

**PROPOSED AMENDMENTS TO
HOUSE BILL 2823**

1 On page 1 of the printed bill, line 3, after “94.550,” insert “94.572, 94.595,
2 94.616” and after “100.005,” insert “100.175, 100.210.”

3 Delete lines 6 through 28 and delete pages 2 through 19 and insert:

4 **“SECTION 1.** ORS 94.550 is amended to read:

5 “94.550. As used in ORS 94.550 to 94.783:

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

10 **“(2) ‘Association account’ means an operating account or a reserve
11 account.**

12 **“(3) ‘Association account holder’ means an individual:**

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

15 **“(b) Whose signature is on file with:**

16 **“(A) The financial institution, as defined in ORS 706.008, other than
17 an extranational institution at which the association account is es-
18 tablished; or**

19 **“(B) The broker-dealer, as defined in ORS 59.015, licensed under the
20 Oregon Securities Law at which the association account is established.**

21 **“[(2)] (4) ‘Blanket encumbrance’ means a trust deed or mortgage or any
22 other lien or encumbrance, mechanic’s lien or otherwise, securing or evi-**

1 dencing the payment of money and affecting more than one lot in a planned
2 community, or an agreement affecting more than one lot by which the de-
3 veloper holds such planned community under an option, contract to sell or
4 trust agreement.

5 “[3] (5) ‘Class I planned community’ means a planned community that:

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

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

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

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

18 “[4] (6) ‘Class II planned community’ means a planned community that:

19 “(a) Is not a Class I planned community;

20 “(b) Contains at least five lots; and

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

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

27 “(B) For a planned community created before January 1, 2002, a reason-
28 able estimate of the cost of fulfilling existing obligations imposed by the
29 declaration, bylaws or other governing document as of January 1, 2002.

30 “[5] (7) ‘Class III planned community’ means a planned community that

1 is not a Class I or II planned community.

2 “[6] (8) ‘Common expenses’ means expenditures made by or financial li-
3 abilities incurred by the homeowners association and includes any allo-
4 cations to the reserve account under ORS 94.595.

5 “[7] (9) ‘Common property’ means any real property or interest in real
6 property within a planned community which is owned, held or leased by the
7 homeowners association or owned as tenants in common by the lot owners,
8 or designated in the declaration or the plat for transfer to the association.

9 “[8] (10) ‘Condominium’ means property submitted to the provisions of
10 ORS chapter 100.

11 “[9] (11) ‘Declarant’ means any person who creates a planned community
12 under ORS 94.550 to 94.785.

13 “[10] (12) ‘Declarant control’ means any special declarant right relating
14 to administrative control of a homeowners association, including but not
15 limited to:

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

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

22 “(c) The right of the declarant to exercise powers and responsibilities
23 otherwise assigned by the declaration or bylaws or by the provisions of ORS
24 94.550 to 94.783 to the association, officers of the association or board of di-
25 rectors of the association.

26 “[11] (13) ‘Declaration’ means the instrument described in ORS 94.580
27 which establishes a planned community, and any amendments to the instru-
28 ment.

29 “[12] (14) ‘Governing document’ means an instrument or plat relating to
30 common ownership or common maintenance of a portion of a planned com-

1 munity and that is binding upon lots within the planned community.

2 “[~~(13)~~] **(15)** ‘Homeowners association’ or ‘association’ means the organ-
3 ization of owners of lots in a planned community, created under ORS 94.625,
4 required by a governing document or formed under ORS 94.572.

5 “[~~(14)~~] **(16)** ‘Majority’ or ‘majority of votes’ or ‘majority of owners’ means
6 more than 50 percent of the votes in the planned community.

7 “[~~(15)~~] **(17)** ‘Mortgagee’ means any person who is:

8 “(a) A mortgagee under a mortgage;

9 “(b) A beneficiary under a trust deed; or

10 “(c) The vendor under a land sale contract.

11 **“(18) ‘Operating account’ means an account established and main-
12 tained by the homeowners association, as required by section 3 of this
13 2013 Act, to hold moneys of the association other than moneys the
14 association is required to hold in a reserve account.**

15 “[~~(16)~~] **(19)** ‘Owner’ means the owner of any lot in a planned community,
16 unless otherwise specified, but does not include a person holding only a se-
17 curity interest in a lot.

18 “[~~(17)~~] **(20)** ‘Percent of owners’ or ‘percentage of owners’ means the own-
19 ers representing the specified voting rights as determined under ORS 94.658.

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

27 “(b) ‘Planned community’ does not mean:

28 “(A) A condominium under ORS chapter 100;

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

30 or

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

2 “[19] (22) ‘Purchaser’ means any person other than a declarant who, by
3 means of a voluntary transfer, acquires a legal or equitable interest in a lot,
4 other than as security for an obligation.

5 “[20] (23) ‘Purchaser for resale’ means any person who purchases from
6 the declarant more than two lots for the purpose of resale whether or not
7 the purchaser for resale makes improvements to the lots before reselling
8 them.

9 “(24) **‘Reserve account’ means an account established and main-
10 tained by the homeowners association, as required by section 3 of this
11 2013 Act, to hold moneys of the association that the association is re-
12 quired to hold as reserves.**

13 “[21] (25) ‘Special declarant rights’ means any rights, in addition to the
14 rights of the declarant as a lot owner, reserved for the benefit of the
15 declarant under the declaration or ORS 94.550 to 94.783, including but not
16 limited to:

17 “(a) Constructing or completing construction of improvements in the
18 planned community which are described in the declaration;

19 “(b) Expanding the planned community or withdrawing property from the
20 planned community under ORS 94.580 (3) and (4);

21 “(c) Converting lots into common property;

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

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

25 “[22] (26) ‘Successor declarant’ means the transferee of any special
26 declarant right.

27 “[23] (27) ‘Turn over’ means the act of turning over administrative re-
28 sponsibility pursuant to ORS 94.609 and 94.616.

29 “[24] (28) ‘Unit’ means a building or portion of a building located upon
30 a lot in a planned community and designated for separate occupancy or

1 ownership, but does not include any building or portion of a building located
2 on common property.

3 “[25] (29) ‘Votes’ means the votes allocated to lots in the declaration
4 under ORS 94.580 (2).

5 **“SECTION 2. Sections 3 and 4 of this 2013 Act are added to and
6 made a part of ORS 94.550 to 94.783.**

7 **“SECTION 3. (1) All moneys of a homeowners association, including
8 assessments and declarant subsidies, must be deposited and main-
9 tained in the name of the association in one or more association ac-
10 counts until disbursed.**

11 **“(2) All expenses of the association must be paid from an associ-
12 ation account.**

13 **“(3) An operating account must be held in a federally insured ac-
14 count, including a certificate of deposit, at a financial institution, as
15 defined in ORS 706.008, other than an extranational institution.**

16 **“(4) A reserve account must be held in:**

17 **“(a) A federally insured account, including a certificate of deposit,
18 at a financial institution, as defined in ORS 706.008, other than an
19 extranational institution; or**

20 **“(b) An account with a broker-dealer, as defined in ORS 59.015, li-
21 censed under the Oregon Securities Law and insured by the Securities
22 Investor Protection Corporation.**

23 **“(5) An association may deposit assessments collected for reserves
24 required under ORS 94.595 in the association’s operating account, but
25 must transfer the reserves to the association’s reserve account as soon
26 as practicable.**

27 **“(6) The association may not maintain moneys in an account, or
28 at any one institution, in an amount that exceeds the insurance limits
29 applicable to the account or institution.**

30 **“(7) Except as provided in subsection (9) of this section, an associ-**

1 **ation may hold moneys in an association account only in:**

2 **“(a) Cash deposits;**

3 **“(b) Certificates of deposit; or**

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

5 **“(8) The investment objectives of an association must be:**

6 **“(a) Preservation of capital; and**

7 **“(b) Maintenance of sufficient liquidity to meet the financial obli-**
8 **gations of the planned community.**

9 **“(9) After the effective date of this 2013 Act, the association:**

10 **“(a) May maintain moneys in an investment established before the**
11 **effective date of this 2013 Act that does not conform to the require-**
12 **ments of subsection (7) of this section until the investment is sold or**
13 **liquidated.**

14 **“(b) May not roll over a mature investment that does not conform**
15 **to the requirements of subsection (7) of this section or reinvest the**
16 **proceeds of a mature investment in an investment that is not au-**
17 **thorized by subsection (7) of this section.**

18 **“SECTION 4. (1) Notwithstanding a provision in the declaration or**
19 **bylaws of a planned community, unless a resolution adopted by the**
20 **board of directors of a homeowners association provides otherwise,**
21 **only the following individuals may be an association account holder:**

22 **“(a) An individual who is a member of the board of directors, in**
23 **accordance with ORS 94.639.**

24 **“(b) An individual who is an officer of the association who is either:**

25 **“(A) An owner or co-owner of a lot; or**

26 **“(B) A representative of an owner or co-owner of a lot, if the indi-**
27 **vidual meets the qualifications described in subsection (2) of this sec-**
28 **tion.**

29 **“(2) An individual who is an officer of the association under sub-**
30 **section (1)(b)(B) of this section must meet one of the following quali-**

1 **fications:**

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

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

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

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

9 **“(b) If a trustee holds legal title to a lot in trust for the benefit of**
10 **the owner of the beneficial interest in the lot, the officer of the asso-**
11 **ciation representing the trust must be a trustee.**

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

19 **“(3) An association account holder may not delegate the holder’s**
20 **authority to use an association account to transact business on behalf**
21 **of the association.**

22 **“SECTION 5.** ORS 94.595 is amended to read:

23 **“94.595. (1) The declarant, on behalf of a homeowners association, shall:**

24 **“(a) Conduct an initial reserve study as described in subsection (3) of this**
25 **section;**

26 **“(b) Prepare an initial maintenance plan as described in subsection (4)**
27 **of this section; and**

28 **“(c) Establish a reserve account as provided in subsection (2) of this sec-**
29 **tion.**

30 **“(2)(a) A reserve account shall be established to [*fund*] provide moneys**

1 **for** major maintenance, repair or replacement of all items of common prop-
2 erty [*which*] **that** will normally require major maintenance, repair or re-
3 placement, in whole or in part, in more than one and less than 30 years, for
4 exterior painting if the common property includes exterior painted surfaces,
5 for other items, whether or not involving common property, if the association
6 has responsibility to maintain the items and for other items required by the
7 declaration or bylaws.

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

9 “(A) That can reasonably be [*funded from the general budget or other*
10 *funds or*] **provided for with moneys in operating** accounts of the associ-
11 ation; or

12 “(B) For which one or more, but less than all, owners are responsible for
13 maintenance and replacement under the provisions of the declaration or by-
14 laws.

15 “[*b*] (c) The reserve account [*shall be established in the name of the*
16 *homeowners association. The association is responsible for administering the*
17 *account and for making periodic payments into the account*] **must be estab-**
18 **lished and maintained as provided in section 3 of this 2013 Act.**

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

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

22 “(B) Other reliable information.

23 “[*d*] (e) A reserve account established under this section [*must be funded*
24 *by*] **may hold only moneys obtained from** assessments against the indi-
25 vidual lots for which the reserves are established.

26 “[*e*] (f) Unless the declaration provides otherwise, the assessments under
27 this subsection begin accruing for all lots from the date the first lot is con-
28 veyed.

29 “(3)(a) The board of directors of the association annually shall conduct
30 a reserve study or review and update an existing study to determine the re-

1 serve account requirements. Subject to subsection (8) of this section, after
2 review of the reserve study or reserve study update, the board of directors
3 may, without any action by owners:

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

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

8 “(b) The reserve study shall:

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

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

12 “(C) Include for each item, as applicable, an estimated cost of mainte-
13 nance and repair and replacement at the end of the item’s useful life.

14 “(4)(a) The board of directors shall prepare a maintenance plan for the
15 maintenance, repair and replacement of all property for which the associ-
16 ation has maintenance, repair or replacement responsibility under the dec-
17 laration or bylaws or ORS 94.550 to 94.783. The maintenance plan shall:

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

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

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

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

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

27 “(5)(a) If the declaration or bylaws require a reserve account, the reserve
28 study requirements of subsection (3) of this section and the maintenance plan
29 requirements of subsection (4) of this section first apply to the association
30 of a subdivision that meets the definition of a planned community under ORS

1 94.550 and is recorded prior to October 23, 1999, when:

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

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

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

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

14 “[b) *After the individual lot owners have assumed responsibility for ad-*
15 *ministration of the planned community under ORS 94.616, if the board of di-*
16 *rectors has adopted a resolution, which may be an annual continuing*
17 *resolution, authorizing the borrowing of funds:]*

18 “[A) *The board of directors may borrow funds from the reserve account to*
19 *meet high seasonal demands on the regular operating funds or to meet unex-*
20 *pected increases in expenses.]*

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

24 “[7) *The reserve account is subject to the requirements and restrictions of*
25 *ORS 94.670 and any additional restrictions or requirements imposed by the*
26 *declaration, bylaws or rules of the homeowners association.]*

27 “(6) **Except as provided in section 3 (5) of this 2013 Act, moneys in**
28 **a reserve account must be kept separate from other moneys.**

29 “(7) **Except as provided in this subsection, moneys in a reserve ac-**
30 **count may be used only for the purposes for which reserves have been**

1 established. After owners assume responsibility for administration of
2 the planned community under ORS 94.616, if the board of directors
3 adopts a resolution, which may be an annual continuing resolution,
4 authorizing the borrowing of moneys:

5 “(a) The board of directors may borrow moneys from the reserve
6 account and transfer the moneys to an operating account to meet high
7 seasonal demands or unexpected increases in operating expenses; and

8 “(b) Not later than the adoption of the budget for the following
9 year, the board of directors shall adopt by resolution a written pay-
10 ment plan providing for repayment of the borrowed moneys within a
11 reasonable period.

12 “(8)(a) Except as provided under paragraph (b) of this subsection, unless
13 the board of directors under subsection (3) of this section determines that the
14 reserve account will [*be adequately funded*] **have adequate reserves to**
15 **meet the requirement for reserves** for the following year, the board of
16 directors or the owners may not vote to eliminate [*funding*] **assessment of**
17 **lots for** a reserve account required under this section or under the declara-
18 tion or bylaws.

19 “(b) Following the turnover meeting described in ORS 94.609, on an an-
20 nual basis, the board of directors, with the approval of all owners, may elect
21 not to [*fund the reserve account*] **assess lots for reserves** for the following
22 year.

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

25 **“SECTION 6.** ORS 94.616 is amended to read:

26 “94.616. (1) At the meeting called under ORS 94.609, the declarant shall
27 turn over to the homeowners association the responsibility for the adminis-
28 tration of the planned community, and the association shall accept the ad-
29 ministrative responsibility from the declarant.

30 “(2) If a quorum of the owners is present, the owners shall elect not fewer

1 than the number of directors sufficient to constitute a quorum of the board
2 of directors in accordance with the declaration or bylaws of the association.

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

5 “(a) The original or a photocopy of the recorded declaration and copies
6 of the bylaws and the articles of incorporation, if any, of the planned com-
7 munity and any supplements and amendments to the articles or bylaws[;].

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

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

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

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

16 “(f) A financial statement. The financial statement:

17 “(A) Must consist of a balance sheet and an income and expense state-
18 ment for the preceding 12-month period or the period following the recording
19 of the declaration, whichever period is shorter; and

20 “(B) Must be reviewed, in accordance with the Statements on Standards
21 for Accounting and Review Services issued by the American Institute of
22 Certified Public Accountants, by an independent certified public accountant
23 licensed in the State of Oregon if the annual assessments of an association
24 exceed \$75,000[;].

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

27 “**(g) All moneys of the association, all documents and records re-**
28 **lated to association accounts and all moneys due the association from**
29 **the declarant for the assessment of lots for reserves as required under**
30 **ORS 94.704.**

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

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

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

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

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

11 “(m) The reserve study and the maintenance plan required under ORS
12 94.595, including all updates and other sources of information that serve as
13 a basis for calculating reserves in accordance with ORS 94.595[;].

14 “(n) An operating budget for the portion of the planned community turned
15 over to association administration and a budget for replacement and main-
16 tenance of the common property[;].

17 “(o) A copy of the following, if available:

18 “(A) The as-built architectural, structural, engineering, mechanical, elec-
19 trical and plumbing plans;

20 “(B) The original specifications, indicating all subsequent material
21 changes;

22 “(C) The plans for underground site service, site grading, drainage and
23 landscaping together with cable television drawings;

24 “(D) Any other plans and information relevant to future repair or main-
25 tenance of the property; and

26 “(E) A list of the general contractor and the electrical, heating and
27 plumbing subcontractors responsible for construction or installation of com-
28 mon property[;].

29 “(p) Insurance policies[;].

30 “(q) Copies of any occupancy permits issued for the planned

1 community[;].

2 “(r) Any other permits issued by governmental bodies applicable to the
3 planned community in force or issued within one year before the date on
4 which the owners assume administrative responsibility[;].

5 “(s) A list of any written warranties on the common property that are in
6 effect and the names of the contractor, subcontractor or supplier who made
7 the installation for which the warranty is in effect[;].

8 “(t) A roster of owners and their addresses and telephone numbers, if
9 known, as shown on the records of the declarant[;].

10 “(u) Leases of the common property and any other leases to which the
11 association is a party[;].

12 “(v) Employment or service contracts in which the association is one of
13 the contracting parties or service contracts in which the association or the
14 owners have an obligation or responsibility, directly or indirectly, to pay
15 some or all of the fee or charge of the person performing the service[;
16 *and*].

17 “(w) Any other contracts to which the homeowners association is a party.

18 “(4) [*In order*] To facilitate an orderly transition, during the three-month
19 period following the turnover meeting, the declarant or an informed repre-
20 sentative shall be available to meet with the board of directors on at least
21 three mutually acceptable dates to review the documents delivered under
22 subsection (3) of this section.

23 “(5) If the declarant has complied with this section and unless the
24 declarant has sufficient voting rights as a lot owner to control the associ-
25 ation, the declarant is not responsible for the failure of the owners to elect
26 the number of directors sufficient to constitute a quorum of the board of
27 directors and assume control of the association in accordance with sub-
28 section (1) of this section. The declarant is relieved from further responsi-
29 bility for the administration of the association, except as a lot owner.

30 “(6) If the owners present do not constitute a quorum or the owners fail

1 to elect the number of directors sufficient to constitute a quorum of the
2 board of directors at the turnover meeting held in accordance with this sec-
3 tion:

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

10 “(b) An owner or first mortgagee may request a court to appoint a re-
11 ceiver as provided in ORS 94.642.

12 **“SECTION 7.** ORS 94.640 is amended to read:

13 “94.640. (1) The board of directors of an association may act on behalf of
14 the association except as limited by the declaration and the bylaws. In the
15 performance of their duties, officers and members of the board of directors
16 are governed by this section and the applicable provisions of ORS 65.357,
17 65.361, 65.367, 65.369 and 65.377, whether or not the association is incorpo-
18 rated under ORS chapter 65.

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

22 “(3) At least annually, the board of directors of an association shall re-
23 view the insurance coverage of the association.

24 “(4) The board of directors of the association annually shall cause to be
25 filed the necessary income tax returns for the association.

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

28 “(6)(a) Unless otherwise provided in the declaration or bylaws, at a
29 meeting of the owners at which a quorum is present, the owners may remove
30 a director from the board of directors, other than directors appointed by the

1 declarant or individuals who are ex officio directors, with or without cause,
2 by a majority vote of owners who are present and entitled to vote.

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

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

6 “(B) The owners must vote on the removal of each director whose removal
7 is proposed as a separate question.

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

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

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

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

23 “(A) Consult with legal counsel.

24 “(B) Consider the following:

25 “(i) Personnel matters, including salary negotiations and employee disci-
26 pline;

27 “(ii) Negotiation of contracts with third parties; or

28 “(iii) Collection of unpaid assessments.

29 “(b) Except in the case of an emergency, the board of directors of an as-
30 sociation shall vote in an open meeting whether to meet in executive session.

1 If the board of directors votes to meet in executive session, the presiding
2 officer of the board of directors shall state the general nature of the action
3 to be considered and, as precisely as possible, when and under what circum-
4 stances the deliberations can be disclosed to owners. The statement, motion
5 or decision to meet in executive session must be included in the minutes of
6 the meeting.

7 “(c) A contract or an action considered in executive session does not be-
8 come effective unless the board of directors, following the executive session,
9 reconvenes in open meeting and votes on the contract or an action, which
10 must be reasonably identified in the open meeting and included in the min-
11 utes.

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

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

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

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

24 “(c) Only emergency meetings of the board of directors may be conducted
25 by telephonic communication or by the use of a means of communication that
26 allows all members of the board of directors participating to hear each other
27 simultaneously or otherwise to be able to communicate during the meeting.
28 A member of the board of directors participating in a meeting by this means
29 is deemed to be present in person at the meeting.

30 “(11) The board of directors, in the name of the association, shall main-

1 tain a current mailing address of the association.

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

5 “(13) As used in this section, ‘meeting’ means a convening of a quorum
6 of members of the board of directors at which association business is dis-
7 cussed, except a convening of a quorum of members of the board of directors
8 for the purpose of participating in litigation, mediation or arbitration pro-
9 ceedings.

10 **“SECTION 8.** ORS 94.670 is amended to read:

11 “94.670. (1) A homeowners association shall retain within this state the
12 documents, information and records delivered to the association under ORS
13 94.616 and all other records of the association for not less than the period
14 specified for the record in ORS 65.771 or any other applicable law except
15 that:

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

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

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

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

1 “[(c) *All expenses of the association shall be paid from the association ac-*
2 *count.*]

3 “[(3)] **(2)** The association shall keep financial records, **including all re-**
4 **ords of association accounts, that are** sufficiently detailed for proper
5 accounting purposes.

6 “[(4)] **(3)** Within 90 days after the end of the fiscal year, the board of di-
7 rectors shall:

8 “(a) Prepare or cause to be prepared an annual financial statement con-
9 sisting of a balance sheet and income and expenses statement for the pre-
10 ceding fiscal year; and

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

13 “[(5)] **(4)** Subject to section 24, chapter 803, Oregon Laws 2003, the asso-
14 ciation of a planned community that has annual assessments [*exceeding*]
15 **greater than \$75,000 and less than \$500,000** shall cause the financial
16 statement required under subsection [(4)] **(3)** of this section to be reviewed
17 **in the manner required by subsection (8) of this section** within 180 days
18 after the end of [*the*] **each** fiscal year [*by an independent certified public ac-*
19 *countant licensed in the State of Oregon in accordance with the Statements on*
20 *Standards for Accounting and Review Services issued by the American Insti-*
21 *tute of Certified Public Accountants*].

22 “[(6)] **(5)** **Subject to section 24, chapter 803, Oregon Laws 2003,** the
23 association of a planned community created on or after January 1, 2004, or
24 the association of a planned community described in ORS 94.572 that has
25 annual assessments of \$75,000 or less, shall cause the most recent financial
26 statement required by subsection [(4)] **(3)** of this section to be reviewed:

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

29 “**(b)** Within 180 days after the association receives a petition [*requesting*
30 *review*] signed by at least a majority of the owners **that requests review**

1 of the most recent financial statement required by subsection (3) of
2 this section.

3 “(6) The association of a planned community that has annual as-
4 sessments of \$500,000 or more shall cause the financial statement re-
5 quired under subsection (3) of this section to be audited within 180
6 days after the end of each fiscal year in the manner required by sub-
7 section (8) of this section.

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

13 “(8) **The review of financial statements required under subsection**
14 **(4) or (5) of this section and the audits required under subsection (6)**
15 **of this section must be performed, in accordance with standards issued**
16 **by the American Institute of Certified Public Accountants, by an in-**
17 **dependent certified public accountant licensed in Oregon.**

18 “[*(8)(a)*] **(9)(a)** The association shall provide, within 10 business days of
19 receipt of a written request from an owner, a written statement that pro-
20 vides:

21 “(A) The amount of assessments due from the owner and unpaid at the
22 time the request was received, including:

23 “(i) Regular and special assessments;

24 “(ii) Fines and other charges;

25 “(iii) Accrued interest; and

26 “(iv) Late payment charges.

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

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

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

5 “~~[(9)(a)]~~ **(10)(a)** Except as provided in paragraph (b) of this subsection, the
6 association shall make the documents, information and records described in
7 subsections (1) and ~~[(4)]~~ **(3)** of this section and all other records of the as-
8 sociation reasonably available for examination and, upon written request,
9 available for duplication by an owner and any mortgagee of a lot that makes
10 the request in good faith for a proper purpose.

11 “(b) Records kept by or on behalf of the association may be withheld from
12 examination and duplication to the extent the records concern:

13 “(A) Personnel matters relating to a specific identified person or a
14 person’s medical records.

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

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

20 “(D) Disclosure of information in violation of law.

21 “(E) Documents, correspondence or management or board reports com-
22 piled for or on behalf of the association or the board of directors by its
23 agents or committees for consideration by the board of directors in executive
24 session held in accordance with ORS 94.640 (8).

25 “(F) Documents, correspondence or other matters considered by the board
26 of directors in executive session held in accordance with ORS 94.640 (8).

27 “(G) Files of individual owners, other than those of a requesting owner
28 or requesting mortgagee of an individual owner, including any individual
29 owner’s file kept by or on behalf of the association.

30 “~~[(10)]~~ **(11)** The association shall maintain a copy, suitable for the purpose

1 of duplication, of the following:

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

5 “(b) The most recent financial statement prepared pursuant to subsection
6 ~~[(4)]~~ **(3)** of this section.

7 “(c) The current operating budget of the association.

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

9 “(e) Architectural standards and guidelines, if any.

10 ~~“[(11)]~~ **(12)** The association, within 10 business days after receipt of a
11 written request by an owner, shall furnish the requested information re-
12 quired to be maintained under subsection ~~[(10)]~~ **(11)** of this section.

13 ~~“[(12)]~~ **(13)** The board of directors, by resolution, may adopt reasonable
14 rules governing the frequency, time, location, notice and manner of exam-
15 ination and duplication of association records and the imposition of a rea-
16 sonable fee for furnishing copies of any documents, information or records
17 described in this section. The fee may include reasonable personnel costs for
18 furnishing the documents, information or records.

19 **“SECTION 9.** ORS 94.680 is amended to read:

20 “94.680. (1) If a declaration or bylaws provide that the homeowners asso-
21 ciation has the sole authority to decide whether to repair or reconstruct a
22 unit that has suffered damage or whether a unit must be repaired or recon-
23 structed, the board of directors **of the association** shall obtain blanket all-
24 risk insurance for the full replacement cost of all structures in the planned
25 community. Cost of the coverage shall be a common expense to the associ-
26 ation.

27 “(2) If the declaration or bylaws contain a provision described in sub-
28 section (1) of this section, the declaration or bylaws also shall provide:

29 “(a) Requirements of or limitations on repairing or reconstructing dam-
30 aged or destroyed property;

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

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

3 “(A) Damage or destruction is not repaired or replaced; or

4 “(B) Insurance proceeds exceed or fall short of the costs of repair or re-
5 construction.

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

9 **“(a) That covers acts of dishonesty, embezzlement and theft by of-**
10 **ficers, directors, association employees, contracted community asso-**
11 **ciation managers, bookkeepers and other persons authorized by the**
12 **association to handle moneys of the association; and**

13 **“(b) In an amount equal to or greater than the sum of assessments**
14 **on all lots for three months plus the total amount of moneys in re-**
15 **serve accounts.**

16 **“(4) The declarant, on behalf of the association, shall obtain insur-**
17 **ance required under subsection (3) of this section within 30 days after**
18 **the date of conveyance of the first lot in the planned community and**
19 **maintain the insurance until the declarant turns over responsibility**
20 **for the administration of the planned community under ORS 94.616.**

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

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

24 **“(1) Commencing with the fiscal year following the turnover meeting re-**
25 **quired by ORS 94.616 for the association of a planned community created**
26 **under ORS 94.550 to 94.783 prior to January 1, 2004, if the turnover meeting**
27 **has not yet occurred on January 1, 2004.**

28 **“(2) Commencing with the fiscal year beginning in calendar year 2004 for**
29 **the association of a planned community created under ORS 94.550 to 94.783**
30 **if the turnover meeting required by ORS 94.616 has occurred on or before**

1 January 1, 2004.

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

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

9 “(5) Commencing with the fiscal year beginning in calendar year 2004 for
10 the association of a planned community described in ORS 94.572 if the own-
11 ers have assumed responsibility for administration of the planned community
12 on or before January 1, 2004.

13 **“SECTION 11.** ORS 94.572 is amended to read:

14 “94.572. (1)(a) A Class I or Class II planned community created before
15 January 1, 2002, that was not created under ORS 94.550 to 94.783 is subject
16 to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630
17 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652,
18 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676,
19 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728,
20 94.733, 94.770, 94.775, 94.777 and 94.780 **and sections 3 and 4 of this 2013**
21 **Act** to the extent that those statutes are consistent with any governing
22 documents. If the governing documents do not provide for the formation of
23 an association, the requirements of this subsection are not effective until the
24 formation of an association in accordance with paragraph (b) of this sub-
25 section. If a provision of the governing documents is inconsistent with this
26 subsection, the owners may amend the governing documents using the pro-
27 cedures in this subsection:

28 “(A) In accordance with the procedures for the adoption of amendments
29 in the governing documents and subject to any limitations in the governing
30 documents, the owners may amend the inconsistent provisions of the gov-

1 erning documents to conform to the extent feasible with this section and
2 ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4),
3 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657,
4 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690,
5 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770,
6 94.775, 94.777 and 94.780 **and sections 3 and 4 of this 2013 Act**. Nothing in
7 this paragraph requires the owners to amend a declaration or bylaws to in-
8 clude the information required by ORS 94.580 or 94.635.

9 “(B) If there are no procedures for amendment in the governing docu-
10 ments:

11 “(i) For an amendment to a recorded governing document other than by-
12 laws, the owners may amend the inconsistent provisions of the document to
13 conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626,
14 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650,
15 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675,
16 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723,
17 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 **and sections 3 and 4 of this**
18 **2013 Act** by a vote of at least 75 percent of the owners in the planned com-
19 munity.

20 “(ii) For an amendment to the bylaws, the owners may amend the incon-
21 sistent provisions of the bylaws to conform to this section and ORS 94.550,
22 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640,
23 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660,
24 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704,
25 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and
26 94.780 **and sections 3 and 4 of this 2013 Act** by a vote of at least a majority
27 of the owners in the planned community.

28 “(iii) An amendment may be adopted at a meeting held in accordance with
29 the governing documents or by another procedure permitted by the governing
30 documents following the procedures prescribed in ORS 94.647, 94.650 or

1 94.660.

2 “(iv) An amendment to a recorded declaration shall be executed, certified
3 and recorded as provided in ORS 94.590 (2) and (3) and shall be subject to
4 ORS 94.590 (5). An amendment to the bylaws and any other governing docu-
5 ment shall be executed and certified as provided in ORS 94.590 (3) and shall
6 be recorded in the office of the recording officer of every county in which
7 the planned community is located if the bylaws or other governing document
8 to which the amendment relates were recorded.

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

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

13 “(ii) A statement that the amendment is adopted pursuant to the appli-
14 cable subparagraph of this paragraph.

15 “(b)(A) If the governing documents do not provide for the formation of
16 an association of owners, at least 10 percent of the owners in the planned
17 community or any governing entity may initiate the formation of an associ-
18 ation as provided in this paragraph. The owners or the governing entity in-
19 itiating the association formation shall call an organizational meeting for
20 the purpose of voting whether to form an association described in ORS
21 94.625. The notice of the meeting shall:

22 “(i) Name the initiating owners or governing entity;

23 “(ii) State that the organizational meeting is for the purpose of voting
24 whether to form an association in accordance with the proposed articles of
25 incorporation;

26 “(iii) State that if the owners vote to form an association, the owners may
27 elect the initial board of directors provided for in the articles of incorpo-
28 ration and may adopt the initial bylaws;

29 “(iv) State that to form an association requires an affirmative vote of at
30 least a majority of the owners in the planned community, or, if a larger

1 percentage is specified in the applicable governing document, the larger
2 percentage;

3 “(v) State that to adopt articles of incorporation, to elect the initial board
4 of directors pursuant to the articles of incorporation or to adopt the initial
5 bylaws requires an affirmative vote of at least a majority of the owners
6 present;

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

10 “(vii) State that a copy of the proposed articles of incorporation and by-
11 laws will be available at least five business days before the meeting and state
12 the method of requesting a copy; and

13 “(viii) Be delivered in accordance with the declaration and bylaws. If
14 there is no governing document or the document does not include applicable
15 provisions, the owners or governing entity shall follow the procedures pre-
16 scribed in ORS 94.650 (4).

17 “(B) At least five business days before the organizational meeting, the
18 initiating owners or governing entity shall cause articles of incorporation
19 and bylaws to be drafted. The bylaws shall include, to the extent applicable,
20 the information required by ORS 94.635.

21 “(C) At the organizational meeting:

22 “(i) Representatives of the initiating owners or governing entity shall, to
23 the extent not inconsistent with the governing documents, conduct the
24 meeting according to Robert’s Rules of Order as provided in ORS 94.657.

25 “(ii) The initiating owners or governing entity shall make available copies
26 of the proposed articles of incorporation and the proposed bylaws.

27 “(iii) The affirmative vote of at least a majority of the owners of a
28 planned community, or, if a larger percentage is specified in the applicable
29 governing document, the larger percentage, is required to form an associ-
30 ation under this paragraph.

1 “(iv) If the owners vote to form an association, the owners shall adopt
2 articles of incorporation and may elect the initial board of directors as pro-
3 vided in the articles of incorporation, adopt bylaws and conduct any other
4 authorized business by an affirmative vote of at least a majority of the
5 owners present. If the owners do not elect the initial board of directors,
6 owners shall elect an interim board of directors by an affirmative vote of at
7 least a majority of the owners present to serve until the initial board of di-
8 rectors is elected.

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

11 “(D) Not later than 10 business days after the organizational meeting, the
12 board of directors shall:

13 “(i) Cause the articles of incorporation to be filed with the Secretary of
14 State under ORS chapter 65;

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

18 “(iii) Provide a copy of the notice of planned community to each owner,
19 together with a copy of the adopted articles of incorporation and bylaws, if
20 any, or a statement of the procedure and method for adoption of bylaws de-
21 scribed in subparagraph (C) of this paragraph. The copies and any statement
22 shall be delivered to each lot, mailed to the mailing address of each lot or
23 mailed to the mailing addresses designated by the owners in writing; and

24 “(iv) Cause a statement of association information to be prepared, exe-
25 cuted and recorded in accordance with ORS 94.667.

26 “(E) If the owners vote to form an association, all costs incurred under
27 this paragraph, including but not limited to the preparation and filing of the
28 articles of incorporation, drafting of bylaws, preparation of notice of meeting
29 and the drafting, delivery and recording of all notices and statements shall
30 be a common expense of the owners and shall be allocated as provided in the

1 appropriate governing document or any amendment thereto.

2 “(2)(a) The owners of lots in a Class I or Class II planned community that
3 are subject to the provisions of ORS [*chapter 94*] **94.550 to 94.783** specified
4 in subsection (1) of this section may elect to be subject to any other pro-
5 visions of ORS 94.550 to 94.783 upon compliance with the procedures pre-
6 scribed in subsection (1) of this section.

7 “(b) If the owners of lots in a Class I or Class II planned community elect
8 to be subject to additional provisions of ORS 94.550 to 94.783, unless the
9 notice of planned community otherwise required or permitted under sub-
10 section (4) of this section includes a statement of the election pursuant to
11 this paragraph, the board of directors of the association shall cause the no-
12 tice of planned community described in subsection (4) of this section to be
13 prepared, executed and recorded in accordance with subsection (4) of this
14 section.

15 “(3)(a) The owners of lots in a Class III planned community created before
16 January 1, 2002, may elect to be subject to provisions of ORS 94.550 to 94.783
17 upon compliance with the applicable procedures in subsection (1) of this
18 section.

19 “(b) If the owners of lots in a Class III planned community elect to be
20 subject to provisions of ORS 94.550 to 94.783, the board of directors of the
21 association shall cause the notice of planned community described in sub-
22 section (4) of this section to be prepared, executed and recorded in accord-
23 ance with subsection (4) of this section.

24 “(4) The notice of planned community required or permitted by this sec-
25 tion shall be:

26 “(a) Titled ‘Notice of Planned Community under ORS 94.572’;

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

28 “(c) Recorded in the office of the recording officer of every county in
29 which the property is located.

30 “(5) The notice of planned community shall include:

1 “(a) The name of the planned community and association as identified in
2 the recorded declaration, conditions, covenants and restrictions or other
3 governing document and, if different, the current name of the association;

4 “(b) A list of the properties, described as required for recordation in ORS
5 93.600, within the jurisdiction of the association;

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

10 “(d) A statement that the property described in accordance with para-
11 graph (b) of this subsection is subject to specific provisions of the Oregon
12 Planned Community Act;

13 “(e) A reference to the specific provisions of the Oregon Planned Com-
14 munity Act that apply to the subject property and a reference to the sub-
15 section of this section under which the application is made; and

16 “(f) If an association is formed under subsection (1)(b)(A) of this section,
17 a statement to that effect.

18 “(6) An amended statement shall include a reference to the recording in-
19 dex numbers and the date of recording of prior statements.

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

22 “(8) The board of directors of an association not otherwise required to
23 cause a notice of planned community described in subsection (4) of this sec-
24 tion to be prepared and recorded under this section may cause a notice of
25 planned community to be prepared, executed and recorded as provided in
26 subsection (4) of this section.

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

1 “(10) As used in this section:

2 “(a) ‘Governing entity’ means an incorporated or unincorporated associ-
3 ation, committee, person or any other entity that has authority, under a
4 governing document, to maintain commonly maintained property, impose as-
5 sessments on lots or to act on behalf of lot owners within the planned com-
6 munity on matters of common concern.

7 “(b) ‘Recorded declaration’ means an instrument recorded with the county
8 recording officer of the county in which the planned community is located
9 that contains conditions, covenants and restrictions binding lots in the
10 planned community or imposes servitudes upon the real property.

11 **“SECTION 12.** ORS 100.005 is amended to read:

12 “100.005. As used in this chapter, unless the context requires otherwise:

13 “(1) ‘Assessment’ means any charge imposed or levied by the association
14 of unit owners on or against a unit owner or unit pursuant to provisions of
15 the declaration or the bylaws of the condominium or provisions of ORS
16 100.005 to 100.910.

17 **“(2) ‘Association account’ means an operating account or a reserve
18 account.**

19 **“(3) ‘Association account holder’ means an individual:**

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

22 **“(b) Whose signature is on file with:**

23 **“(A) The financial institution, as defined in ORS 706.008, other than
24 an extranational institution at which the account is established; or**

25 **“(B) The broker-dealer, as defined in ORS 59.015, licensed under the
26 Oregon Securities Law at which the account is established.**

27 **“[(2)] (4) ‘Association of unit owners’ or ‘association’ means the associ-
28 ation provided for under ORS 100.405.**

29 **“[(3)] (5) ‘Association property’ means any real property or interest in
30 real property acquired, held or possessed by the association under ORS**

1 100.405.

2 “[4] (6) ‘Blanket encumbrance’ means a trust deed or mortgage or any
3 other lien or encumbrance, mechanic’s lien or otherwise, securing or evi-
4 dencing the payment of money and affecting more than one unit in a con-
5 dominium, or an agreement affecting more than one such unit by which the
6 developer holds such condominium under an option, contract to sell or trust
7 agreement.

8 “[5] (7) ‘Building’ means a multiple-unit building or single-unit
9 buildings, or any combination thereof, comprising a part of the property.
10 ‘Building’ also includes a floating structure described in ORS 100.020
11 (3)(b)(D).

12 “[6] (8) ‘Commissioner’ means the Real Estate Commissioner.

13 “[7] (9) ‘Common elements’ means the general common elements and the
14 limited common elements.

15 “[8] (10) ‘Common expenses’ means:

16 “(a) Expenses of administration, maintenance, repair or replacement of
17 the common elements;

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

19 “(c) Expenses declared common by ORS 100.005 to 100.625 or by the dec-
20 laration or the bylaws of the particular condominium.

21 “[9] (11) ‘Condominium’ means:

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

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

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

26 “(C) Any easements, rights and appurtenances belonging to the property
27 submitted to the provisions of ORS 100.005 to 100.625; and

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

1 “[(10)] **(12)** ‘Conversion condominium’ means a condominium in which
2 there is a building, improvement or structure that was occupied prior to any
3 negotiation and that is:

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

5 “(b) Not wholly commercial or industrial, or commercial and industrial,
6 in nature.

7 “[(11)] **(13)** ‘Declarant’ means a person who records a declaration under
8 ORS 100.100 or a supplemental declaration under ORS 100.110.

9 “[(12)] **(14)** ‘Declaration’ means the instrument described in ORS 100.100
10 by which the condominium is created and as modified by any amendment
11 recorded in accordance with ORS 100.135 or supplemental declaration re-
12 corded in accordance with ORS 100.120.

13 “[(13)] **(15)** ‘Developer’ means a declarant or any person who purchases
14 an interest in a condominium from declarant, successor declarant or subse-
15 quent developer for the primary purpose of resale.

16 “[(14)] **(16)** ‘Flexible condominium’ means a condominium containing
17 property that may be reclassified or withdrawn from the condominium pur-
18 suant to ORS 100.150 (1).

19 “[(15)] **(17)** ‘General common elements,’ unless otherwise provided in a
20 declaration, means all portions of the condominium that are not part of a
21 unit or a limited common element, including but not limited to the following:

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

24 “(b) The foundations, columns, girders, beams, supports, bearing and shear
25 walls, windows, except glazing and screening, unit access doors, except
26 glazing and screening, roofs, halls, corridors, lobbies, stairs, fire escapes,
27 entrances and exits of a building;

28 “(c) The basements, yards, gardens, parking areas and outside storage
29 spaces;

30 “(d) Installations of central services such as power, light, gas, hot and

1 cold water, heating, refrigeration, air conditioning, waste disposal and
2 incinerating;

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

5 “(f) The premises for the lodging of janitors or caretakers of the property;
6 and

7 “(g) All other elements of a building and the condominium necessary or
8 convenient to their existence, maintenance and safety, or normally in com-
9 mon use.

10 “[16] **(18)** ‘Leasehold’ means the interest of a person, firm or corporation
11 who is the lessee under a lease from the owner in fee and who files a dec-
12 laration creating a condominium under ORS 100.100.

13 “[17] **(19)** ‘Limited common elements’ means those common elements
14 designated in the declaration, as reserved for the use of a certain unit or
15 number of units, to the exclusion of the other units.

16 “[18] **(20)** ‘Majority’ or ‘majority of unit owners’ means more than 50
17 percent of the voting rights allocated to the units by the declaration.

18 “[19] **(21)** ‘Mortgagee’ means any person who is:

19 “(a) A mortgagee under a mortgage;

20 “(b) A beneficiary under a trust deed; or

21 “(c) The vendor under a land sale contract.

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

25 “[21] **(23)** ‘Nonwithdrawable property’ means property which pursuant
26 to ORS 100.150 (1)(b):

27 “(a) Is designated nonwithdrawable in the declaration and on the plat;
28 and

29 “(b) Which may not be withdrawn from the condominium without the
30 consent of all of the unit owners.

1 “(24) **‘Operating account’** means an account established and main-
2 **tained by the association of unit owners, as required by section 14 of**
3 **this 2013 Act, to hold moneys of the association other than moneys the**
4 **association is required to hold in a reserve account.**

5 “[(22)] (25) ‘Percent of owners’ or ‘percentage of owners’ means the per-
6 cent of the voting rights determined under ORS 100.525.

7 “[(23)] (26) ‘Purchaser’ means an actual or prospective purchaser of a
8 condominium unit pursuant to a sale.

9 “[(24)] (27) ‘Recording officer’ means the county officer charged with the
10 duty of filing and recording deeds and mortgages or any other instruments
11 or documents affecting the title to real property.

12 “[(25)] (28) ‘Reservation agreement’ means an agreement relating to the
13 future sale of a unit which is not binding on the purchaser and which grants
14 purchaser the right to cancel the agreement without penalty and obtain a
15 refund of any funds deposited at any time until purchaser executes a unit
16 sales agreement.

17 “(29) **‘Reserve account’** means an account established and main-
18 **tained by the association of unit owners, as required by section 14 of**
19 **this 2013 Act, to hold moneys of the association that the association**
20 **is required to hold as reserves.**

21 “[(26)] (30) ‘Sale’ includes every disposition or transfer of a condominium
22 unit, or an interest or estate therein, by a developer, including the offering
23 of the property as a prize or gift when a monetary charge or consideration
24 for whatever purpose is required by the developer. ‘Interest or estate’ in-
25 cludes a lessee’s interest in a unit for more than three years or less than
26 three years if the interest may be renewed under the terms of the lease for
27 a total period of more than three years. ‘Interest or estate’ does not include
28 any interest held for security purposes or a timeshare regulated or otherwise
29 exempt under ORS 94.803 and 94.807 to 94.945.

30 “[(27)] (31) ‘Special declarant right’ means any right, in addition to the

1 regular rights of the declarant as a unit owner, reserved for the benefit of
2 or created by the declarant under the declaration, bylaws or the provisions
3 of this chapter.

4 “[28] (32) ‘Staged condominium’ means a condominium which provides
5 for annexation of additional property pursuant to ORS 100.115 and 100.120.

6 “[29] (33) ‘Successor declarant’ means the transferee of any special
7 declarant right.

8 “[30] (34) ‘Termination date’ means that date described in ORS 100.105
9 (2)(b) or (7)(d).

10 “[31] (35) ‘Transitional committee’ means the committee provided for
11 under ORS 100.205.

12 “[32] (36) ‘Turnover meeting’ means the meeting provided for under ORS
13 100.210.

14 “[33] (37) ‘Unit’ or ‘condominium unit’ means a part of the property
15 which:

16 “(a) Is described in ORS 100.020 (3);

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

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

19 “[34] (38) ‘Unit designation’ means the number, letter or combination
20 thereof designating a unit in the declaration and on the plat.

21 “[35] (39) ‘Unit owner’ means, except to the extent the declaration or
22 bylaws provide otherwise, the person owning fee simple interest in a unit,
23 the holder of a vendee’s interest in a unit under a recorded installment
24 contract of sale and, in the case of a leasehold condominium, the holder of
25 the leasehold estate in a unit.

26 “[36] (40) ‘Unit sales agreement’ means a written offer or agreement for
27 the sale of a condominium unit which when fully executed will be binding
28 on all parties. ‘Unit sales agreement’ includes but is not limited to an ear-
29 nest money receipt and agreement to purchase and other such agreements
30 which serve as an agreement of sale for a cash transaction or which are

1 preliminary to the execution of an installment contract of sale, but does not
2 include a reservation agreement.

3 “[37] (41) ‘Variable property’ means property described in ORS 100.150
4 (2) and designated as variable property in the declaration and on the plat.

5 “[38] (42) ‘Voting rights’ means the portion of the votes allocated to a
6 unit by the declaration in accordance with ORS 100.105 (1)(j).

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

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

13 **“(2) All expenses of the association must be paid from an associ-
14 ation account.**

15 **“(3) An operating account must be held in a federally insured ac-
16 count, including a certificate of deposit, at a financial institution, as
17 defined in ORS 706.008, other than an extranational institution.**

18 **“(4) A reserve account must be held in:**

19 **“(a) A federally insured account, including a certificate of deposit,
20 at a financial institution, as defined in ORS 706.008, other than an
21 extranational institution; or**

22 **“(b) An account with a broker-dealer, as defined in ORS 59.015, li-
23 censed under the Oregon Securities Law and insured by the Securities
24 Investor Protection Corporation.**

25 **“(5) An association may deposit assessments collected for reserves
26 required under ORS 100.175 in the association’s operating account, but
27 must transfer the reserves to the association’s reserve account as soon
28 as practicable.**

29 **“(6) The association may not maintain moneys in an account, or
30 at any one institution, in an amount that exceeds the insurance limits**

1 applicable to the account or institution.

2 “(7) Except as provided in subsection (9) of this section, an associ-
3 ation may hold moneys in an association account only in:

4 “(a) Cash deposits;

5 “(b) Certificates of deposit; or

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

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

8 “(a) Preservation of capital; and

9 “(b) Maintenance of sufficient liquidity to meet the financial obli-
10 gations of the condominium.

11 “(9) After the effective date of this 2013 Act, the association:

12 “(a) May maintain moneys in an investment established before the
13 effective date of this 2013 Act that does not conform to the require-
14 ments of subsection (7) of this section until the investment is sold or
15 liquidated.

16 “(b) May not roll over a mature investment that does not conform
17 with the requirements of subsection (7) of this section or reinvest the
18 proceeds of a mature investment in an investment that is not au-
19 thorized by in subsection (7) of this section.

20 **“SECTION 15. (1) Notwithstanding a provision in the declaration**
21 **or bylaws of a condominium, unless a resolution adopted by the board**
22 **of directors of an association of unit owners provides otherwise, only**
23 **the following individuals may be an association account holder:**

24 “(a) An individual who is a member of the board of directors in
25 accordance with ORS 100.416; and

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

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

28 “(B) A representative of an owner or co-owner of a unit, if the in-
29 dividual meets the qualifications described in subsection (2) of this
30 section.

1 **“(2) An individual who is an officer of the association under sub-**
2 **section (1)(b)(B) of this section must meet one of the following quali-**
3 **fications:**

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

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

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

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

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

15 **“(c) If a court has appointed an executor, administrator, guardian,**
16 **conservator or other individual to serve in a fiduciary capacity for a**
17 **unit owner, the officer of the association must be the executor, ad-**
18 **ministrators, guardian, conservator or other individual appointed by**
19 **the court. If the court appointed an entity to serve in a fiduciary ca-**
20 **capacity for a unit owner, the officer of the association must be an of-**
21 **ficer or employee of the appointed entity.**

22 **“(3) An association account holder may not delegate the holder’s**
23 **authority to use an association account to transact business on behalf**
24 **of the association.**

25 **“SECTION 16. ORS 100.175 is amended to read:**

26 **“100.175. (1) The declarant, on behalf of the association of unit owners,**
27 **shall:**

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

30 **“(b) Prepare an initial maintenance plan as described in subsection (4)**

1 of this section; and

2 “(c) Establish a reserve account as provided in subsection (2) of this sec-
3 tion.

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

10 “(b) The reserve account need not include:

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

14 “(B) A reserve for limited common elements for which maintenance and
15 replacement are the responsibility of one or more, but less than all, unit
16 owners under the provisions of the declaration or bylaws.

17 “[*b*] (c) The reserve account *[shall be established in the name of the as-*
18 *sociation of unit owners. The association is responsible for administering the*
19 *account and for making periodic payments into the account]* **must be estab-**
20 **lished and maintained as provided in section 14 of this 2013 Act.**

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

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

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

26 “(C) Other reliable information.

27 “[*d*] (e) The reserve account *[must be funded by]* **may hold only mon-**
28 **eys obtained from** assessments against the individual units for the purposes
29 for which the reserve account is established.

30 “[*e*] (f) The assessment under this subsection accrues from the time of

1 the conveyance of the first individual unit assessed as provided in ORS
2 100.530.

3 “(3)(a) The board of directors of the association annually shall conduct
4 a reserve study or review and update an existing study to determine the re-
5 serve account requirements. Subject to subsection (10) of this section, after
6 a review of the reserve study or the reserve study update, the board may,
7 without any action by the unit owners:

8 “(A) Adjust the amount of payments in accordance with the study or re-
9 view; and

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

12 “(b) The reserve study shall:

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

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

16 “(C) Include for each item, as applicable, an estimated cost of mainte-
17 nance and repair and replacement at the end of the item’s useful life.

18 “(4)(a) The board of directors shall prepare a maintenance plan for the
19 maintenance, repair and replacement of all property for which the associ-
20 ation has maintenance, repair or replacement responsibility under the dec-
21 laration or bylaws or this chapter. The maintenance plan shall:

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

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

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

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

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

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

6 “(A) After the sale of the first unit to a person other than a successor
7 declarant, if the condominium is created on or after September 27, 2007; or

8 “(B) If the condominium was created before September 27, 2007, notwith-
9 standing any requirement in the declaration or bylaws.

10 “(b) The reserve study requirements under subsection (3) of this section
11 and the maintenance plan requirements under subsection (4) of this section
12 apply to a flexible condominium or a staged condominium created on or after
13 September 27, 2007, if the condominium might in the future consist of more
14 than two units.

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

19 “(A) Upon adoption of a resolution by the board of directors in accord-
20 ance with the bylaws providing that the requirements of subsections (3) and
21 (4) of this section apply to the association; or

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

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

28 “[7)(a) *Except as provided in paragraph (b) of this subsection, the reserve*
29 *account is to be used only for the purposes for which reserves have been es-*
30 *tablished and is to be kept separate from other funds.]*

1 “[(b) After the individual unit owners have assumed administrative re-
2 sponsibility for the association under ORS 100.210, if the board of directors
3 has adopted a resolution, which may be an annual continuing resolution, au-
4 thorizing the borrowing of funds:]

5 “[(A) The board of directors may borrow funds from the reserve account to
6 meet high seasonal demands on the regular operating funds or to meet unex-
7 pected increases in expenses.]

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

11 “[(8) The reserve account is subject to the requirements and restrictions of
12 ORS 100.480 and any additional requirements or restrictions imposed by the
13 declaration, bylaws or rules of the association of unit owners.]

14 **“(7) Except as provided in section 14 (5) of this 2013 Act, moneys in
15 a reserve account must be kept separate from other moneys.**

16 **“(8) Except as provided in this subsection, moneys in a reserve ac-
17 count may be used only for the purposes for which reserves have been
18 established. After unit owners assume responsibility for adminis-
19 tration of the association under ORS 100.210, if the board of directors
20 adopts a resolution, which may be an annual continuing resolution,
21 authorizing the borrowing of moneys:**

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

25 **“(b) Not later than the adoption of the budget for the following
26 year, the board of directors shall adopt by resolution a written pay-
27 ment plan providing for repayment of the borrowed moneys within a
28 reasonable period.**

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

1 “(10)(a) Except as provided under paragraph (b) of this subsection, unless
2 the board of directors under subsection (3) of this section determines that the
3 reserve account will [*be adequately funded*] **have adequate reserves to**
4 **meet the requirement for reserves** for the following year, the board of
5 directors or the **unit** owners may not vote to eliminate [*funding*] **assess-**
6 **ment of units for** a reserve account required under this section or under
7 the declaration or bylaws.

8 “(b) Following the turnover meeting described in ORS 100.210, on an an-
9 nual basis, the board of directors, with the approval of all **unit** owners, may
10 elect not to [*fund the reserve account*] **assess units for reserves** for the
11 following year.

12 **“SECTION 17.** ORS 100.210 is amended to read:

13 “100.210. (1) A turnover meeting shall be called by the declarant within
14 90 days of the expiration of any period of declarant control reserved in the
15 declaration or bylaws under ORS 100.200. If no control has been reserved, the
16 declarant shall call the turnover meeting within 90 days of the earlier of:

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

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

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

29 “(3) If the meeting required under subsection (1) of this section is not
30 called by the declarant within the time specified, the meeting may be called

1 and notice given by a unit owner or any first mortgagee of a unit.

2 “(4) At the turnover meeting:

3 “(a) The declarant shall relinquish control of the administration of the
4 association of unit owners and the unit owners shall assume the control;

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

9 “(c) The declarant shall deliver to the association the items specified in
10 subsection (5) of this section.

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

15 “(a) The original or a photocopy of the recorded declaration and bylaws
16 of the condominium and any supplements and amendments thereto.

17 “(b) A copy of the articles of incorporation.

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

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

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

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

27 “(g) A financial statement. The financial statement:

28 “(A) Must consist of a balance sheet and an income and expense state-
29 ment for the preceding 12-month period or the period following the recording
30 of the declaration, whichever period is shorter.

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

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

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

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

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

16 “(A) The as-built architectural, structural, engineering, mechanical, elec-
17 trical and plumbing plans.

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

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

21 “(D) Any other plans and information relevant to future repair or main-
22 tenance of the property.

23 “(k) Insurance policies.

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

26 “(m) Any other permits issued by governmental bodies applicable to the
27 condominium in force or issued within one year prior to the date the unit
28 owners assume control of the administration of the association of unit own-
29 ers.

30 “(n) A list of the general contractor and the subcontractors responsible

1 for construction or installation of the major plumbing, electrical, mechanical
2 and structural components of the common elements.

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

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

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

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

13 “(6) [*In order*] To facilitate an orderly transition, during the three-month
14 period following the turnover meeting, the declarant or an informed repre-
15 sentative shall be available to meet with the board of directors on at least
16 three mutually acceptable dates to review the documents delivered under
17 subsection (5) of this section.

18 “(7) If the declarant has complied with this section, unless the declarant
19 otherwise has sufficient voting rights as a unit owner to control the associ-
20 ation, the declarant is not responsible for the failure of the unit owners to
21 elect the number of directors sufficient to constitute a quorum of the board
22 of directors and assume control of the association in accordance with sub-
23 section (4) of this section. The declarant shall be relieved of any further re-
24 sponsibility for the administration of the association except as a unit owner
25 of any unsold unit.

26 “(8) If the unit owners present do not constitute a quorum or the unit
27 owners fail to elect the number of directors sufficient to constitute a quorum
28 of the board of directors at the turnover meeting held in accordance with
29 subsection (1) of this section:

30 “(a) At any time before the election of the number of directors sufficient

1 to constitute a quorum, a unit owner or first mortgagee of a unit may call
2 a special meeting for the purpose of election of directors and shall give no-
3 tice of the meeting in accordance with the notice requirements in the bylaws
4 for special meetings. The unit owners and first mortgagees present at the
5 special meeting shall select a person to preside over the meeting.

6 “(b) A unit owner or first mortgagee of a unit may request a court to
7 appoint a receiver as provided in ORS 100.418.

8 **“SECTION 18.** ORS 100.417 is amended to read:

9 “100.417. (1) The board of directors of an association of unit owners may
10 act on behalf of the association except as limited by the declaration or by-
11 laws. In the performance of their duties, officers and members of the board
12 of directors shall be governed by this section and the applicable provisions
13 of ORS 65.357, 65.361, 65.367, 65.369 and 65.377 whether or not the association
14 is incorporated under ORS chapter 65.

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

18 “(3) At least annually, the board of directors of an association shall re-
19 view the insurance coverage of the association.

20 “(4) The board of directors of the association annually shall cause to be
21 filed the necessary income tax returns for the association.

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

24 “(6) The board of directors, in the name of the association, shall maintain
25 a current mailing address.

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

29 “(8)(a) Unless otherwise provided in the declaration or bylaws, at a
30 meeting of the unit owners at which a quorum is present, the unit owners

1 may remove a director from the board of directors, other than directors ap-
2 pointed by the declarant or individuals who are ex officio directors, with or
3 without cause, by a majority vote of unit owners who are present and enti-
4 tled to vote.

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

6 “(A) Before a vote to remove a director, unit owners must give the di-
7 rector whose removal has been proposed an opportunity to be heard at the
8 meeting.

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

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

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

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

22 “**SECTION 19.** ORS 100.435 is amended to read:

23 “100.435. (1) If the bylaws provide that [*the*] **an** association of unit owners
24 has the sole authority to decide whether to repair or reconstruct a unit that
25 has suffered damage or that a unit must be repaired or reconstructed, the
26 board of directors **of the association** shall obtain, [*and*] maintain at all
27 times and [*shall pay for*] **pay**, out of the common expense funds, **for** the
28 following insurance covering both the common elements and individual units:

29 “(a) Property insurance including, but not limited to, fire, extended cov-
30 erage, vandalism and malicious mischief; and

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

14 “(2) If the bylaws require the individual unit owners to obtain insurance
15 for their units, the bylaws also shall contain a provision requiring the board
16 of directors to obtain the following insurance covering the common elements:

17 “(a) Property insurance including, but not limited to, fire, extended cov-
18 erage, vandalism and malicious mischief; and

19 “(b) Insurance covering the legal liability of the association of unit own-
20 ers and the manager including, but not limited to, the board of directors, to
21 the public or the unit owners and their invitees or tenants, incident to
22 supervision, control or use of the property.

23 “(3) The board of directors shall obtain, if reasonably available, terms in
24 insurance policies under this section that provide a waiver of subrogation
25 by the insurer as to any claims against the board of directors of the associ-
26 ation.

27 “(4) Notwithstanding a provision in the declaration or bylaws of a con-
28 dominium, including a condominium created before September 27, 2007, that
29 imposes a maximum deductible amount of \$10,000 or less in an association
30 insurance policy, if the board of directors determines that it is in the best

1 interest of the association of unit owners and of the unit owners, as provided
2 in subsection (5) of this section, the board may adopt a resolution authoriz-
3 ing the association to obtain and maintain an insurance policy with a
4 deductible amount exceeding the specified maximum, but not in excess of the
5 greater of:

6 “(a) The maximum deductible acceptable to the Federal National Mort-
7 gage Association; or

8 “(b) \$10,000.

9 “(5) In making the determination under subsection (4) of this section, the
10 board of directors shall consider such factors as the availability and cost of
11 insurance and the loss experience of the association.

12 “(6) If the declaration or bylaws of a condominium created before Sep-
13 tember 27, 2007, do not assign the responsibility for payment of the amount
14 of the deductible in an association insurance policy, the board of directors
15 may adopt a resolution that assigns the responsibility for payment of the
16 amount of the deductible. The resolution must include, but need not be lim-
17 ited to:

18 “(a) The circumstances under which the deductible will be charged
19 against:

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

21 “(B) All unit owners;

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

24 “(c) If a unit owner and the association have duplicate insurance cover-
25 age, the insurance policy that is primary, unless otherwise provided in the
26 declaration or bylaws.

27 “(7) If the board of directors adopts a resolution described in subsection
28 (6) of this section, the resolution may require that a unit owner, in addition
29 to any other insurance required by the declaration or bylaws, obtain and
30 maintain:

1 “(a) An insurance policy that insures the unit owner’s unit and
2 appurtenant limited common elements for not less than the amount of the
3 deductible in the association’s insurance policy for which the unit owner
4 may be responsible and that insures the unit owner’s personal property for
5 any loss or damage; and

6 “(b) Comprehensive liability insurance that includes, but is not limited
7 to, coverage for negligent acts of unit owners and tenants, guests of unit
8 owners and tenants and occupants of other units for damage to the general
9 and limited common elements, to other units and to the personal property
10 of other persons that is located in other units or the common elements.

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

13 “(a) Prescribes a procedure for processing insurance claims. The proce-
14 dure may require that all claims against the association’s insurance policy
15 be processed through and coordinated by the board of directors or the man-
16 aging agent, if authorized by the board.

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

19 “(9) Not later than 10 days after adoption of a resolution under subsection
20 (4), (6) or (8) of this section, the board of directors shall ensure that a copy
21 of the resolution and a notice described in subsection (10) of this section are:

22 “(a) Delivered to each unit owner; or

23 “(b) Mailed to the mailing address of each unit owner or to the mailing
24 address designated in writing by the unit owner.

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

26 “(a) Advise the unit owner to contact the unit owner’s insurance agent
27 to determine the effect of the resolution on the unit owner’s individual in-
28 surance coverage; and

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

1 “(11) Failure to provide a copy of a resolution or a notice required under
2 this section does not affect the responsibility of a unit owner to comply with
3 a resolution adopted under this section.

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

7 **“(a) That covers acts of dishonesty, embezzlement and theft by of-
8 ficers, directors, association employees, contracted community asso-
9 ciation managers, bookkeepers and other persons authorized by the
10 association to handle moneys of the association; and**

11 **“(b) In an amount equal to or greater than the sum of assessments
12 on all units for three months plus the total amount of moneys in re-
13 serve accounts.**

14 **“(13) The declarant, on behalf of the association, shall obtain in-
15 surance required under subsection (12) of this section within 30 days
16 after the date of conveyance of the first unit in the condominium and
17 maintain the insurance until the declarant relinquishes control of the
18 administration of the association under ORS 100.210.**

19 **“SECTION 20. ORS 100.480 is amended to read:**

20 **“100.480. (1) An association of unit owners shall retain within this state
21 the documents, information and records delivered to the association under
22 ORS 100.210 and all other records of the association for not less than the
23 period specified for the record in ORS 65.771 or any other applicable law,
24 except that:**

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

27 **“(b) Proxies and ballots must be retained for one year from the date of
28 determination of the vote, except proxies and ballots relating to an amend-
29 ment to the declaration, supplemental declaration plat, supplemental plat or
30 bylaws must be retained for one year from the date the amendment is re-**

1 corded.

2 “(2) The association of unit owners shall keep financial records, **includ-**
3 **ing all records of association accounts, that are** sufficient for proper
4 accounting purposes.

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

11 “[*(b) Subject to any limitations imposed by the declaration or bylaws, as-*
12 *sociation funds maintained in accounts established under this subsection may*
13 *be used to purchase obligations issued by the United States government.*]

14 “[*(c) All expenses of the association shall be paid from the association ac-*
15 *count.*]

16 “[*(4)*] **(3)** Within 90 days after the end of the fiscal year, the board of di-
17 rectors shall:

18 “(a) Prepare or cause to be prepared an annual financial statement con-
19 sisting of a balance sheet and income and expenses statement for the pre-
20 ceding fiscal year; and

21 “(b) Distribute to each unit owner a copy of the annual financial state-
22 ment.

23 “[*(5)*] **(4)** Subject to section 26, chapter 803, Oregon Laws 2003, the asso-
24 ciation of unit owners of a condominium that has annual assessments [*ex-*
25 *ceeding*] **greater than \$75,000 and less than \$500,000** shall cause the
26 financial statement required under subsection [*(4)*] **(3)** of this section to be
27 reviewed **in the manner required by subsection (8) of this section** within
28 180 days after the end of [*the*] **each** fiscal year [*by an independent certified*
29 *public accountant licensed in the State of Oregon in accordance with the*
30 *Statements on Standards for Accounting and Review Services issued by the*

1 *American Institute of Certified Public Accountants*].

2 “[~~(6)~~] **(5) Subject to section 26, chapter 803, Oregon Laws 2003**, the
3 association of unit owners of a condominium that has annual assessments
4 of \$75,000 or less shall cause the most recent financial statement required
5 by subsection [~~(4)~~] **(3)** of this section to be reviewed:

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

8 **“(b)** Within 180 days after the board of directors receives the petition
9 [*requesting review*] signed by at least a majority of the owners **that requests**
10 **review of the most recent financial statement required by subsection**
11 **(3) of this section.**

12 **“(6) The association of unit owners of a condominium that has an-**
13 **ual assessments of \$500,000 or more shall cause the financial state-**
14 **ment required under subsection (3) of this section to be audited within**
15 **180 days after the end of each fiscal year in the manner required by**
16 **subsection (8) of this section.**

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

23 **“(8) The review of financial statements required under subsection**
24 **(4) or (5) of this section and the audits required under subsection (6)**
25 **of this section must be performed, in accordance with standards issued**
26 **by the American Institute of Certified Public Accountants, by an in-**
27 **dependent certified public accountant licensed in Oregon.**

28 “[~~(8)(a)~~] **(9)(a)** The association shall provide, within 10 business days of
29 receipt of a written request from an owner, a written statement that pro-
30 vides:

1 “(A) The amount of assessments due from the owner and unpaid at the
2 time the request was received, including:

3 “(i) Regular and special assessments;

4 “(ii) Fines and other charges;

5 “(iii) Accrued interest; and

6 “(iv) Late payment charges.

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

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

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

15 “[(9)(a)] **(10)(a)** Except as provided in paragraph (b) of this subsection, the
16 documents, information and records described in subsections (1) to [(4)] **(3)**
17 of this section and all other records of the association of unit owners must
18 be reasonably available for examination and, upon written request, available
19 for duplication by a unit owner and any mortgagee of a unit that makes the
20 request in good faith for a proper purpose.

21 “(b) Records kept by or on behalf of the association may be withheld from
22 examination and duplication to the extent the records concern:

23 “(A) Personnel matters relating to a specific identified person or a
24 person’s medical records.

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

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

30 “(D) Disclosure of information in violation of law.

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

5 “(F) Documents, correspondence or other matters considered by the board
6 of directors in executive session held in accordance with ORS 100.420 (1) and
7 (2).

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

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

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

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

18 “(c) The current operating budget of the association;

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

20 “(e) Architectural standards and guidelines, if any.

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

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

30 “[13] (14) Subsection [(4)] (3) of this section first applies to property

1 submitted to the provisions of this chapter before January 1, 1982, when the
2 board of directors of the association of unit owners receives a written re-
3 quest from at least one unit owner that a copy of the annual financial
4 statement be distributed in accordance with subsection [(4)] (3) of this sec-
5 tion.

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

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

9 “(1) Commencing with the fiscal year following the turnover meeting for
10 the association of unit owners of a condominium created prior to January
11 1, 2004, if the turnover meeting has not yet occurred on January 1, 2004.

12 “(2) Commencing with the fiscal year beginning in calendar year 2004 for
13 the association of unit owners of a condominium created prior to January
14 1, 2004, if the turnover meeting has occurred on or before January 1, 2004.

15 “(3) Commencing with the fiscal year following the turnover meeting for
16 the association of unit owners of a condominium created on or after January
17 1, 2004.”.

18
