

Enrolled House Bill 2722

Sponsored by Representatives MCLAIN, VIAL (Pre-session filed.)

CHAPTER

AN ACT

Relating to governing documents of housing associations; creating new provisions; amending ORS 94.550, 94.572, 94.630, 94.671 and 100.005 and section 7, chapter ___, Oregon Laws 2017 (Enrolled House Bill 3447); repealing sections 3, 4 and 6, chapter ___, Oregon Laws 2017 (Enrolled House Bill 3447); and declaring an emergency.

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

SECTION 1. ORS 100.005 is amended to read:

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

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

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

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

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

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

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

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

(8) "Common expenses" means:

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

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

(c) Expenses declared common by ORS 100.005 to 100.627 or by the declaration or the bylaws of the particular condominium.

(9) "Condominium" means:

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

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

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

(C) Any easements, rights and appurtenances belonging to the property submitted to the provisions of ORS 100.005 to 100.627; and

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

(10) "Conversion condominium" means a condominium in which there is a building, improvement or structure that was occupied prior to any negotiation and that is:

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

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

(11) "Declarant" means a person who records a declaration under ORS 100.100 or a supplemental declaration under ORS 100.110.

(12) "Declaration" means the instrument described in ORS [100.100] **100.105** by which the condominium is created and as modified by any amendment recorded in accordance with ORS 100.135 or supplemental declaration recorded in accordance with ORS 100.120.

(13) "Developer" means a declarant or any person who purchases an interest in a condominium from declarant, successor declarant or subsequent developer for the primary purpose of resale.

(14) "Electric vehicle charging station" or "charging station" means a facility designed to deliver electrical current for the purpose of charging one or more electric motor vehicles.

(15) "Flexible condominium" means a condominium containing property that may be reclassified or withdrawn from the condominium pursuant to ORS 100.150 (1).

(16) "General common elements," unless otherwise provided in a declaration, means all portions of the condominium that are not part of a unit or a limited common element, including but not limited to the following:

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

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

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

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

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

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

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

(17) "Governing document" means articles of incorporation, bylaws, a declaration or a rule, regulation or resolution that was properly adopted by the association of unit owners or any other instrument or plat relating to common ownership or common maintenance of a portion of a condominium that is binding upon units within the condominium.

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

[(18)] **(19)** "Limited common elements" means those common elements designated in the declaration, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

[(19)] **(20)** "Majority" or "majority of unit owners" means more than 50 percent of the voting rights allocated to the units by the declaration.

[(20)] **(21)** "Mortgagee" means any person who is:

(a) A mortgagee under a mortgage;

(b) A beneficiary under a trust deed; or

(c) The vendor under a land sale contract.

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

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

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

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

[23] **(24)** “Percent of owners” or “percentage of owners” means the percent of the voting rights determined under ORS 100.525.

[24] **(25)** “Purchaser” means an actual or prospective purchaser of a condominium unit pursuant to a sale.

[25] **(26)** “Recording officer” means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

[26] **(27)** “Reservation agreement” means an agreement relating to the future sale of a unit which is not binding on the purchaser and which grants purchaser the right to cancel the agreement without penalty and obtain a refund of any funds deposited at any time until purchaser executes a unit sales agreement.

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

[28] **(29)** “Special declarant right” means any right, in addition to the regular rights of the declarant as a unit owner, reserved for the benefit of or created by the declarant under the declaration, bylaws or the provisions of this chapter.

[29] **(30)** “Staged condominium” means a condominium which provides for annexation of additional property pursuant to ORS 100.115 and 100.120.

[30] **(31)** “Successor declarant” means the transferee of any special declarant right.

[31] **(32)** “Termination date” means that date described in ORS 100.105 (2)(b) or (7)(d).

[32] **(33)** “Transitional committee” means the committee provided for under ORS 100.205.

[33] **(34)** “Turnover meeting” means the meeting provided for under ORS 100.210.

[34] **(35)** “Unit” or “condominium unit” means a part of the property which:

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

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

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

[35] **(36)** “Unit designation” means the number, letter or combination thereof designating a unit in the declaration and on the plat.

[36] **(37)** “Unit owner” means, except to the extent the declaration or bylaws provide otherwise, the person owning fee simple interest in a unit, the holder of a vendee’s interest in a unit under a recorded installment contract of sale and, in the case of a leasehold condominium, the holder of the leasehold estate in a unit.

[37] **(38)** “Unit sales agreement” means a written offer or agreement for the sale of a condominium unit which when fully executed will be binding on all parties. “Unit sales agreement” includes but is not limited to an earnest money receipt and agreement to purchase and other such agreements which serve as an agreement of sale for a cash transaction or which are preliminary to the execution of an installment contract of sale, but does not include a reservation agreement.

[38] **(39)** “Variable property” means property described in ORS 100.150 (2) and designated as variable property in the declaration and on the plat.

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

SECTION 2. Section 3 of this 2017 Act is added to and made a part of ORS chapter 100.

SECTION 3. (1) A provision of a condominium's governing document or landscaping or architectural guidelines that imposes irrigation requirements on a unit owner or the association is void and unenforceable while any of the following is in effect:

(a) A declaration by the Governor that a severe, continuing drought exists or is likely to occur in a political subdivision within which the condominium is located;

(b) A finding by the Water Resources Commission that a severe, continuing drought exists or is likely to occur in a political subdivision within which the condominium is located;

(c) An ordinance adopted by the governing body of a political subdivision within which the condominium is located that requires conservation or curtailment of water use; or

(d) A rule adopted by the association under subsection (2) of this section to reduce or eliminate irrigation water use.

(2) Notwithstanding any provision of a condominium's governing document or landscaping or architectural guidelines imposing irrigation requirements on a unit owner or the association, an association may adopt rules that:

(a) Require the reduction or elimination of irrigation on any portion of the condominium.

(b) Permit or require the replacement of turf or other landscape vegetation with xeriscape on any portion of the condominium.

(c) Require prior review and approval by the association or its designee of any plans by a unit owner or the association to replace turf or other landscape vegetation with xeriscape.

(d) Require the use of best practices and industry standards to reduce the landscaped areas and minimize irrigation of existing landscaped general common elements where turf is necessary for the function of the general common elements.

SECTION 3a. If House Bill 3447 becomes law, sections 3 and 4, chapter ___, Oregon Laws 2017 (Enrolled House Bill 3447), are repealed.

SECTION 3b. If House Bill 3447 becomes law, section 3 of this 2017 Act is amended to read:

Sec. 3. (1) A provision of a condominium's governing document or landscaping or architectural guidelines that imposes irrigation requirements on a unit owner or the association is void and unenforceable while any of the following is in effect:

(a) A declaration by the Governor that a severe, continuing drought exists or is likely to occur in a political subdivision within which the condominium is located;

(b) A finding by the Water Resources Commission that a severe, continuing drought exists or is likely to occur in a political subdivision within which the condominium is located;

(c) An ordinance adopted by the governing body of a political subdivision within which the condominium is located that requires conservation or curtailment of water use; or

(d) A rule adopted by the association under subsection (2) of this section to reduce or eliminate irrigation water use.

(2) Notwithstanding any provision of a condominium's governing document or landscaping or architectural guidelines imposing irrigation requirements on a unit owner or the association, an association may adopt rules that:

(a) Require the reduction or elimination of irrigation on any portion of the condominium.

(b) Permit or require the replacement of turf or other landscape vegetation with xeriscape on any portion of the condominium.

(c) Require prior review and approval by the association or its designee of any plans by a unit owner or the association to replace turf or other landscape vegetation with xeriscape.

(d) Require the use of best practices and industry standards to reduce the landscaped areas and minimize irrigation of existing landscaped general common elements where turf is necessary for the function of the general common elements.

(3) Except as provided in subsections (4) and (5) of this section, the following provisions of a condominium's governing document are void and unenforceable:

(a) A provision that prohibits or restricts the use of the unit owner's condominium unit or any limited common element designated for exclusive use by the occupants of the unit as the premises of an exempt family child care provider participating in the subsidy program under ORS 329A.500; or

(b) If the condominium unit does not share a wall, floor or ceiling surface in common with another unit, a provision that prohibits or restricts the use of the unit owner's condominium unit or any limited common element designated for exclusive use by the occupants of the unit as a certified or registered family child care home pursuant to ORS 329A.250 to 329A.450.

(4) Subsection (3) of this section does not prohibit an association of unit owners from adopting or enforcing a provision of the condominium's governing document that regulates parking, noise, odors, nuisance, use of common elements or activities that impact the cost of insurance policies held by the condominium, provided the provision:

(a) Is reasonable; and

(b) Does not have the effect of prohibiting or restricting the use of a unit as the premises of an exempt family child care provider participating in the subsidy program under ORS 329A.500 or as a certified or registered family child care home pursuant to ORS 329A.250 to 329A.450.

(5)(a) Subsection (3) of this section does not apply to condominiums that provide housing for older persons.

(b) As used in this subsection, "housing for older persons" has the meaning given that term in ORS 659A.421.

SECTION 4. ORS 94.550 is amended to read:

94.550. As used in ORS 94.550 to 94.783:

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

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

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

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

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

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

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

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

(a) Is not a Class I planned community;

(b) Contains at least five lots; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) "Electric vehicle charging station" or "charging station" means a facility designed to deliver electrical current for the purpose of charging one or more electric motor vehicles.

(13) "Governing document" means *[an]* **articles of incorporation, bylaws, a declaration or a rule, regulation or resolution that was properly adopted by the homeowners association or any other instrument or plat relating to common ownership or common maintenance of a portion of a planned community** *[and]* that is binding upon lots within the planned community.

(14) **"Governing entity" means an incorporated or unincorporated association, committee, person or any other entity that has authority under a governing document to maintain commonly maintained property, to impose assessments on lots or to act on matters of common concern on behalf of lot owners within the planned community.**

[(14)] (15) "Homeowners association" or "association" means the organization of owners of lots in a planned community, created under ORS 94.625, required by a governing document or formed under *[ORS 94.572]* **section 11 of this 2017 Act.**

[(15)] (16) "Majority" or "majority of votes" or "majority of owners" means more than 50 percent of the votes in the planned community.

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

(a) A mortgagee under a mortgage;

(b) A beneficiary under a trust deed; or

(c) The vendor under a land sale contract.

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

[(18)] (19) "Percent of owners" or "percentage of owners" means the owners representing the specified voting rights as determined under ORS 94.658.

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

(b) "Planned community" does not mean:

- (A) A condominium under ORS chapter 100;
- (B) A [planned community] **subdivision** that is exclusively commercial or industrial; or
- (C) A timeshare plan under ORS 94.803 to 94.945.

[(20)] **(21)** “Purchaser” means any person other than a declarant who, by means of a voluntary transfer, acquires a legal or equitable interest in a lot, other than as security for an obligation.

[(21)] **(22)** “Purchaser for resale” means any person who purchases from the declarant more than two lots for the purpose of resale whether or not the purchaser for resale makes improvements to the lots before reselling them.

(23) “Recorded declaration” means an instrument recorded with the recording officer of the county in which the planned community is located that contains covenants, conditions and restrictions that are binding upon lots in the planned community or that impose servitudes on the real property.

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

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

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

(c) Converting lots into common property;

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

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

[(23)] **(25)** “Successor declarant” means the transferee of any special declarant right.

[(24)] **(26)** “Turn over” means the act of turning over administrative responsibility pursuant to ORS 94.609 and 94.616.

[(25)] **(27)** “Unit” means a building or portion of a building located upon a lot in a planned community and designated for separate occupancy or ownership, but does not include any building or portion of a building located on common property.

[(26)] **(28)** “Votes” means the votes allocated to lots in the declaration under ORS 94.580 (2).

SECTION 5. ORS 94.630, as amended by section 1, chapter 86, Oregon Laws 2016, is amended to read:

94.630. (1) Subject to [subsections (2) and (5) of this section] **subsection (2) of this section and section 7 of this 2017 Act**, and except as otherwise provided in its declaration or bylaws, a homeowners association may:

(a) Adopt and amend bylaws, rules and regulations for the planned community;

(b) Adopt and amend budgets for revenues, expenditures and reserves, and collect assessments from owners for common expenses and the reserve account established under ORS 94.595;

(c) Hire and terminate managing agents and other employees, agents and independent contractors;

(d) Defend against any claims, proceedings or actions brought against it;

(e) Subject to subsection (4) of this section, initiate or intervene in litigation or administrative proceedings in its own name and without joining the individual owners in the following:

(A) Matters relating to the collection of assessments and the enforcement of governing documents;

(B) Matters arising out of contracts to which the association is a party;

(C) Actions seeking equitable or other nonmonetary relief regarding matters that affect the common interests of the owners, including but not limited to the abatement of nuisance;

(D) Matters, including but not limited to actions for damage, destruction, impairment or loss of use, relating to or affecting:

(i) Individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

(ii) Common property;

(E) Matters relating to or affecting the lots or interests of the owners including but not limited to damage, destruction, impairment or loss of use of a lot or portion thereof, if:

(i) Resulting from a nuisance or a defect in or damage to common property or individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

(ii) Required to facilitate repair to any common property; and

(F) Any other matter to which the association has standing under law or pursuant to the declaration or bylaws;

(f) Make contracts and incur liabilities;

(g) Regulate the use, maintenance, repair, replacement and modification of common property;

(h) Cause additional improvements to be made as a part of the common property;

(i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common property may be conveyed or subjected to a security interest only pursuant to ORS 94.665;

(j) Grant easements, leases, licenses and concessions through or over the common property as provided in ORS 94.665;

(k) Modify, close, remove, eliminate or discontinue the use of common property, including any improvement or landscaping, regardless of whether the common property is mentioned in the declaration, provided that:

(A) Nothing in this paragraph is intended to limit the authority of the association to seek approval of the modification, closure, removal, elimination or discontinuance by the owners; and

(B) Modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreation or community building must be approved by at least a majority of owners voting on the matter at a meeting or by written ballot held in accordance with the declaration, bylaws or ORS 94.647;

(L) Impose and receive any payments, fees or charges for the use, rental or operation of the common property and services provided to owners;

(m) Adopt rules regarding the termination of utility services paid for out of assessments of the association and access to and use of recreational and service facilities available to owners. The rules must provide for written notice and an opportunity to be heard before the association may terminate the rights of any owners to receive the benefits or services until the correction of any violation covered by the rule has occurred;

(n) Impose charges for late payment of assessments and attorney fees related to the collection of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules and regulations of the association, provided that the charge imposed or the fine levied by the association is based:

(A) On a schedule contained in the declaration or bylaws, or an amendment to either that is delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing by the owners; or

(B) On a resolution of the association or its board of directors that is delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing by the owners;

(o) Impose reasonable charges for the preparation and recordation of amendments to the declaration;

(p) Provide for the indemnification of its officers and the board of directors and maintain liability insurance for directors and officers;

(q) Assign its right to future income, including the right to receive common expense assessments; and

(r) Exercise any other powers necessary and proper for the administration and operation of the association.

(2) A declaration may not impose any limitation on the ability of the association to deal with a declarant that is more restrictive than the limitations imposed on the ability of the association to deal with any other person, except during the period of declarant control under ORS 94.600.

(3) A permit or authorization, or an amendment, modification, termination or other instrument affecting a permit or authorization, issued by the board of directors that is authorized by law, the declaration or bylaws may be recorded in the deed records of the county in which the planned community is located. A permit or authorization, or an amendment, modification, termination or other instrument affecting a permit or authorization, recorded under this subsection shall:

(a) Be executed by the president and secretary of the association and acknowledged in the manner provided for acknowledgment of instruments by the officers;

(b) Include the name of the planned community and a reference to where the declaration and any applicable supplemental declarations are recorded;

(c) Identify, by the designations stated or referenced in the declaration or applicable supplemental declaration, all affected lots and common property; and

(d) Include other information and signatures if required by law, the declaration, bylaws or the board of directors.

(4)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an administrative proceeding in which the association and an owner have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution program available within the county in which the planned community is located that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the association, for the other party.

(b) If the party receiving the offer does not accept the offer within 10 days after receipt by written notice hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the association, for the other party, the initiating party may commence the litigation or the administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(c) If a qualified dispute resolution program exists within the county in which the planned community is located and an offer to use the program is not made as required under paragraph (a) of this subsection, litigation or an administrative proceeding may be stayed for 30 days upon a motion of the noninitiating party. If the litigation or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(d) Unless a stay has been granted under paragraph (c) of this subsection, if the dispute resolution process is not completed within 30 days after receipt of the initial offer, the initiating party may commence litigation or an administrative proceeding without regard to whether the dispute resolution is completed.

(e) Once made, the decision of the court or administrative body arising from litigation or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(f) The requirements of this subsection do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines.

[(5) A provision of a planned community's declaration, bylaws, rules, regulations or landscaping or architectural guidelines that imposes irrigation requirements on an owner shall be void and unenforceable while any of the following is in effect:]

[(a) A declaration by the Governor that a severe, continuing drought exists or is likely to exist;]

[(b) A finding by the Water Resources Commission that a severe or continuing drought exists or is likely to occur; or]

[(c) An ordinance adopted by the governing body of a political subdivision within which the planned community is located that requires conservation or curtailment of water use.]

SECTION 6. Section 7 of this 2017 Act is added to and made a part of ORS 94.550 to 94.783.

SECTION 7. (1) A provision of a planned community's governing document or landscaping or architectural guidelines that imposes irrigation requirements on an owner or the association is void and unenforceable while any of the following is in effect:

(a) A declaration by the Governor that a severe, continuing drought exists or is likely to occur in a political subdivision within which the planned community is located;

(b) A finding by the Water Resources Commission that a severe, continuing drought exists or is likely to occur in a political subdivision within which the planned community is located;

(c) An ordinance adopted by the governing body of a political subdivision within which the planned community is located that requires conservation or curtailment of water use; or

(d) A rule adopted by the association under subsection (2) of this section to reduce or eliminate irrigation water use.

(2) Notwithstanding any provision of a planned community's governing documents or landscaping or architectural guidelines imposing irrigation requirements on an owner or the association, an association may adopt rules that:

(a) Require the reduction or elimination of irrigation on any portion of the planned community.

(b) Permit or require the replacement of turf or other landscape vegetation with xeriscape on any portion of the planned community.

(c) Require prior review and approval by the association or its designee of any plans by an owner or the association to replace turf or other landscape vegetation with xeriscape.

(d) Require the use of best practices and industry standards to reduce the landscaped areas and minimize irrigation of existing landscaped areas of common property where turf is necessary for the function of the landscaped area.

SECTION 7a. If House Bill 3447 becomes law, section 6, chapter ___, Oregon Laws 2017 (Enrolled House Bill 3447) (amending ORS 94.630), is repealed.

SECTION 7b. If House Bill 3447 becomes law, section 7 of this 2017 Act is amended to read:

Sec. 7. (1) A provision of a planned community's governing document or landscaping or architectural guidelines that imposes irrigation requirements on an owner or the association is void and unenforceable while any of the following is in effect:

(a) A declaration by the Governor that a severe, continuing drought exists or is likely to occur in a political subdivision within which the planned community is located;

(b) A finding by the Water Resources Commission that a severe, continuing drought exists or is likely to occur in a political subdivision within which the planned community is located;

(c) An ordinance adopted by the governing body of a political subdivision within which the planned community is located that requires conservation or curtailment of water use; or

(d) A rule adopted by the association under subsection (2) of this section to reduce or eliminate irrigation water use.

(2) Notwithstanding any provision of a planned community's governing documents or landscaping or architectural guidelines imposing irrigation requirements on an owner or the association, an association may adopt rules that:

(a) Require the reduction or elimination of irrigation on any portion of the planned community.

(b) Permit or require the replacement of turf or other landscape vegetation with xeriscape on any portion of the planned community.

(c) Require prior review and approval by the association or its designee of any plans by an owner or the association to replace turf or other landscape vegetation with xeriscape.

(d) Require the use of best practices and industry standards to reduce the landscaped areas and minimize irrigation of existing landscaped areas of common property where turf is necessary for the function of the landscaped area.

(3) Except as provided in subsections (4) and (5) of this section, the following provisions of a planned community's governing document are void and unenforceable:

(a) A provision that prohibits or restricts the use of the owner's unit or lot as the premises of an exempt family child care provider participating in the subsidy program under ORS 329A.500; or

(b) If the unit does not share a wall, floor or ceiling surface in common with another unit, a provision that prohibits or restricts the use of the owner's unit or lot as a certified or registered family child care home pursuant to ORS 329A.250 to 329A.450.

(4) Subsection (3) of this section does not prohibit a homeowners association from adopting or enforcing a provision of the planned community's governing document that regulates parking, noise, odors, nuisance, use of common property or activities that impact the cost of insurance policies held by the planned community, provided the provision:

(a) Is reasonable; and

(b) Does not have the effect of prohibiting or restricting the use of a unit or lot as the premises of an exempt family child care provider participating in the subsidy program under ORS 329A.500 or as a certified or registered family child care home pursuant to ORS 329A.250 to 329A.450.

(5)(a) Subsection (3) of this section does not apply to planned communities that provide housing for older persons.

(b) As used in this subsection, "housing for older persons" has the meaning given that term in ORS 659A.421.

SECTION 7c. The amendments to sections 3 and 7 of this 2017 Act by sections 3b and 7b of this 2017 Act become operative on January 1, 2018.

SECTION 7d. If House Bill 3447 becomes law, section 7, chapter ___, Oregon Laws 2017 (Enrolled House Bill 3447), is amended to read:

Sec. 7. [Section 4 of this 2017 Act and] The amendments to ORS 93.270 [and 94.630] by [sections 1 and 6 of this 2017 Act] **section 1, chapter ___, Oregon Laws 2017 (Enrolled House Bill 3447), and the amendments to sections 3 and 7 of this 2017 Act by sections 3b and 7b of this 2017 Act** apply to:

(1) Instruments conveying fee title to real property executed on or after [the effective date of this 2017 Act] **January 1, 2018**; and

(2) Provisions of governing documents and guidelines adopted on or after [the effective date of this 2017 Act] **January 1, 2018**.

SECTION 8. ORS 94.572, as amended by section 2, chapter 86, Oregon Laws 2016, is amended to read:

94.572. (1)[(a)] A Class I or Class II planned community created before January 1, 2002, that was not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3)[, (4) and (5)] **and (4)**, 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 **and sections 7, 10, 11, 12 and 13 of this 2017 Act** to the extent that those statutes are consistent with any governing documents **of the planned community**.

(2) If the governing documents **of a planned community described in subsection (1) of this section** do not provide for the formation of [an] **a homeowners** association, the requirements of this [subsection] **section** are not effective until the formation of an association in accordance with [paragraph (b) of this subsection] **section 11 of this 2017 Act**.

(3) If a provision of the governing documents **of a planned community described in subsection (1) of this section** is inconsistent with this [subsection] **section**, the owners may amend the governing documents using the procedures in [this subsection:] **section 10 of this 2017 Act**.

[A] *In accordance with the procedures for the adoption of amendments in the governing documents and subject to any limitations in the governing documents, the owners may amend the inconsistent provisions of the governing documents to conform to the extent feasible with this section and ORS*

94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3), (4) and (5), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780. Nothing in this paragraph requires the owners to amend a declaration or bylaws to include the information required by ORS 94.580 or 94.635.]

[(B) If there are no procedures for amendment in the governing documents:]

[(i) For an amendment to a recorded governing document other than bylaws, the owners may amend the inconsistent provisions of the document to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 by a vote of at least 75 percent of the owners in the planned community.]

[(ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the bylaws to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3), (4) and (5), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 by a vote of at least a majority of the owners in the planned community.]

[(iii) An amendment may be adopted at a meeting held in accordance with the governing documents or by another procedure permitted by the governing documents following the procedures prescribed in ORS 94.647, 94.650 or 94.660.]

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

[(C) An amendment adopted pursuant to this paragraph shall include:]

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

[(ii) A statement that the amendment is adopted pursuant to the applicable subparagraph of this paragraph.]

[(b)(A) If the governing documents do not provide for the formation of an association of owners, at least 10 percent of the owners in the planned community or any governing entity may initiate the formation of an association as provided in this paragraph. The owners or the governing entity initiating the association formation shall call an organizational meeting for the purpose of voting whether to form an association described in ORS 94.625. The notice of the meeting shall:]

[(i) Name the initiating owners or governing entity;]

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

[(iii) State that if the owners vote to form an association, the owners may elect the initial board of directors provided for in the articles of incorporation and may adopt the initial bylaws;]

[(iv) State that to form an association requires an affirmative vote of at least a majority of the owners in the planned community, or, if a larger percentage is specified in the applicable governing document, the larger percentage;]

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

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

[(vii) State that a copy of the proposed articles of incorporation and bylaws will be available at least five business days before the meeting and state the method of requesting a copy; and]

[(viii) Be delivered in accordance with the declaration and bylaws. If there is no governing document or the document does not include applicable provisions, the owners or governing entity shall follow the procedures prescribed in ORS 94.650 (4).]

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

[(C) At the organizational meeting:]

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

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

[(iii) The affirmative vote of at least a majority of the owners of a planned community, or, if a larger percentage is specified in the applicable governing document, the larger percentage, is required to form an association under this paragraph.]

[(iv) If the owners vote to form an association, the owners shall adopt articles of incorporation and may elect the initial board of directors as provided in the articles of incorporation, adopt bylaws and conduct any other authorized business by an affirmative vote of at least a majority of the owners present. If the owners do not elect the initial board of directors, owners shall elect an interim board of directors by an affirmative vote of at least a majority of the owners present to serve until the initial board of directors is elected.]

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

[(D) Not later than 10 business days after the organizational meeting, the board of directors shall:]

[(i) Cause the articles of incorporation to be filed with the Secretary of State under ORS chapter 65;]

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

[(iii) Provide a copy of the notice of planned community to each owner, together with a copy of the adopted articles of incorporation and bylaws, if any, or a statement of the procedure and method for adoption of bylaws described in subparagraph (C) of this paragraph. The copies and any statement shall be delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated by the owners in writing; and]

[(iv) Cause a statement of association information to be prepared, executed and recorded in accordance with ORS 94.667.]

[(E) If the owners vote to form an association, all costs incurred under this paragraph, including but not limited to the preparation and filing of the articles of incorporation, drafting of bylaws, preparation of notice of meeting and the drafting, delivery and recording of all notices and statements shall be a common expense of the owners and shall be allocated as provided in the appropriate governing document or any amendment thereto.]

[(2)(a) The owners of lots in a Class I or Class II planned community that are subject to the provisions of ORS chapter 94 specified in subsection (1) of this section may elect to be subject to any other provisions of ORS 94.550 to 94.783 upon compliance with the procedures prescribed in subsection (1) of this section.]

[(b) If the owners of lots in a Class I or Class II planned community elect to be subject to additional provisions of ORS 94.550 to 94.783, unless the notice of planned community otherwise required or permitted under subsection (4) of this section includes a statement of the election pursuant to this paragraph, the board of directors of the association shall cause the notice of planned community described in subsection (4) of this section to be prepared, executed and recorded in accordance with subsection (4) of this section.]

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

[(b) If the owners of lots in a Class III planned community elect to be subject to provisions of ORS 94.550 to 94.783, the board of directors of the association shall cause the notice of planned community described in subsection (4) of this section to be prepared, executed and recorded in accordance with subsection (4) of this section.]

[(4) The notice of planned community required or permitted by this section shall be:]

[(a) Titled "Notice of Planned Community under ORS 94.572";]

[(b) Executed by the president and secretary of the association; and]

[(c) Recorded in the office of the recording officer of every county in which the property is located.]

[(5) The notice of planned community shall include:]

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

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

[(c) Information identifying the recorded declaration, conditions, covenants and restrictions or other governing documents and a reference to the recording index numbers and date of recording of the governing documents;]

[(d) A statement that the property described in accordance with paragraph (b) of this subsection is subject to specific provisions of the Oregon Planned Community Act;]

[(e) A reference to the specific provisions of the Oregon Planned Community Act that apply to the subject property and a reference to the subsection of this section under which the application is made; and]

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

[(6) An amended statement shall include a reference to the recording index numbers and the date of recording of prior statements.]

[(7) The county clerk may charge a fee for recording a statement under this section according to the provisions of ORS 205.320 (1)(d).]

[(8) The board of directors of an association not otherwise required to cause a notice of planned community described in subsection (4) of this section to be prepared and recorded under this section may cause a notice of planned community to be prepared, executed and recorded as provided in subsection (4) of this section.]

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

[(10) As used in this section:]

[(a) "Governing entity" means an incorporated or unincorporated association, committee, person or any other entity that has authority, under a governing document, to maintain commonly maintained property, impose assessments on lots or to act on behalf of lot owners within the planned community on matters of common concern.]

[(b) "Recorded declaration" means an instrument recorded with the county recording officer of the county in which the planned community is located that contains conditions, covenants and restrictions binding lots in the planned community or imposes servitudes upon the real property.]

SECTION 9. Sections 10, 11, 12 and 13 of this 2017 Act are added to and made a part of ORS 94.550 to 94.783.

SECTION 10. (1)(a)(A) The owners in a Class I or Class II planned community created before January 1, 2002, that was not created under ORS 94.550 to 94.783 may amend any provision of the planned community's governing documents to conform with this section and

ORS 94.550, 94.572, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 and sections 7, 11 and 12 of this 2017 Act.

(B) An amendment to any provision of a planned community's governing documents made pursuant to this paragraph must be executed in accordance with the procedures for the adoption of amendments prescribed by, and subject to any limitations specified in, the planned community's governing documents.

(C) Nothing in this section or ORS 94.572 requires the owners to amend a declaration or bylaws to include the information required by ORS 94.580 or 94.635.

(b) If a planned community's governing documents do not provide procedures to amend the provisions of the governing documents:

(A) The owners may amend the inconsistent provisions of a governing document other than bylaws to conform with this section and ORS 94.550, 94.572, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 and sections 11 and 12 of this 2017 Act by a vote of at least 75 percent of the owners in the planned community.

(B) The owners may amend the inconsistent provisions of the bylaws to conform with this section and ORS 94.550, 94.572, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 and sections 7, 11 and 12 of this 2017 Act by a vote of at least a majority of the owners in the planned community.

(C) The owners may adopt an amendment to the provisions of a governing document at a meeting held in accordance with the governing documents or by another procedure permitted by the governing documents that follows the procedures prescribed in ORS 94.647, 94.650 or 94.660.

(2) The owners of a planned community described in subsection (1) of this section shall execute, certify and record an amendment adopted pursuant to subsection (1) of this section to:

(a) A recorded declaration as provided in ORS 94.590 (2), (3) and (5).

(b) The bylaws or any other governing document as provided in ORS 94.590 (3). If the bylaws or other governing document to which the amendment relates were recorded, the owners shall cause an amendment to the bylaws or other governing document to be recorded in the office of the recording officer of every county in which the planned community is located.

(3) An amendment adopted pursuant to subsection (1) of this section shall include:

(a) A reference to the recording index numbers and date of recording of the governing document, if recorded, to which the amendment relates; and

(b) A statement that the amendment is adopted.

SECTION 11. (1)(a) If the governing documents of a Class I or Class II planned community created before January 1, 2002, that was not created under ORS 94.550 to 94.783 do not provide for the formation of a homeowners association, at least 10 percent of the owners in the planned community or any governing entity of the planned community may initiate the formation of an association as provided in this section.

(b) The owners or the governing entity initiating the association formation shall:

(A) Call an organizational meeting for the purpose of voting whether to form an association described in ORS 94.625; and

(B) Provide notice of the organization meeting to the owners in the planned community.

(c) The notice of the organizational meeting shall list the names of the initiating owners or the governing entity and shall include the following statements:

(A) The organizational meeting is for the purpose of voting whether to form an association in accordance with the proposed articles of incorporation;

(B) If the owners vote to form an association, the owners may elect the initial board of directors provided for in the articles of incorporation and may adopt the initial bylaws;

(C) The formation of the association requires an affirmative vote of at least a majority of the owners in the planned community, or a larger percentage if so specified in an applicable governing document;

(D) An affirmative vote of at least a majority of the owners present is required to adopt the articles of incorporation, to elect the initial board of directors pursuant to the articles of incorporation or to adopt the initial bylaws;

(E) If the initial board of directors is not elected at the organizational meeting, an interim board of directors must be elected pursuant to bylaws adopted as provided in subsection (4) of this section; and

(F) A copy of the proposed articles of incorporation and bylaws will be available at least five business days before the meeting and a statement of the method of requesting a copy.

(2) The notice described in subsection (1)(c) of this section must be delivered in accordance with the declaration and bylaws. If there are no governing documents or the governing documents do not include notice provisions, the owners or the governing entity shall follow the procedure prescribed in ORS 94.650 (4).

(3) The initiating owners or the governing entity shall cause articles of incorporation and bylaws to be drafted at least five business days before the organizational meeting. The bylaws must include, to the extent applicable, the information required by ORS 94.635.

(4) At the organizational meeting:

(a) Representatives of the initiating owners or the governing entity shall conduct the meeting according to Robert's Rules of Order as provided in ORS 94.657, to the extent not inconsistent with the governing documents.

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

(c) The affirmative vote of at least a majority of the owners of a planned community, or a larger percentage if so specified in an applicable governing document, is required to form an association under this section.

(d) An owner may vote by proxy or written ballot if so approved by a majority of the initiating owners or by the governing entity.

(e)(A) If the owners vote to form an association at the organizational meeting, the owners:

(i) Shall adopt articles of incorporation;

(ii) May elect the initial board of directors as provided in the articles of incorporation;

(iii) Shall adopt bylaws; and

(iv) Shall conduct any other authorized business by an affirmative vote of at least a majority of the owners present.

(B) If the owners do not elect the initial board of directors at the organizational meeting, the owners shall elect an interim board of directors by an affirmative vote of at least a majority of the owners present to serve until the initial board of directors is elected.

(5) Not later than 10 business days after the organizational meeting, the board of directors shall cause:

(a) The articles of incorporation to be filed with the Secretary of State under ORS chapter 65.

(b) The notice of planned community to be prepared, executed and recorded in accordance with section 12 of this 2017 Act.

(c) A statement of association information to be prepared, executed and recorded in accordance with ORS 94.667.

(d) Each owner to receive a copy of the notice of planned community, together with a copy of the adopted articles of incorporation and bylaws, if any, or a statement of the procedure and method for adoption of bylaws described in subsection (4) of this section. The copies and any statement must be delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated by the owners in writing.

(6) If the owners vote to form an association, all costs incurred under this section, including but not limited to the preparation and filing of the articles of incorporation, the drafting of bylaws, the preparation of notice of meeting and the drafting, delivery and recording of all notices and statements, shall be a common expense of the owners and shall be allocated as provided in the appropriate governing document or any amendment thereto.

SECTION 12. (1)(a) The owners in a Class I or Class II planned community that is subject to the statutory provisions listed in ORS 94.572 (1) may elect to be subject to any other provisions of ORS 94.550 to 94.783 upon compliance with the applicable procedures prescribed in ORS 94.572 or section 10 or 11 of this 2017 Act.

(b) If the owners in a Class I or Class II planned community elect to be subject to additional provisions of ORS 94.550 to 94.783, the board of directors of the association shall cause a notice of planned community to be prepared, executed and recorded in accordance with subsection (3) of this section. This paragraph does not apply if a statement of the election was included in the notice of planned community required or permitted under section 11 of this 2017 Act.

(2)(a) The owners in a Class III planned community created before January 1, 2002, may elect to be subject to provisions of ORS 94.550 to 94.783 upon compliance with the applicable procedures in ORS 94.572 or section 10 or 11 of this 2017 Act.

(b) If the owners in a Class III planned community elect to be subject to provisions of ORS 94.550 to 94.783, the board of directors of the association shall cause a notice of planned community to be prepared, executed and recorded in accordance with subsection (3) of this section.

(3)(a) The notice of planned community required or permitted by section 11 of this 2017 Act must be:

(A) Titled "Notice of Planned Community under section 11 of this 2017 Act";

(B) Executed by the president and secretary of the association; and

(C) Recorded in the office of the recording officer of every county in which the property is located.

(b) The notice of planned community shall include:

(A) The name of the planned community and association as identified in the recorded declaration and any covenants, conditions and restrictions or other governing document, and, if different, the current name of the association;

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

(C) Information identifying the recorded declaration and any covenants, conditions and restrictions or other governing documents, and a reference to the recording index numbers and date of recording of the governing documents;

(D) A statement that the property described in accordance with subparagraph (B) of this paragraph is subject to specific provisions of the Oregon Planned Community Act;

(E) A reference to the specific provisions of the Oregon Planned Community Act that apply to the subject property and a reference to the subsection of this section under which the application is made; and

(F) If an association is formed under section 11 of this 2017 Act, a statement to that effect.

(4) The board of directors of an association not otherwise required to cause a notice of planned community to be prepared and recorded under section 11 of this 2017 Act may cause a notice of planned community to be prepared, executed and recorded as provided in subsection (3) of this section.

SECTION 13. (1) An amended governing document must include a reference to the recording index numbers and the date of recording of prior governing documents.

(2) The county clerk may charge a fee for recording a governing document or an amendment to a governing document under ORS 94.572 or section 10, 11 or 12 of this 2017 Act according to the provisions of ORS 205.320 (1)(d).

(3) Title to a unit, lot or common property in a Class I or Class II planned community created before January 1, 2002, may not be rendered unmarketable or otherwise affected by a failure of the planned community to be in compliance with a requirement of this section or ORS 94.572 or section 10, 11 or 12 of this 2017 Act.

SECTION 14. ORS 94.671 is amended to read:

94.671. The requirements of ORS 94.670 (5) first apply:

(1) Commencing with the fiscal year following the turnover meeting required by ORS 94.616 for the association of a planned community created under ORS 94.550 to 94.783.

(2) Commencing with the fiscal year following the year in which owners assume responsibility for administration of a planned community described in [ORS 94.572] section 11 of this 2017 Act.

SECTION 15. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by House April 3, 2017

Received by Governor:

Repassed by House June 14, 2017

.....M.,....., 2017

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2017

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Tina Kotek, Speaker of House

.....
Kate Brown, Governor

Passed by Senate June 6, 2017

Filed in Office of Secretary of State:

.....M.,....., 2017

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Peter Courtney, President of Senate

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Dennis Richardson, Secretary of State