

House Bill 3354

Sponsored by Representative DOHERTY

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**.

Modifies definitions that apply to planned communities and condominium communities.

A BILL FOR AN ACT

Relating to communities governed by declarations; amending ORS 94.550 and 100.005.

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

SECTION 1. ORS 94.550 is amended to read:

94.550. As used in ORS 94.550 to 94.783:

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

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

(3) "Class I planned community" means a planned community that:

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

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

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

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

(4) "Class II planned community" means a planned community that:

(a) Is not a Class I planned community;

(b) Contains at least five lots; and

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

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

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

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 of January 1, 2002.

2 (5) "Class III planned community" means a planned community that is not a Class I or II
3 planned community.

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

6 (7) "Common property" means any real property or interest in real property within a planned
7 community which is owned, held or leased by the homeowners association or owned as tenants in
8 common by the lot owners, or designated in the declaration or the plat for transfer to the associ-
9 ation.

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

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

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

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

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

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

22 (11) "Declaration" means the instrument described in ORS 94.580 which establishes a planned
23 community, and any amendments to the instrument.

24 (12) "Governing document" means an instrument or plat relating to common ownership or com-
25 mon maintenance of a portion of a planned community and that is binding upon lots within the
26 planned community.

27 (13) "Homeowners association" or "association" means the organization of owners of lots in a
28 planned community, created under ORS 94.625, required by a governing document or formed under
29 ORS 94.572.

30 (14) "Majority" or "majority of votes" or "majority of owners" means more than 50 percent of
31 the votes in the planned community.

32 (15) "Mortgagee" means any person who is:

33 (a) A mortgagee under a mortgage;

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

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

36 (16) "Owner" means the owner of any lot in a planned community, unless otherwise specified,
37 but does not include a person holding only a security interest in a lot.

38 (17) "Percent of owners" or "percentage of owners" means the owners representing the specified
39 voting rights as determined under ORS 94.658.

40 (18)(a) "Planned community" means any subdivision under ORS 92.010 to 92.192 that results in
41 a pattern of ownership of real property and all the buildings, improvements and rights located on
42 or belonging to the real property, in which the owners collectively are responsible for the mainte-
43 nance, operation, insurance or other expenses relating to any property within the [*planned commu-*
44 *nity*] **subdivision**, including common property, if any, or for the exterior maintenance of any
45 property that is individually owned.

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

2 (A) A condominium under ORS chapter 100;

3 (B) A *[planned community]* **subdivision described in paragraph (a) of this subsection** that is
4 exclusively commercial or industrial; or

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

6 (19) "Purchaser" means any person other than a declarant who, by means of a voluntary trans-
7 fer, acquires a legal or equitable interest in a lot, other than as security for an obligation.

8 (20) "Purchaser for resale" means any person who purchases from the declarant more than two
9 lots for the purpose of resale whether or not the purchaser for resale makes improvements to the
10 lots before reselling them.

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

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

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

18 (c) Converting lots into common property;

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

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

21 (22) "Successor declarant" means the transferee of any special declarant right.

22 (23) "Turn over" means the act of turning over administrative responsibility pursuant to ORS
23 94.609 and 94.616.

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

27 (25) "Votes" means the votes allocated to lots in the declaration under ORS 94.580 (2).

28 **SECTION 2.** ORS 100.005 is amended to read:

29 100.005. As used in this chapter, unless the context requires otherwise:

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

33 (2) "Association of unit owners" **or "association"** means the association provided for under
34 ORS 100.405.

35 (3) "Association property" means any real property or interest in real property acquired, held
36 or possessed by the association under **authority granted in** ORS 100.405.

37 (4) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance,
38 mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than
39 one unit in a condominium, or an agreement affecting more than one such unit by which the devel-
40 oper holds such condominium under an option, contract to sell or trust agreement.

41 (5) "Building" means a multiple-unit building or single-unit buildings, or any combination
42 thereof, comprising a part of the property. "Building" also includes a floating structure described
43 in ORS 100.020 (3)(b)(D).

44 (6) "Commissioner" means the Real Estate Commissioner.

45 (7) "Common elements" means the general common elements and the limited common elements.

- 1 (8) "Common expenses" means:
- 2 (a) Expenses of administration, maintenance, repair or replacement of the common elements;
- 3 (b) Expenses agreed upon as common by all the unit owners; and
- 4 (c) Expenses declared common by ORS 100.005 to 100.625 or by the declaration or the bylaws
- 5 of the particular condominium.
- 6 (9) "Condominium" means:
- 7 (a) With respect to property located within this state:
- 8 (A) The land, if any, whether fee simple, leasehold, easement or other interest or combination
- 9 thereof, and whether contiguous or noncontiguous;
- 10 (B) Any buildings, improvements and structures on the property; and
- 11 (C) Any easements, rights and appurtenances belonging to the property submitted to the pro-
- 12 visions of ORS 100.005 to 100.625; and
- 13 (b) With respect to property located outside this state, the property that has been committed to
- 14 the condominium form of ownership in accordance with the jurisdiction within which the property
- 15 is located.
- 16 (10) "Conversion condominium" means a condominium in which there is a building, improvement
- 17 or structure that was occupied prior to any negotiation and that is:
- 18 (a) Residential in nature, at least in part; and
- 19 (b) Not wholly commercial or industrial, or commercial and industrial, in nature.
- 20 (11) "Declarant" means a person who records a declaration under ORS 100.100 or a supple-
- 21 mental declaration under ORS 100.110.
- 22 (12) "Declaration" means the instrument described in ORS 100.100 **and 100.105** by which the
- 23 condominium is created and as modified by any amendment recorded in accordance with ORS
- 24 100.135 or supplemental declaration recorded in accordance with ORS 100.120.
- 25 (13) "Developer" means a declarant or any person who purchases an interest in a condominium
- 26 from declarant, successor declarant or subsequent developer for the primary purpose of resale.
- 27 (14) "Flexible condominium" means a condominium containing property that may be reclassified
- 28 or withdrawn from the condominium pursuant to ORS 100.150 (1).
- 29 (15) "General common elements," unless otherwise provided in a declaration, means all portions
- 30 of the condominium that are not part of a unit or a limited common element, including but not
- 31 limited to the following:
- 32 (a) The land, whether fee simple, leasehold, easement, other interest or combination thereof,
- 33 together with any rights and appurtenances;
- 34 (b) The foundations, columns, girders, beams, supports, bearing and shear walls, windows, except
- 35 glazing and screening, unit access doors, except glazing and screening, roofs, halls, corridors, lob-
- 36 bies, stairs, fire escapes, entrances and exits of a building;
- 37 (c) The basements, yards, gardens, parking areas and outside storage spaces;
- 38 (d) Installations of central services such as power, light, gas, hot and cold water, heating, re-
- 39 frigeration, air conditioning, waste disposal and incinerating;
- 40 (e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus
- 41 and installations existing for common use;
- 42 (f) The premises for the lodging of janitors or caretakers of the property; and
- 43 (g) All other elements of a building and the condominium necessary or convenient to their ex-
- 44 istence, maintenance and safety, or normally in common use.
- 45 (16) "Leasehold" means the interest of a person, firm or corporation who is the lessee under a

1 lease from the owner in fee and who files a declaration creating a condominium under ORS 100.100.

2 (17) "Limited common elements" means those common elements designated in the declaration,
3 as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

4 (18) "Majority" or "majority of unit owners" means more than 50 percent of the voting rights
5 allocated to the units by the declaration.

6 (19) "Mortgagee" means any person who is:

7 (a) A mortgagee under a mortgage;

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

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

10 (20) "Negotiation" means any activity preliminary to the execution by either developer or pur-
11 chaser of a unit sales agreement, including but not limited to advertising, solicitation and promotion
12 of the sale of a unit.

13 (21) "Nonwithdrawable property" means property which pursuant to ORS 100.150 (1)(b):

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

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

17 (22) "Percent of owners" or "percentage of owners" means the percent of the voting rights de-
18 termined under ORS 100.525.

19 (23) "Purchaser" means an actual or prospective purchaser of a condominium unit pursuant to
20 a sale.

21 (24) "Recording officer" means the county officer charged with the duty of filing and recording
22 deeds and mortgages or any other instruments or documents affecting the title to real property.

23 (25) "Reservation agreement" means an agreement relating to the future sale of a unit which is
24 not binding on the purchaser and which grants purchaser the right to cancel the agreement without
25 penalty and obtain a refund of any funds deposited at any time until purchaser executes a unit sales
26 agreement.

27 (26) "Sale" includes every disposition or transfer of a condominium unit, or an interest or estate
28 therein, by a developer, including the offering of the property as a prize or gift when a monetary
29 charge or consideration for whatever purpose is required by the developer. "Interest or estate" in-
30 cludes a lessee's interest in a unit for more than three years or less than three years if the interest
31 may be renewed under the terms of the lease for a total period of more than three years. "Interest
32 or estate" does not include any interest held for security purposes or a timeshare regulated or
33 otherwise exempt under ORS 94.803 and 94.807 to 94.945.

34 (27) "Special declarant right" means any right, in addition to the regular rights of the declarant
35 as a unit owner, reserved for the benefit of or created by the declarant under the declaration, by-
36 laws or the provisions of this chapter.

37 (28) "Staged condominium" means a condominium which provides for annexation of additional
38 property pursuant to ORS 100.115 and 100.120.

39 (29) "Successor declarant" means the transferee of any special declarant right.

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

41 (31) "Transitional committee" means the committee provided for under ORS 100.205.

42 (32) "Turnover meeting" means the meeting provided for under ORS 100.210.

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

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

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

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

2 (34) "Unit designation" means the number, letter or combination thereof designating a unit in
3 the declaration and on the plat.

4 (35) "Unit owner" means, except to the extent the declaration or bylaws provide otherwise, the
5 person owning fee simple interest in a unit, the holder of a vendee's interest in a unit under a re-
6 corded installment contract of sale and, in the case of a leasehold condominium, the holder of the
7 leasehold estate in a unit.

8 (36) "Unit sales agreement" means a written offer or agreement for the sale of a condominium
9 unit which when fully executed will be binding on all parties. "Unit sales agreement" includes but
10 is not limited to an earnest money receipt and agreement to purchase and other such agreements
11 which serve as an agreement of sale for a cash transaction or which are preliminary to the exe-
12 cution of an installment contract of sale, but does not include a reservation agreement.

13 (37) "Variable property" means property described in ORS 100.150 (2) and designated as variable
14 property in the declaration and on the plat.

15 (38) "Voting rights" means the portion of the votes allocated to a unit by the declaration in
16 accordance with ORS 100.105 (1)(j).

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