

D R A F T

SUMMARY

Requires homeowners associations and condominium unit owners associations to be audited by certified public accountant at least once every three years if annual assessments exceed \$500,000.

A BILL FOR AN ACT

Relating to financial practices in associations; amending ORS 94.640, 94.670, 100.417 and 100.480.

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

SECTION 1. ORS 94.670 is amended to read:

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

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

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

(2)(a) All assessments, including declarant subsidies and all other association funds, shall be deposited and maintained in the name of the association in one or more separate federally insured accounts, including certificates of deposit, at a financial institution, as defined in ORS 706.008, other than an

1 extranational institution. Except as provided in paragraph (b) of this sub-
2 section, funds must be maintained in an association account until disbursed.

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

6 (c) All expenses of the association shall be paid from the association ac-
7 count.

8 (3) The association shall keep financial records sufficiently detailed for
9 proper accounting purposes.

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

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

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

17 (5) Subject to ORS 94.671, the association of a planned community that
18 has annual assessments exceeding \$75,000 shall cause the financial statement
19 required under subsection (4) of this section to be reviewed within 300 days
20 after the end of the fiscal year by an independent certified public accountant
21 licensed in the State of Oregon in accordance with the Statements on Stan-
22 dards for Accounting and Review Services issued by the American Institute
23 of Certified Public Accountants.

24 (6) The association of a planned community created on or after January
25 1, 2004, or the association of a planned community described in ORS 94.572
26 that has annual assessments of \$75,000 or less shall cause the most recent
27 financial statement required by subsection (4) of this section to be reviewed
28 in the manner described in subsection (5) of this section within 300 days after
29 the association receives a petition requesting review signed by at least a
30 majority of the owners.

31 (7) An association subject to the requirements of subsection (5) of this

1 section may elect, on an annual basis, not to comply with the requirements
2 of subsection (5) of this section by an affirmative vote of at least 60 percent
3 of the owners, not including the votes of the declarant with respect to lots
4 owned by the declarant.

5 **(8) In addition to and not in lieu of the requirements of subsections**
6 **(5) to (7) of this section, an association that has annual assessments**
7 **exceeding \$500,000 shall, no less than once every three years, cause the**
8 **financial statement required under subsection (4) of this section to be**
9 **audited within 300 days after the end of the fiscal year by an inde-**
10 **pendent certified public accountant licensed in this state. The audit**
11 **must be prepared in accordance with generally accepted auditing**
12 **standards issued by the American Institute of Certified Public Ac-**
13 **countants.**

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

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

- 19 (i) Regular and special assessments;
- 20 (ii) Fines and other charges;
- 21 (iii) Accrued interest; and
- 22 (iv) Late payment charges.

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

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

27 (b) The association is not required to comply with paragraph (a) of this
28 subsection if the association has commenced litigation by filing a complaint
29 against the owner and the litigation is pending when the statement would
30 otherwise be due.

31 [(9)(a)] **(10)(a)** Except as provided in paragraph (b) of this subsection, the

1 association shall make the documents, information and records described in
2 subsections (1) and (4) of this section and all other records of the association
3 reasonably available for examination and, upon written request, available for
4 duplication by an owner and any mortgagee of a lot that makes the request
5 in good faith for a proper purpose.

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

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

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

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

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

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

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

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

25 [(10)] (11) The association shall maintain a copy, suitable for the purpose
26 of duplication, of the following:

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

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

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

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

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

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

7 ~~[(12)]~~ **(13)** The board of directors, by resolution, may adopt reasonable
8 rules governing the frequency, time, location, notice and manner of exam-
9 ination and duplication of association records and the imposition of a rea-
10 sonable fee for furnishing copies of any documents, information or records
11 described in this section. The fee may include reasonable personnel costs for
12 furnishing the documents, information or records.

13 **SECTION 2.** ORS 100.480 is amended to read:

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

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

21 (b) Proxies and ballots must be retained for one year from the date of
22 determination of the vote, except proxies and ballots relating to an amend-
23 ment to the declaration, supplemental declaration plat, supplemental plat or
24 bylaws must be retained for one year from the date the amendment is re-
25 corded.

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

28 (3)(a) All assessments and other association funds shall be deposited and
29 maintained in the name of the association in one or more separate federally
30 insured accounts, including certificates of deposit, at a financial institution,
31 as defined in ORS 706.008, other than an extranational institution. Except

1 as provided in paragraph (b) of this subsection, funds must be maintained in
2 an association account until disbursed.

3 (b) Subject to any limitations imposed by the declaration or bylaws, as-
4 sociation funds maintained in accounts established under this subsection may
5 be used to purchase obligations issued by the United States government.

6 (c) All expenses of the association shall be paid from the association ac-
7 count.

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

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

13 (b) Distribute to each unit owner a copy of the annual financial state-
14 ment.

15 (5) Subject to ORS 100.481, the association of unit owners of a condo-
16 minium that has annual assessments exceeding \$75,000 shall cause the fi-
17 nancial statement required under subsection (4) of this section to be reviewed
18 within 300 days after the end of the fiscal year by an independent certified
19 public accountant licensed in the State of Oregon in accordance with the
20 Statements on Standards for Accounting and Review Services issued by the
21 American Institute of Certified Public Accountants.

22 (6) The association of unit owners of a condominium that has annual as-
23 sessments of \$75,000 or less shall cause the most recent financial statement
24 required by subsection (4) of this section to be reviewed in the manner de-
25 scribed in subsection (5) of this section within 300 days after the board of
26 directors receives the petition requesting review signed by at least a majority
27 of the owners.

28 (7) An association of unit owners subject to the requirements of sub-
29 section (5) of this section may elect, on an annual basis, not to comply with
30 the requirements of subsection (5) of this section by an affirmative vote of
31 at least 60 percent of the owners, not including the votes of the declarant

1 with respect to units owned by the declarant.

2 **(8) In addition to and not in lieu of the requirements of subsections**
3 **(5) to (7) of this section, an association that has annual assessments**
4 **exceeding \$500,000 shall, no less than once every three years, cause the**
5 **financial statement required under subsection (4) of this section to be**
6 **audited within 300 days after the end of the fiscal year by an inde-**
7 **pendent certified public accountant licensed in this state. The audit**
8 **must be prepared in accordance with generally accepted auditing**
9 **standards issued by the American Institute of Certified Public Ac-**
10 **countants.**

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

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

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

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

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

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

28 [(9)(a)] **(10)(a)** Except as provided in paragraph (b) of this subsection, the
29 documents, information and records described in subsections (1) to (4) of this
30 section and all other records of the association of unit owners must be rea-
31 sonably available for examination and, upon written request, available for

1 duplication by a unit owner and any mortgagee of a unit that makes the
2 request in good faith for a proper purpose.

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

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

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

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

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

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

17 (F) Documents, correspondence or other matters considered by the board
18 of directors in executive session held in accordance with ORS 100.420 (1) and
19 (2).

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

23 ~~[(10)]~~ (11) The association of unit owners shall maintain a copy, suitable
24 for the purpose of duplication, of the following:

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

28 (b) The most recent annual financial statement prepared in accordance
29 with subsection (4) of this section;

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

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

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

2 [(11)] (12) The association, within 10 business days after receipt of a
3 written request by an owner, shall furnish the requested information re-
4 quired to be maintained under subsection [(10)] (11) of this section.

5 [(12)] (13) The board of directors, by resolution, may adopt reasonable
6 rules governing the frequency, time, location, notice and manner of exam-
7 ination and duplication of association records and the imposition of a rea-
8 sonable fee for furnishing copies of any documents, information or records
9 described in this section. The fee may include reasonable personnel costs
10 incurred to furnish the information.

11 [(13)] (14) Subsection (4) of this section first applies to property submitted
12 to the provisions of this chapter before January 1, 1982, when the board of
13 directors of the association of unit owners receives a written request from
14 at least one unit owner that a copy of the annual financial statement be
15 distributed in accordance with subsection (4) of this section.

16 **SECTION 3.** ORS 94.640 is amended to read:

17 94.640. (1) The board of directors of an association may act on behalf of
18 the association except as limited by the declaration and the bylaws. In the
19 performance of their duties, officers and members of the board of directors
20 are governed by this section and the applicable provisions of ORS 65.357,
21 65.361, 65.367, 65.369 and 65.377, whether or not the association is incorpo-
22 rated under ORS chapter 65.

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

26 (3) At least annually, the board of directors of an association shall review
27 the insurance coverage of the association.

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

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

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

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

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

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

11 (C) Removal of a director by owners is effective only if the matter of re-
12 moval was an item on the agenda and was stated in the notice of the meeting
13 if notice is required under ORS 94.650.

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

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

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

26 (A) Consult with legal counsel.

27 (B) Consider the following:

28 (i) Personnel matters, including salary negotiations and employee disci-
29 pline;

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

31 (iii) Collection of unpaid assessments.

1 (b) Except in the case of an emergency, the board of directors of an as-
2 sociation shall vote in an open meeting whether to meet in executive session.
3 If the board of directors votes to meet in executive session, the presiding
4 officer of the board of directors shall state the general nature of the action
5 to be considered and, as precisely as possible, when and under what circum-
6 stances the deliberations can be disclosed to owners. The statement, motion
7 or decision to meet in executive session must be included in the minutes of
8 the meeting.

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

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

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

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

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

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

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

3 (12) The board of directors shall [*cause*] **maintain and keep current** the
4 information required to enable the association to comply with ORS 94.670
5 [(8)] **(9)** [*to be maintained and kept current*].

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

11 **SECTION 4.** ORS 100.417 is amended to read:

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

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

21 (3) At least annually, the board of directors of an association shall review
22 the insurance coverage of the association.

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

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

27 (6) The board of directors, in the name of the association, shall maintain
28 a current mailing address.

29 (7) The board of directors shall [*cause to be maintained and kept*] **main-**
30 **tain and keep** current the information required to enable the association to
31 comply with ORS 100.480 [(11)] **(12)**.

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

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

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

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

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

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

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

23
