution and a notice described in  
36 subsection (10) of this section are:

37 (a) Delivered to each unit owner; or

38 (b) Mailed to the mailing address of each unit owner or to the mailing address designated in  
39 writing by the unit owner.

40 (10) The notice required under subsection (9) of this section shall:

41 (a) Advise the unit owner to contact the unit owner's insurance agent to determine the effect  
42 of the resolution on the unit owner's individual insurance coverage; and

43 (b) Be in a form and style reasonably calculated to inform the unit owner of the importance of  
44 the notice.

45 (11) Failure to provide a copy of a resolution or a notice required under this section does not

1 affect the responsibility of a unit owner to comply with a resolution adopted under this section.

2 **(12) Notwithstanding a provision in the declaration or bylaws, the board of directors of**  
 3 **an association, or a declarant as provided in subsection (13) of this section, shall obtain and**  
 4 **maintain insurance:**

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

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

10 **(13) During a period of declarant control of the association, the declarant, on behalf of**  
 11 **the association, shall obtain and maintain insurance required under subsection (12) of this**  
 12 **section within 30 days after the date of conveyance of the first unit in the condominium.**

13 **SECTION 8.** ORS 100.480 is amended to read:

14 100.480. (1) An association of unit owners shall retain within this state the documents, infor-  
 15 mation and records delivered to the association under ORS 100.210 and all other records of the as-  
 16 sociation for not less than the period specified for the record in ORS 65.771 or any other applicable  
 17 law, except that:

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

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

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

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

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

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

35 **(3)(a) Except as provided otherwise in paragraph (e) of this subsection, all funds of the**  
 36 **association, including assessments and declarant subsidies, must be deposited and main-**  
 37 **tained in the name of the association in one or more fully insured association accounts until**  
 38 **disbursed.**

39 **(b) An operating account must be held in a federally insured account, including a certif-**  
 40 **icate of deposit, at a financial institution, as defined in ORS 706.008, other than an**  
 41 **extranational institution.**

42 **(c) A reserve account, as described in ORS 100.175, must be held in:**

43 **(A) A federally insured account, including a certificate of deposit, at a financial institu-**  
 44 **tion, as defined in ORS 706.008, other than an extranational institution; or**

45 **(B) An account insured by the Securities Investor Protection Corporation.**

1       **(d) The association may not maintain funds in an account, or at any one institution, in**  
 2 **an amount that exceeds the insurance limits applicable to the account or institution.**

3       **(e) Subject to limitations imposed by the declaration or bylaws, if any, funds of the as-**  
 4 **sociation may be used to purchase obligations of the United States Government.**

5       **(f) The investment objectives of an association are:**

6       **(A) Preservation of capital; and**

7       **(B) Maintaining sufficient liquidity to meet the financial obligations of the condominium.**

8       **(g) The association may maintain a nonconforming investment of association funds es-**  
 9 **tablished before the effective date of this 2013 Act. When the nonconforming investment is**  
 10 **liquidated, future investments of the association funds must conform with the requirements**  
 11 **of this subsection.**

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

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

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

16       (5) Subject to section 26, chapter 803, Oregon Laws 2003, the association of unit owners of a  
 17 condominium that has annual assessments [*exceeding*] **greater than \$75,000 and less than \$500,000**  
 18 shall cause the financial statement required under subsection (4) of this section to be reviewed **in**  
 19 **the manner required by subsection (9) of this section** within 180 days after the end of the fiscal  
 20 year [*by an independent certified public accountant licensed in the State of Oregon in accordance with*  
 21 *the Statements on Standards for Accounting and Review Services issued by the American Institute of*  
 22 *Certified Public Accountants.*]

23       (6) **Subject to section 26, chapter 803, Oregon Laws 2003,** the association of unit owners of  
 24 a condominium that has annual assessments of \$75,000 or less shall cause the most recent financial  
 25 statement required by subsection (4) of this section to be reviewed in the manner [*described in sub-*  
 26 *section (5)*] **required by subsection (9) of this section** within 180 days after the board of directors  
 27 receives the petition requesting review signed by at least a majority of the owners.

28       **(7) The association of unit owners of a condominium that has annual assessments of**  
 29 **\$500,000 or more shall cause the financial statement required under subsection (4) of this**  
 30 **section to be audited within 180 days after the end of the fiscal year in the manner required**  
 31 **by subsection (9) of this section.**

32       [(7)] (8) An association of unit owners subject to the [*requirements of subsection (5)*] **review re-**  
 33 **quirements of subsection (5) or (6)** of this section may elect, on an annual basis, not to comply  
 34 with the requirements [*of subsection (5) of this section*] by an affirmative vote of at least 60 percent  
 35 of the owners, not including the votes of the declarant with respect to units owned by the declarant.

36       **(9) The reviews of financial statements required under subsection (5) or (6) of this section**  
 37 **and the audits required under subsection (7) of this section must be performed in accordance**  
 38 **with standards issued by the American Institute of Certified Public Accountants by an in-**  
 39 **dependent certified public accountant licensed in Oregon.**

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

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

44       (i) Regular and special assessments;

45       (ii) Fines and other charges;

1 (iii) Accrued interest; and  
 2 (iv) Late payment charges.  
 3 (B) The percentage rate at which interest accrues on assessments that are not paid when due.  
 4 (C) The percentage rate used to calculate the charges for late payment or the amount of a fixed  
 5 charge for late payment.  
 6 (b) The association is not required to comply with paragraph (a) of this subsection if the asso-  
 7 ciation has commenced litigation by filing a complaint against the owner and the litigation is  
 8 pending when the statement would otherwise be due.  
 9 [(9)(a)] **(11)(a)** Except as provided in paragraph (b) of this subsection, the documents, information  
 10 and records described in subsections (1) to (4) of this section and all other records of the association  
 11 of unit owners must be reasonably available for examination and, upon written request, available for  
 12 duplication by a unit owner and any mortgagee of a unit that makes the request in good faith for  
 13 a proper purpose.  
 14 (b) Records kept by or on behalf of the association may be withheld from examination and du-  
 15 plication to the extent the records concern:  
 16 (A) Personnel matters relating to a specific identified person or a person's medical records.  
 17 (B) Contracts, leases and other business transactions that are currently under negotiation to  
 18 purchase or provide goods or services.  
 19 (C) Communications with legal counsel that relate to matters specified in subparagraphs (A) and  
 20 (B) of this paragraph and the rights and duties of the association regarding existing or potential  
 21 litigation or criminal matters.  
 22 (D) Disclosure of information in violation of law.  
 23 (E) Documents, correspondence or management or board reports compiled for or behalf of the  
 24 association or the board of directors by its agents or committees for consideration by the board of  
 25 directors in executive session held in accordance with ORS 100.420 (1) and (2).  
 26 (F) Documents, correspondence or other matters considered by the board of directors in execu-  
 27 tive session held in accordance with ORS 100.420 (1) and (2).  
 28 (G) Files of individual owners, other than those of a requesting owner or requesting mortgagee  
 29 of an individual owner, including any individual owner's file kept by or on behalf of the association.  
 30 [(10)] **(12)** The association of unit owners shall maintain a copy, suitable for the purpose of du-  
 31 plication, of the following:  
 32 (a) The declaration and bylaws, including amendments or supplements in effect, the recorded  
 33 plat, if feasible, and the association rules and regulations currently in effect;  
 34 (b) The most recent annual financial statement prepared in accordance with subsection (4) of  
 35 this section;  
 36 (c) The current operating budget of the association;  
 37 (d) The reserve study, if any, described in ORS 100.175; and  
 38 (e) Architectural standards and guidelines, if any.  
 39 [(11)] **(13)** The association, within 10 business days after receipt of a written request by an  
 40 owner, shall furnish the requested information required to be maintained under subsection [(10)] **(12)**  
 41 of this section.  
 42 [(12)] **(14)** The board of directors, by resolution, may adopt reasonable rules governing the fre-  
 43 quency, time, location, notice and manner of examination and duplication of association records and  
 44 the imposition of a reasonable fee for furnishing copies of any documents, information or records  
 45 described in this section. The fee may include reasonable personnel costs incurred to furnish the

1 information.

2 [(13)] (15) Subsection (4) of this section first applies to property submitted to the provisions of  
 3 this chapter before January 1, 1982, when the board of directors of the association of unit owners  
 4 receives a written request from at least one unit owner that a copy of the annual financial statement  
 5 be distributed in accordance with subsection (4) of this section.

6 **SECTION 9. Section 10 of this 2013 Act is added to and made a part of ORS chapter 100.**

7 **SECTION 10. (1) Notwithstanding a provision in the declaration or bylaws of a condo-**  
 8 **minium, unless a resolution adopted by the board of directors of an association of unit**  
 9 **owners provides otherwise, only the following individuals may be an association account**  
 10 **holder:**

11 (a) A member of the board of directors, as provided in ORS 100.416; and

12 (b) An officer of the association who is either:

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

14 (B) A representative of an owner or co-owner of a unit who meets the qualifications de-  
 15 scribed in subsection (2) of this section.

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

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

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

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

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

24 (b) If a trustee holds legal title to a unit in trust for the benefit of the owner of the  
 25 beneficial interest in the unit, the officer of the association representing the trust must be  
 26 a trustee.

27 (c) If a court has appointed an executor, administrator, guardian, conservator or other  
 28 individual to serve in a fiduciary capacity for an owner of a unit, the officer of the associ-  
 29 ation must be the executor, administrator, guardian, conservator or other individual ap-  
 30 pointed by the court. If the court appointed an entity to serve in a fiduciary capacity for an  
 31 owner of a unit, the officer of the association must be an officer or employee of the appointed  
 32 entity.

33 (3) An association account holder may not delegate the holder's authority to transact  
 34 business on behalf of the association or to access an association account.

35 **SECTION 11.** ORS 100.005 is amended to read:

36 100.005. As used in this chapter, unless the context requires otherwise:

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

40 (2) "Association account" means an operating account, as described in ORS 100.480, or a  
 41 reserve account, as described in ORS 100.175.

42 (3) "Association account holder" means an individual:

43 (a) Who is designated and authorized to transact business on behalf of an association of  
 44 unit owners by accessing moneys in an association account required by ORS 100.480; and

45 (b) Whose signature is on file with the financial institution that maintains the associ-

1 **ation account.**

2 [(2)] (4) “Association of unit owners” or “**association**” means the association provided for under  
3 ORS 100.405.

4 [(3)] (5) “Association property” means any real property or interest in real property acquired,  
5 held or possessed by the association under ORS 100.405.

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

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

14 [(6)] (8) “Commissioner” means the Real Estate Commissioner.

15 [(7)] (9) “Common elements” means the general common elements and the limited common ele-  
16 ments.

17 [(8)] (10) “Common expenses” means:

18 (a) Expenses of administration, maintenance, repair or replacement of the common elements;

19 (b) Expenses agreed upon as common by all the unit owners; and

20 (c) Expenses declared common by ORS 100.005 to 100.625 or by the declaration or the bylaws  
21 of the particular condominium.

22 [(9)] (11) “Condominium” means:

23 (a) With respect to property located within this state:

24 (A) The land, if any, whether fee simple, leasehold, easement or other interest or combination  
25 thereof, and whether contiguous or noncontiguous;

26 (B) Any buildings, improvements and structures on the property; and

27 (C) Any easements, rights and appurtenances belonging to the property submitted to the pro-  
28 visions of ORS 100.005 to 100.625; and

29 (b) With respect to property located outside this state, the property that has been committed to  
30 the condominium form of ownership in accordance with the jurisdiction within which the property  
31 is located.

32 [(10)] (12) “Conversion condominium” means a condominium in which there is a building, im-  
33 provement or structure that was occupied prior to any negotiation and that is:

34 (a) Residential in nature, at least in part; and

35 (b) Not wholly commercial or industrial, or commercial and industrial, in nature.

36 [(11)] (13) “Declarant” means a person who records a declaration under ORS 100.100 or a sup-  
37 plemental declaration under ORS 100.110.

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

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

44 [(14)] (16) “Flexible condominium” means a condominium containing property that may be re-  
45 classified or withdrawn from the condominium pursuant to ORS 100.150 (1).

1        [(15)] (17) “General common elements,” unless otherwise provided in a declaration, means all  
 2 portions of the condominium that are not part of a unit or a limited common element, including but  
 3 not limited to the following:

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

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

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

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

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

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

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

17       [(16)] (18) “Leasehold” means the interest of a person, firm or corporation who is the lessee  
 18 under a lease from the owner in fee and who files a declaration creating a condominium under ORS  
 19 100.100.

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

23       [(18)] (20) “Majority” or “majority of unit owners” means more than 50 percent of the voting  
 24 rights allocated to the units by the declaration.

25       [(19)] (21) “Mortgagee” means any person who is:

26       (a) A mortgagee under a mortgage;

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

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

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

32       [(21)] (23) “Nonwithdrawable property” means property which pursuant to ORS 100.150 (1)(b):

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

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

36       (24) “Obligations of the United States Government” means Treasury bills, notes or bonds.

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       [(25)] (28) “Reservation agreement” means an agreement relating to the future sale of a unit  
 45 which is not binding on the purchaser and which grants purchaser the right to cancel the agreement

1 without penalty and obtain a refund of any funds deposited at any time until purchaser executes a  
2 unit sales agreement.

3 [(26)] (29) "Sale" includes every disposition or transfer of a condominium unit, or an interest  
4 or estate therein, by a developer, including the offering of the property as a prize or gift when a  
5 monetary charge or consideration for whatever purpose is required by the developer. "Interest or  
6 estate" includes a lessee's interest in a unit for more than three years or less than three years if  
7 the interest may be renewed under the terms of the lease for a total period of more than three years.  
8 "Interest or estate" does not include any interest held for security purposes or a timeshare regu-  
9 lated or otherwise exempt under ORS 94.803 and 94.807 to 94.945.

10 [(27)] (30) "Special declarant right" means any right, in addition to the regular rights of the  
11 declarant as a unit owner, reserved for the benefit of or created by the declarant under the decla-  
12 ration, bylaws or the provisions of this chapter.

13 [(28)] (31) "Staged condominium" means a condominium which provides for annexation of addi-  
14 tional property pursuant to ORS 100.115 and 100.120.

15 [(29)] (32) "Successor declarant" means the transferee of any special declarant right.

16 [(30)] (33) "Termination date" means that date described in ORS 100.105 (2)(b) or (7)(d).

17 [(31)] (34) "Transitional committee" means the committee provided for under ORS 100.205.

18 [(32)] (35) "Turnover meeting" means the meeting provided for under ORS 100.210.

19 [(33)] (36) "Unit" or "condominium unit" means a part of the property which:

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

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

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

23 [(34)] (37) "Unit designation" means the number, letter or combination thereof designating a unit  
24 in the declaration and on the plat.

25 [(35)] (38) "Unit owner" means, except to the extent the declaration or bylaws provide other-  
26 wise, the person owning fee simple interest in a unit, the holder of a vendee's interest in a unit  
27 under a recorded installment contract of sale and, in the case of a leasehold condominium, the  
28 holder of the leasehold estate in a unit.

29 [(36)] (39) "Unit sales agreement" means a written offer or agreement for the sale of a condo-  
30 minium unit which when fully executed will be binding on all parties. "Unit sales agreement" in-  
31 cludes but is not limited to an earnest money receipt and agreement to purchase and other such  
32 agreements which serve as an agreement of sale for a cash transaction or which are preliminary to  
33 the execution of an installment contract of sale, but does not include a reservation agreement.

34 [(37)] (40) "Variable property" means property described in ORS 100.150 (2) and designated as  
35 variable property in the declaration and on the plat.

36 [(38)] (41) "Voting rights" means the portion of the votes allocated to a unit by the declaration  
37 in accordance with ORS 100.105 (1)(j).

38 **SECTION 12.** Section 26, chapter 803, Oregon Laws 2003, as amended by section 39, chapter  
39 641, Oregon Laws 2009, is amended to read:

40 **Sec. 26.** The requirements of ORS 100.480 (5) and (6) first apply:

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

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



1 or before January 1, 2004.

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

4 **SECTION 13.** ORS 94.640 is amended to read:

5 94.640. (1) The board of directors of an association may act on behalf of the association except  
 6 as limited by the declaration and the bylaws. In the performance of their duties, officers and mem-  
 7 bers of the board of directors are governed by this section and the applicable provisions of ORS  
 8 65.357, 65.361, 65.367, 65.369 and 65.377, whether or not the association is incorporated under ORS  
 9 chapter 65.

10 (2) Subject to subsection (7) of this section, unless otherwise provided in the bylaws, the board  
 11 of directors may fill vacancies in its membership for the unexpired portion of any term.

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

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

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

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

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

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

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

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

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

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

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

38 (A) Consult with legal counsel.

39 (B) Consider the following:

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

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

42 (iii) Collection of unpaid assessments.

43 (b) Except in the case of an emergency, the board of directors of an association shall vote in  
 44 an open meeting whether to meet in executive session. If the board of directors votes to meet in  
 45 executive session, the presiding officer of the board of directors shall state the general nature of the

1 action to be considered and, as precisely as possible, when and under what circumstances the de-  
 2 liberations can be disclosed to owners. The statement, motion or decision to meet in executive ses-  
 3 sion must be included in the minutes of the meeting.

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

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

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

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

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

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

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

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

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

30 **SECTION 14.** ORS 100.417 is amended to read:

31 100.417. (1) The board of directors of an association of unit owners may act on behalf of the  
 32 association except as limited by the declaration or bylaws. In the performance of their duties, offi-  
 33 cers and members of the board of directors shall be governed by this section and the applicable  
 34 provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377 whether or not the association is incor-  
 35 porated under ORS chapter 65.

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

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

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

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

45 (6) The board of directors, in the name of the association, shall maintain a current mailing ad-

1 dress.

2 (7) The board of directors shall cause to be maintained and kept current the information re-  
3 quired to enable the association to comply with ORS 100.480 [(11)] (13).

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

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

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

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

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

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

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

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