

Senate Bill 169

Sponsored by Senator BOQUIST (at the request of Glen Comuntz) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires approval of 50 percent of owners to establish or increase amount of assessment imposed on owners by planned community for common expenses.

Reduces percentage of owners, from 80 percent to 50 percent, required to approve transfer by homeowners association of ownership or security interest in common property of planned community.

A BILL FOR AN ACT

1
2 Relating to approval by vote of owners for actions of homeowners association in planned community;
3 creating new provisions; and amending ORS 94.580 and 94.665.

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

5 **SECTION 1.** ORS 94.580 is amended to read:

6 94.580. (1) A declarant shall record, in accordance with ORS 94.565, the declaration for a
7 planned community in the office of the recording officer of each county in which the planned com-
8 munity is located.

9 (2) The declaration shall include:

10 (a) The name and classification of the planned community;

11 (b) The name of the association and the type of entity formed in accordance with ORS 94.625;

12 (c) A statement that the planned community is subject to ORS 94.550 to 94.783;

13 (d) A statement that the bylaws adopted under ORS 94.625 must be recorded;

14 (e) A legal description, as required under ORS 93.600, of the real property included in the
15 planned community;

16 (f) A legal description, as required under ORS 93.600, of any real property included in the
17 planned community which is or must become a common property;

18 (g) A description of any special declarant rights other than the rights described under sub-
19 sections (3) and (4) of this section;

20 (h) A statement of the number of votes allocated to each lot in accordance with ORS 94.658;

21 (i) A method of determining the liability of each lot for common expenses and the right of each
22 lot to any common profits of the association;

23 (j) A statement of when the lots, including lots owned by the declarant, become subject to as-
24 sessment;

25 (k) If a Class I planned community, provisions for establishing a reserve account and for the
26 preparation, review and update of the reserve study and the maintenance plan as required by ORS
27 94.595;

28 (L) Any restrictions on the alienation of lots. Any such restriction created by any document
29 other than the declaration may be incorporated by reference to the official records of the county
30 where the property is located;

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

- 1 (m) A statement of the use, residential or otherwise, for which each lot is intended;
- 2 (n) A statement as to whether or not the association pursuant to ORS 94.665 may sell, convey
3 or subject to a security interest any portion of the common property and any limitation on such
4 authority;
- 5 (o) A statement of any restriction on the use, maintenance or occupancy of lots or units;
- 6 (p) The method of amending the declaration and a statement of the percentage of votes required
7 to approve an amendment of the declaration in accordance with ORS 94.590;
- 8 (q) A description of any contemplated improvements which the declarant agrees to build, or a
9 statement that the declarant does not agree to build any improvement or does not choose to limit
10 declarant's rights to add improvements not described in the declaration;
- 11 (r) A statement of any period of declarant control or other special declarant rights reserved by
12 the declarant under ORS 94.600;
- 13 (s) A statement of the time at which the deed to the common property is to be delivered,
14 whether by date or upon the occurrence of a stipulated event; and
- 15 (t) Any provisions restricting a right of the association with respect to the common property,
16 or an individual lot owner with respect to the lot or improvements on the lot, including but not
17 limited to:
- 18 (A) A right to divide the lot or to combine it with other lots;
- 19 (B) A right to repair or restore improvements on the lot at the owner's discretion in the event
20 of damage or destruction;
- 21 (C) The requirement for architectural controls, including but not limited to fencing, landscaping
22 or choice of exterior colors and materials of structures to be placed on the common property or on
23 a lot; and
- 24 (D) The requirement of review of any plans of any structure to be placed on the common prop-
25 erty or a lot.
- 26 (3) If the declarant reserves the right to expand the planned community by annexing lots or
27 common property or by creating additional lots or common property by developing existing property
28 in the planned community, the declaration shall contain, in addition to the provisions required under
29 subsections (1) and (2) of this section, a general description of the plan of development including:
- 30 (a) The procedure by which the planned community will be expanded;
- 31 (b) The maximum number of lots and units to be included in the planned community or a state-
32 ment that there is no limitation on the number of lots or units which the declarant may create or
33 annex to the planned community;
- 34 (c) A general description of the nature and proposed use of any common property which the
35 declarant agrees to create or annex to the planned community or a statement that there is no lim-
36 itation on the right of the declarant to create or annex common property;
- 37 (d) The method of allocation of votes if additional lots are to be created or annexed to the
38 planned community; and
- 39 (e) The formula to be used for reallocating the common expenses if additional lots are to be
40 created or annexed to the planned community, and the manner of reapportioning the common ex-
41 penses if lots are created or annexed during the fiscal year.
- 42 (4) If the declarant may withdraw property from the planned community, the declaration shall
43 include in addition to the provisions required under subsections (1), (2) and (3) of this section:
- 44 (a) The procedure by which property will be withdrawn;
- 45 (b) A general description of the property which may be withdrawn from the planned community;

1 (c) The method of allocation of votes if lots are withdrawn from the planned community;

2 (d) The formula to be used for reallocating the common expenses if the property to be withdrawn
 3 has been assessed for common expenses prior to withdrawal; and

4 (e) The date after which the right to withdraw property from the planned community shall ex-
 5 pire or a statement that such a right shall not expire.

6 **(5)(a) A declaration recorded on or after the effective date of this 2015 Act may not au-**
 7 **thorize the amount of an assessment for common expenses, including but not limited to as-**
 8 **sessments described in ORS 94.595 or 94.704, to be established or raised without the approval**
 9 **of a simple majority of owners in the planned community.**

10 **(b) When applied to an assessment described in ORS 94.704 (6), the assessment must be**
 11 **approved by a simple majority of the votes applicable to the lots or units benefited by the**
 12 **assessment.**

13 **(c) Paragraph (a) of this subsection does not apply to an assessment described in ORS**
 14 **94.704 (8).**

15 **SECTION 2.** ORS 94.665 is amended to read:

16 94.665. (1)(a) Except as otherwise provided in the declaration, a homeowners association may
 17 sell, transfer, convey or subject to a security interest any portion of the common property if 80
 18 percent or more of the votes in the homeowners association, including 80 percent of the votes of lots
 19 not owned by a declarant at the time of the vote, are cast in favor of the action.

20 **(b) Notwithstanding paragraph (a) of this subsection, for a planned community estab-**
 21 **lished by a declaration that is recorded on or after the effective date of this 2015 Act, a**
 22 **homeowners association may sell, transfer, convey or subject to a security interest any**
 23 **portion of the common property if 50 percent or more of the votes in the homeowners as-**
 24 **sociation, including 50 percent of the votes of lots not owned by a declarant at the time of**
 25 **the vote, are cast in favor of the action.**

26 (2) A sale, transfer, conveyance or encumbrance by a security interest of the common property
 27 or any portion of the common property made pursuant to a right reserved in the declaration under
 28 this section may provide that the common property be released from any restriction imposed on the
 29 common property by the declaration or other governing document if the request for approval of the
 30 action also includes approval of the release. However, a sale, transfer or encumbrance may not
 31 deprive any lot of its right of access to or support for the lot without the consent of the owner of
 32 the lot.

33 (3) Subject to subsections (4) and (5) of this section, unless expressly limited or prohibited by the
 34 declaration, the homeowners association may execute, acknowledge and deliver leases, easements,
 35 rights of way, licenses and other similar interests affecting common property and consent to vaca-
 36 tion of roadways within and adjacent to common property.

37 (4)(a) Except as otherwise provided in the declaration and paragraph (b) of this subsection, the
 38 granting of a lease, easement, right of way, license or other similar interest pursuant to subsection
 39 (3) of this section shall be first approved by at least 75 percent of owners present at a meeting of
 40 the association or with the consent of at least 75 percent of all owners solicited by any means the
 41 board of directors determines is reasonable. If a meeting is held to conduct the vote, the meeting
 42 notice must include a statement that approval of the grant will be an item of business in the agenda
 43 of the meeting.

44 (b)(A) The granting of a lease, easement, right of way, license or other similar interest affecting
 45 common property for a term of two years or less requires the approval of a majority of the board

1 of directors.

2 (B) The granting of a lease, easement, right of way, license or other similar interest affecting
3 common property for a term of more than two years to a public body, as defined in ORS 174.109,
4 or to a utility or a communications company for installation and maintenance of power, gas, electric,
5 water or other utility and communication lines and services requires the approval of a majority of
6 the board of directors.

7 (5) Unless the declaration otherwise provides, the consent to vacation of roadways within and
8 adjacent to common property must be approved first by at least a majority of owners present and
9 voting at a meeting of the association or with the consent of at least a majority of all owners so-
10 licited by any means the board of directors determines is reasonable. If a meeting is held to conduct
11 the vote, the meeting notice must include a statement that the roadway vacation will be an item
12 of business in the agenda of the meeting.

13 (6) An instrument that sells, transfers, conveys or encumbers common property pursuant to
14 subsection (1) of this section or grants an interest or consent pursuant to subsection (3) of this
15 section shall:

16 (a) State that the action of the homeowners association was approved in accordance with this
17 section; and

18 (b) Be executed by the president and secretary of the association and acknowledged in the
19 manner provided for acknowledgment of the instruments by the officers.

20 (7) The association shall treat proceeds of any sale, transfer or conveyance under subsection (1)
21 of this section, any grant under subsection (4) of this section or any consent to vacation under
22 subsection (5) of this section as an asset of the association.

23 **SECTION 3. The amendments to ORS 94.580 and 94.665 by sections 1 and 2 of this 2015**
24 **Act apply to a planned community established by a declaration recorded on or after the ef-**
25 **fective date of this 2015 Act.**

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