

(To Resolve Conflicts)

A-Engrossed
House Bill 2722

Ordered by the Senate June 2
Including Senate Amendments dated June 2 to resolve conflicts

Sponsored by Representatives MCLAIN, VIAL (Presession filed.)

SUMMARY

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

Prohibits enforcement of condominium irrigation requirements by association of unit owners following finding or declaration of existing or likely drought conditions or adoption of certain rules by association. Prohibits enforcement of irrigation requirements by homeowners association following adoption of certain rules by association. Permits association of unit owners and homeowners association to adopt rules that require reduction or elimination of irrigation or that permit or require replacement of existing turf with xeriscape. Defines terms and reorganizes certain provisions within each statutory series.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to governing documents of housing associations; creating new provisions; amending ORS
3 94.550, 94.572, 94.630, 94.671 and 100.005 and section 7, chapter ___, Oregon Laws 2017 (Enrolled
4 House Bill 3447); repealing sections 3, 4 and 6, chapter ___, Oregon Laws 2017 (Enrolled House
5 Bill 3447); and declaring an emergency.

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

7 **SECTION 1.** ORS 100.005 is amended to read:

8 100.005. As used in this chapter, unless the context requires otherwise:

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

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

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

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

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

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

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

- 1 (7) "Common elements" means the general common elements and the limited common elements.
- 2 (8) "Common expenses" means:
- 3 (a) Expenses of administration, maintenance, repair or replacement of the common elements;
- 4 (b) Expenses agreed upon as common by all the unit owners; and
- 5 (c) Expenses declared common by ORS 100.005 to 100.627 or by the declaration or the bylaws
- 6 of the particular condominium.
- 7 (9) "Condominium" means:
- 8 (a) With respect to property located within this state:
- 9 (A) The land, if any, whether fee simple, leasehold, easement or other interest or combination
- 10 thereof, and whether contiguous or noncontiguous;
- 11 (B) Any buildings, improvements and structures on the property; and
- 12 (C) Any easements, rights and appurtenances belonging to the property submitted to the pro-
- 13 visions of ORS 100.005 to 100.627; and
- 14 (b) With respect to property located outside this state, the property that has been committed to
- 15 the condominium form of ownership in accordance with the jurisdiction within which the property
- 16 is located.
- 17 (10) "Conversion condominium" means a condominium in which there is a building, improvement
- 18 or structure that was occupied prior to any negotiation and that is:
- 19 (a) Residential in nature, at least in part; and
- 20 (b) Not wholly commercial or industrial, or commercial and industrial, in nature.
- 21 (11) "Declarant" means a person who records a declaration under ORS 100.100 or a supple-
- 22 mental declaration under ORS 100.110.
- 23 (12) "Declaration" means the instrument described in ORS [100.100] **100.105** by which the con-
- 24 dominium is created and as modified by any amendment recorded in accordance with ORS 100.135
- 25 or supplemental declaration recorded in accordance with ORS 100.120.
- 26 (13) "Developer" means a declarant or any person who purchases an interest in a condominium
- 27 from declarant, successor declarant or subsequent developer for the primary purpose of resale.
- 28 (14) "Electric vehicle charging station" or "charging station" means a facility designed to de-
- 29 liver electrical current for the purpose of charging one or more electric motor vehicles.
- 30 (15) "Flexible condominium" means a condominium containing property that may be reclassified
- 31 or withdrawn from the condominium pursuant to ORS 100.150 (1).
- 32 (16) "General common elements," unless otherwise provided in a declaration, means all portions
- 33 of the condominium that are not part of a unit or a limited common element, including but not
- 34 limited to the following:
- 35 (a) The land, whether fee simple, leasehold, easement, other interest or combination thereof,
- 36 together with any rights and appurtenances;
- 37 (b) The foundations, columns, girders, beams, supports, bearing and shear walls, windows, except
- 38 glazing and screening, unit access doors, except glazing and screening, roofs, halls, corridors, lob-
- 39 bies, stairs, fire escapes, entrances and exits of a building;
- 40 (c) The basements, yards, gardens, parking areas and outside storage spaces;
- 41 (d) Installations of central services such as power, light, gas, hot and cold water, heating, re-
- 42 frigeration, air conditioning, waste disposal and incinerating;
- 43 (e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus
- 44 and installations existing for common use;
- 45 (f) The premises for the lodging of janitors or caretakers of the property; and

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

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

7 [(17)] **(18) “Leasehold” means the interest of a person, firm or corporation [who] that is the**
8 **lessee under a lease from the owner in fee and [who] that files a declaration creating a condomi-**
9 **um under ORS 100.100.**

10 [(18)] **(19) “Limited common elements” means those common elements designated in the decla-**
11 **ration, as reserved for the use of a certain unit or number of units, to the exclusion of the other**
12 **units.**

13 [(19)] **(20) “Majority” or “majority of unit owners” means more than 50 percent of the voting**
14 **rights allocated to the units by the declaration.**

15 [(20)] **(21) “Mortgagee” means any person who is:**

- 16 (a) A mortgagee under a mortgage;
17 (b) A beneficiary under a trust deed; or
18 (c) The vendor under a land sale contract.

19 [(21)] **(22) “Negotiation” means any activity preliminary to the execution by either developer**
20 **or purchaser of a unit sales agreement, including but not limited to advertising, solicitation and**
21 **promotion of the sale of a unit.**

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

- 23 (a) Is designated nonwithdrawable in the declaration and on the plat; and
24 (b) Which may not be withdrawn from the condominium without the consent of all of the unit
25 owners.

26 [(23)] **(24) “Percent of owners” or “percentage of owners” means the percent of the voting rights**
27 **determined under ORS 100.525.**

28 [(24)] **(25) “Purchaser” means an actual or prospective purchaser of a condominium unit pursu-**
29 **ant to a sale.**

30 [(25)] **(26) “Recording officer” means the county officer charged with the duty of filing and re-**
31 **recording deeds and mortgages or any other instruments or documents affecting the title to real**
32 **property.**

33 [(26)] **(27) “Reservation agreement” means an agreement relating to the future sale of a unit**
34 **which is not binding on the purchaser and which grants purchaser the right to cancel the agreement**
35 **without penalty and obtain a refund of any funds deposited at any time until purchaser executes a**
36 **unit sales agreement.**

37 [(27)] **(28) “Sale” [includes every] means any disposition or transfer of a condominium unit, or**
38 **an interest or estate therein, by a developer, including the offering of the property as a prize or gift**
39 **when a monetary charge or consideration for whatever purpose is required by the developer. “In-**
40 **terest or estate” includes a lessee’s interest in a unit for more than three years or less than three**
41 **years if the interest may be renewed under the terms of the lease for a total period of more than**
42 **three years. “Interest or estate” does not include any interest held for security purposes or a**
43 **timeshare regulated or otherwise exempt under ORS 94.803 and 94.807 to 94.945.**

44 [(28)] **(29) “Special declarant right” means any right, in addition to the regular rights of the**
45 **declarant as a unit owner, reserved for the benefit of or created by the declarant under the decla-**

1 ration, bylaws or the provisions of this chapter.

2 [(29)] (30) "Staged condominium" means a condominium which provides for annexation of addi-
3 tional property pursuant to ORS 100.115 and 100.120.

4 [(30)] (31) "Successor declarant" means the transferee of any special declarant right.

5 [(31)] (32) "Termination date" means that date described in ORS 100.105 (2)(b) or (7)(d).

6 [(32)] (33) "Transitional committee" means the committee provided for under ORS 100.205.

7 [(33)] (34) "Turnover meeting" means the meeting provided for under ORS 100.210.

8 [(34)] (35) "Unit" or "condominium unit" means a part of the property which:

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

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

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

12 [(35)] (36) "Unit designation" means the number, letter or combination thereof designating a unit
13 in the declaration and on the plat.

14 [(36)] (37) "Unit owner" means, except to the extent the declaration or bylaws provide other-
15 wise, the person owning fee simple interest in a unit, the holder of a vendee's interest in a unit
16 under a recorded installment contract of sale and, in the case of a leasehold condominium, the
17 holder of the leasehold estate in a unit.

18 [(37)] (38) "Unit sales agreement" means a written offer or agreement for the sale of a condo-
19 minium unit which when fully executed will be binding on all parties. "Unit sales agreement" in-
20 cludes but is not limited to an earnest money receipt and agreement to purchase and other such
21 agreements which serve as an agreement of sale for a cash transaction or which are preliminary to
22 the execution of an installment contract of sale, but does not include a reservation agreement.

23 [(38)] (39) "Variable property" means property described in ORS 100.150 (2) and designated as
24 variable property in the declaration and on the plat.

25 [(39)] (40) "Voting rights" means the portion of the votes allocated to a unit by the declaration
26 in accordance with ORS 100.105 (1)(j).

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

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

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

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

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

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

39 (2) **Notwithstanding any provision of a condominium's governing document or landscap-**
40 **ing or architectural guidelines imposing irrigation requirements on a unit owner or the as-**
41 **sociation, an association may adopt rules that:**

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

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

45 (c) **Require prior review and approval by the association or its designee of any plans by**

1 **a unit owner or the association to replace turf or other landscape vegetation with xeriscape.**

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

5 **SECTION 3a. If House Bill 3447 becomes law, sections 3 and 4, chapter ___, Oregon Laws**
6 **2017 (Enrolled House Bill 3447), are repealed.**

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

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

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

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

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

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

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

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

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

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

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

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

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

36 **(b) If the condominium unit does not share a wall, floor or ceiling surface in common**
37 **with another unit, a provision that prohibits or restricts the use of the unit owner's condo-**
38 **minium unit or any limited common element designated for exclusive use by the occupants**
39 **of the unit as a certified or registered family child care home pursuant to ORS 329A.250 to**
40 **329A.450.**

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

45 **(a) Is reasonable; and**

1 **(b) Does not have the effect of prohibiting or restricting the use of a unit as the premises**
2 **of an exempt family child care provider participating in the subsidy program under ORS**
3 **329A.500 or as a certified or registered family child care home pursuant to ORS 329A.250 to**
4 **329A.450.**

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

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

9 **SECTION 4.** ORS 94.550 is amended to read:

10 94.550. As used in ORS 94.550 to 94.783:

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

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

18 (3) “Class I planned community” means a planned community that:

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

21 (b) Has an estimated annual assessment, including an amount required for reserves under ORS
22 94.595, exceeding \$10,000 for all lots or \$100 per lot[, *whichever is greater,*] based on:

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

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

29 (4) “Class II planned community” means a planned community that:

30 (a) Is not a Class I planned community;

31 (b) Contains at least five lots; and

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

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

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

39 (5) “Class III planned community” means a planned community that is not a Class I or II
40 planned community.

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

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

1 ation.

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

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

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

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

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

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

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

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

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

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

26 *[(14)]* (15) "Homeowners association" or "association" means the organization of owners of lots
27 in a planned community, created under ORS 94.625, required by a governing document or formed
28 under *[ORS 94.572]* **section 11 of this 2017 Act.**

29 *[(15)]* (16) "Majority" or "majority of votes" or "majority of owners" means more than 50 per-
30 cent of the votes in the planned community.

31 *[(16)]* (17) "Mortgagee" means any person who is:

32 (a) A mortgagee under a mortgage;

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

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

35 *[(17)]* (18) "Owner" means the owner of any lot in a planned community, unless otherwise spec-
36 ified, but does not include a person holding only a security interest in a lot.

37 *[(18)]* (19) "Percent of owners" or "percentage of owners" means the owners representing the
38 specified voting rights as determined under ORS 94.658.

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

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

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

4 [(20)] **(21)** “Purchaser” means any person other than a declarant who, by means of a voluntary
5 transfer, acquires a legal or equitable interest in a lot, other than as security for an obligation.

6 [(21)] **(22)** “Purchaser for resale” means any person who purchases from the declarant more than
7 two lots for the purpose of resale whether or not the purchaser for resale makes improvements to
8 the lots before reselling them.

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

13 [(22)] **(24)** “Special declarant rights” means any rights, in addition to the rights of the declarant
14 as a lot owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to
15 94.783, including but not limited to:

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

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

20 (c) Converting lots into common property;

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

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

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

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

26 [(25)] **(27)** “Unit” means a building or portion of a building located upon a lot in a planned
27 community and designated for separate occupancy or ownership, but does not include any building
28 or portion of a building located on common property.

29 [(26)] **(28)** “Votes” means the votes allocated to lots in the declaration under ORS 94.580 (2).

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

32 94.630. (1) Subject to *[subsections (2) and (5) of this section]* **subsection (2) of this section and**
33 **section 7 of this 2017 Act**, and except as otherwise provided in its declaration or bylaws, a home-
34 owners association may:

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

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

38 (c) Hire and terminate managing agents and other employees, agents and independent contrac-
39 tors;

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

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

43 (A) Matters relating to the collection of assessments and the enforcement of governing docu-
44 ments;

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

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

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

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

7 (ii) Common property;

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

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

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

14 (F) Any other matter to which the association has standing under law or pursuant to the dec-
15 laration or bylaws;

16 (f) Make contracts and incur liabilities;

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

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

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

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

24 (k) Modify, close, remove, eliminate or discontinue the use of common property, including any
25 improvement or landscaping, regardless of whether the common property is mentioned in the decla-
26 ration, provided that:

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

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

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

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

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

44 (A) On a schedule contained in the declaration or bylaws, or an amendment to either that is
45 delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses

1 designated in writing by the owners; or

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

5 (o) Impose reasonable charges for the preparation and recordation of amendments to the decla-
6 ration;

7 (p) Provide for the indemnification of its officers and the board of directors and maintain li-
8 ability insurance for directors and officers;

9 (q) Assign its right to future income, including the right to receive common expense assess-
10 ments; and

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

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

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

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

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

25 (c) Identify, by the designations stated or referenced in the declaration or applicable supple-
26 mental declaration, all affected lots and common property; and

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

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

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

42 (c) If a qualified dispute resolution program exists within the county in which the planned
43 community is located and an offer to use the program is not made as required under paragraph (a)
44 of this subsection, litigation or an administrative proceeding may be stayed for 30 days upon a mo-
45 tion of the noninitiating party. If the litigation or administrative action is stayed under this para-

1 graph, both parties shall participate in the dispute resolution process.

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

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

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

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

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

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

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

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

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

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

26 **(b) A finding by the Water Resources Commission that a severe, continuing drought ex-
27 ists or is likely to occur in a political subdivision within which the planned community is
28 located;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 **(a) Is reasonable; and**

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

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

45 **(b) As used in this subsection, "housing for older persons" has the meaning given that**

1 term in ORS 659A.421.

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

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

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

10 (1) Instruments conveying fee title to real property executed on or after [the effective date of this
11 2017 Act] **January 1, 2018;** and

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

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

16 94.572. (1)[(a)] A Class I or Class II planned community created before January 1, 2002, that was
17 not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 (5)
18 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,
19 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,
20 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
21 and 94.780 **and sections 7, 10, 11, 12 and 13 of this 2017 Act** to the extent that those statutes are
22 consistent with any governing documents **of the planned community.**

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

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

30 [(A) In accordance with the procedures for the adoption of amendments in the governing documents
31 and subject to any limitations in the governing documents, the owners may amend the inconsistent
32 provisions of the governing documents to conform to the extent feasible with this section and ORS
33 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,
34 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,
35 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,
36 94.770, 94.775, 94.777 and 94.780. Nothing in this paragraph requires the owners to amend a declara-
37 tion or bylaws to include the information required by ORS 94.580 or 94.635.]

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

39 [(i) For an amendment to a recorded governing document other than bylaws, the owners may
40 amend the inconsistent provisions of the document to conform to this section and ORS 94.550, 94.590,
41 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,
42 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,
43 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
44 and 94.780 by a vote of at least 75 percent of the owners in the planned community.]

45 [(ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the

1 *bylaws to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1),*
2 *(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,*
3 *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,*
4 *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*
5 *majority of the owners in the planned community.]*

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

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

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

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

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

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

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

25 *[(ii) State that the organizational meeting is for the purpose of voting whether to form an associ-*
26 *ation in accordance with the proposed articles of incorporation;]*

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

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

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

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

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

39 *[(viii) Be delivered in accordance with the declaration and bylaws. If there is no governing docu-*
40 *ment or the document does not include applicable provisions, the owners or governing entity shall fol-*
41 *low the procedures prescribed in ORS 94.650 (4).]*

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

45 *[(C) At the organizational meeting:]*

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

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

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

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

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

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

19 *[(i) Cause the articles of incorporation to be filed with the Secretary of State under ORS chapter*
20 *65;]*

21 *[(ii) Cause the notice of planned community described in subsection (4) of this section to be pre-*
22 *pared, executed and recorded in accordance with subsection (4) of this section;]*

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

28 *[(iv) Cause a statement of association information to be prepared, executed and recorded in ac-*
29 *cordance with ORS 94.667.]*

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

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

39 *[(b) If the owners of lots in a Class I or Class II planned community elect to be subject to addi-*
40 *tional provisions of ORS 94.550 to 94.783, unless the notice of planned community otherwise required*
41 *or permitted under subsection (4) of this section includes a statement of the election pursuant to this*
42 *paragraph, the board of directors of the association shall cause the notice of planned community de-*
43 *scribed in subsection (4) of this section to be prepared, executed and recorded in accordance with sub-*
44 *section (4) of this section.]*

45 *[(3)(a) The owners of lots in a Class III planned community created before January 1, 2002, may*

1 *elect to be subject to provisions of ORS 94.550 to 94.783 upon compliance with the applicable proce-*
2 *dures in subsection (1) of this section.]*

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

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

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

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

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

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

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

16 *[(b) A list of the properties, described as required for recordation in ORS 93.600, within the ju-*
17 *risdiction of the association;]*

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

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

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

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

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

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

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

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

39 *[(10) As used in this section:]*

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

44 *[(b) "Recorded declaration" means an instrument recorded with the county recording officer of the*
45 *county in which the planned community is located that contains conditions, covenants and restrictions*

1 *binding lots in the planned community or imposes servitudes upon the real property.]*

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

4 **SECTION 10.** (1)(a)(A) The owners in a Class I or Class II planned community created
5 before January 1, 2002, that was not created under ORS 94.550 to 94.783 may amend any
6 provision of the planned community's governing documents to conform with this section and
7 **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,**
8 **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,**
9 **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,**
10 **94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 and sections 7, 11 and 12 of this 2017 Act.**

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

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

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

19 (A) The owners may amend the inconsistent provisions of a governing document other
20 than bylaws to conform with this section and ORS 94.550, 94.572, 94.590, 94.595 (5) to (9),
21 **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,**
22 **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,**
23 **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**
24 **and sections 11 and 12 of this 2017 Act by a vote of at least 75 percent of the owners in the**
25 **planned community.**

26 (B) The owners may amend the inconsistent provisions of the bylaws to conform with
27 this section and ORS 94.550, 94.572, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and
28 (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,**
29 **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,**
30 **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**
31 **of this 2017 Act by a vote of at least a majority of the owners in the planned community.**

32 (C) The owners may adopt an amendment to the provisions of a governing document at
33 a meeting held in accordance with the governing documents or by another procedure per-
34 mitted by the governing documents that follows the procedures prescribed in ORS 94.647,
35 **94.650 or 94.660.**

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

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

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

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

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

3 (b) A statement that the amendment is adopted.

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

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

10 (A) Call an organizational meeting for the purpose of voting whether to form an associ-
11 ation described in ORS 94.625; and

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

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

15 (A) The organizational meeting is for the purpose of voting whether to form an associ-
16 ation in accordance with the proposed articles of incorporation;

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

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

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

25 (E) If the initial board of directors is not elected at the organizational meeting, an in-
26 terim board of directors must be elected pursuant to bylaws adopted as provided in sub-
27 section (4) of this section; and

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

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

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

37 (4) At the organizational meeting:

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

41 (b) The initiating owners or the governing entity shall make available copies of the pro-
42 posed articles of incorporation and bylaws.

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

1 (d) An owner may vote by proxy or written ballot if so approved by a majority of the in-
2 itiating owners or by the governing entity.

3 (e)(A) If the owners vote to form an association at the organizational meeting, the own-
4 ers:

5 (i) Shall adopt articles of incorporation;

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

7 (iii) Shall adopt bylaws; and

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

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

13 (5) Not later than 10 business days after the organizational meeting, the board of direc-
14 tors shall cause:

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

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

19 (c) A statement of association information to be prepared, executed and recorded in ac-
20 cordance with ORS 94.667.

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

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

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

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

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

44 (b) If the owners in a Class III planned community elect to be subject to provisions of
45 ORS 94.550 to 94.783, the board of directors of the association shall cause a notice of planned

1 community to be prepared, executed and recorded in accordance with subsection (3) of this
2 section.

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

5 (A) Titled “Notice of Planned Community under section 11 of this 2017 Act”;

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

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

9 (b) The notice of planned community shall include:

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

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

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

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

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

23 (F) If an association is formed under section 11 of this 2017 Act, a statement to that ef-
24 fect.

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

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

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

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

38 **SECTION 14.** ORS 94.671 is amended to read:

39 94.671. The requirements of ORS 94.670 (5) first apply:

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

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

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

1 **on its passage.**

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