

House Bill 2722

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 **as introduced**.

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 declaring an emergency.

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

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

6 100.005. As used in this chapter, unless the context requires otherwise:

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

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

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

14 (4) "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 unit in a condominium, or an agreement affecting more than one such unit by which the devel-
17 oper holds such condominium under an option, contract to sell or trust agreement.

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

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

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

23 (8) "Common expenses" means:

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

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

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

28 (9) "Condominium" means:

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

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

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

5 (C) Any easements, rights and appurtenances belonging to the property submitted to the pro-
6 visions of ORS 100.005 to 100.627; and

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

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

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

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

14 (11) "Declarant" means a person who records a declaration under ORS 100.100 or a supple-
15 mental declaration under ORS 100.110.

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

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

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

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

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

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

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

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

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

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

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

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

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

45 [(17)] (18) "Leasehold" means the interest of a person, firm or corporation [who] **that** is the

1 lessee under a lease from the owner in fee and *[who]* **that** files a declaration creating a condominium under ORS 100.100.

3 [(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.

6 [(19)] (20) “Majority” or “majority of unit owners” means more than 50 percent of the voting rights allocated to the units by the declaration.

8 [(20)] (21) “Mortgagee” means any person who is:

9 (a) A mortgagee under a mortgage;

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

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

12 [(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.

15 [(22)] (23) “Nonwithdrawable property” means property which pursuant to ORS 100.150 (1)(b):

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

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

19 [(23)] (24) “Percent of owners” or “percentage of owners” means the percent of the voting rights determined under ORS 100.525.

21 [(24)] (25) “Purchaser” means an actual or prospective purchaser of a condominium unit pursuant to a sale.

23 [(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 [(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.

30 [(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.

37 [(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.

40 [(29)] (30) “Staged condominium” means a condominium which provides for annexation of additional property pursuant to ORS 100.115 and 100.120.

42 [(30)] (31) “Successor declarant” means the transferee of any special declarant right.

43 [(31)] (32) “Termination date” means that date described in ORS 100.105 (2)(b) or (7)(d).

44 [(32)] (33) “Transitional committee” means the committee provided for under ORS 100.205.

45 [(33)] (34) “Turnover meeting” means the meeting provided for under ORS 100.210.

1 [(34)] **(35)** “Unit” or “condominium unit” means a part of the property which:

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

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

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

5 [(35)] **(36)** “Unit designation” means the number, letter or combination thereof designating a unit
6 in the declaration and on the plat.

7 [(36)] **(37)** “Unit owner” means, except to the extent the declaration or bylaws provide other-
8 wise, the person owning fee simple interest in a unit, the holder of a vendee’s interest in a unit
9 under a recorded installment contract of sale and, in the case of a leasehold condominium, the
10 holder of the leasehold estate in a unit.

11 [(37)] **(38)** “Unit sales agreement” means a written offer or agreement for the sale of a condo-
12 minium unit which when fully executed will be binding on all parties. “Unit sales agreement” in-
13 cludes but is not limited to an earnest money receipt and agreement to purchase and other such
14 agreements which serve as an agreement of sale for a cash transaction or which are preliminary to
15 the execution of an installment contract of sale, but does not include a reservation agreement.

16 [(38)] **(39)** “Variable property” means property described in ORS 100.150 (2) and designated as
17 variable property in the declaration and on the plat.

18 [(39)] **(40)** “Voting rights” means the portion of the votes allocated to a unit by the declaration
19 in accordance with ORS 100.105 (1)(j).

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

21 **SECTION 3. (1) A provision of a condominium’s governing document or landscaping or**
22 **architectural guidelines that imposes irrigation requirements on a unit 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 condominium 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 condominium is located;**

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

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

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

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

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

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

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

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

44 94.550. As used in ORS 94.550 to 94.783:

45 (1) “Assessment” means any charge imposed or levied by a homeowners association on or

1 against an owner or lot pursuant to the provisions of the declaration or the bylaws of the planned
2 community or provisions of ORS 94.550 to 94.783.

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

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

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

10 (b) Has an estimated annual assessment, including an amount required for reserves under ORS
11 94.595, exceeding \$10,000 for all lots or \$100 per lot[, *whichever is greater,*] based on:

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

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

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

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

20 (b) Contains at least five lots; and

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

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

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

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

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

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

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

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

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

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

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

45 (c) The right of the declarant to exercise powers and responsibilities otherwise assigned by the

1 declaration or bylaws or by the provisions of ORS 94.550 to 94.783 to the association, officers of the
 2 association or board of directors of the association.

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

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

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

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

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

18 *[(15)]* (16) “Majority” or “majority of votes” or “majority of owners” means more than 50 per-
 19 cent of the votes in the planned community.

20 *[(16)]* (17) “Mortgagee” means any person who is:

- 21 (a) A mortgagee under a mortgage;
- 22 (b) A beneficiary under a trust deed; or
- 23 (c) The vendor under a land sale contract.

24 *[(17)]* (18) “Owner” means the owner of any lot in a planned community, unless otherwise spec-
 25 ified, but does not include a person holding only a security interest in a lot.

26 *[(18)]* (19) “Percent of owners” or “percentage of owners” means the owners representing the
 27 specified voting rights as determined under ORS 94.658.

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

34 (b) “Planned community” does not mean:

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

38 *[(20)]* (21) “Purchaser” means any person other than a declarant who, by means of a voluntary
 39 transfer, acquires a legal or equitable interest in a lot, other than as security for an obligation.

40 *[(21)]* (22) “Purchaser for resale” means any person who purchases from the declarant more than
 41 two lots for the purpose of resale whether or not the purchaser for resale makes improvements to
 42 the lots before reselling them.

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

1 **servitudes on the real property.**

2 [(22)] (24) “Special declarant rights” means any rights, in addition to the rights of the declarant
 3 as a lot owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to
 4 94.783, including but not limited to:

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

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

9 (c) Converting lots into common property;

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

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

12 [(23)] (25) “Successor declarant” means the transferee of any special declarant right.

13 [(24)] (26) “Turn over” means the act of turning over administrative responsibility pursuant to
 14 ORS 94.609 and 94.616.

15 [(25)] (27) “Unit” means a building or portion of a building located upon a lot in a planned
 16 community and designated for separate occupancy or ownership, but does not include any building
 17 or portion of a building located on common property.

18 [(26)] (28) “Votes” means the votes allocated to lots in the declaration under ORS 94.580 (2).

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

21 94.630. (1) Subject to *[subsections (2) and (5) of this section]* **subsection (2) of this section and**
 22 **section 7 of this 2017 Act**, and except as otherwise provided in its declaration or bylaws, a home-
 23 owners association may:

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

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

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

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

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

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

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

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

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

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

41 (ii) Common property;

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

44 (i) Resulting from a nuisance or a defect in or damage to common property or individually
 45 owned real property, the expenses for which, including maintenance, repair or replacement, insur-

- 1 ance or other expenses, the association is responsible; or
- 2 (ii) Required to facilitate repair to any common property; and
- 3 (F) Any other matter to which the association has standing under law or pursuant to the dec-
- 4 laration or bylaws;
- 5 (f) Make contracts and incur liabilities;
- 6 (g) Regulate the use, maintenance, repair, replacement and modification of common property;
- 7 (h) Cause additional improvements to be made as a part of the common property;
- 8 (i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or
- 9 personal property, except that common property may be conveyed or subjected to a security interest
- 10 only pursuant to ORS 94.665;
- 11 (j) Grant easements, leases, licenses and concessions through or over the common property as
- 12 provided in ORS 94.665;
- 13 (k) Modify, close, remove, eliminate or discontinue the use of common property, including any
- 14 improvement or landscaping, regardless of whether the common property is mentioned in the decla-
- 15 ration, provided that:
- 16 (A) Nothing in this paragraph is intended to limit the authority of the association to seek ap-
- 17 proval of the modification, closure, removal, elimination or discontinuance by the owners; and
- 18 (B) Modification, closure, removal, elimination or discontinuance other than on a temporary
- 19 basis of any swimming pool, spa or recreation or community building must be approved by at least
- 20 a majority of owners voting on the matter at a meeting or by written ballot held in accordance with
- 21 the declaration, bylaws or ORS 94.647;
- 22 (L) Impose and receive any payments, fees or charges for the use, rental or operation of the
- 23 common property and services provided to owners;
- 24 (m) Adopt rules regarding the termination of utility services paid for out of assessments of the
- 25 association and access to and use of recreational and service facilities available to owners. The
- 26 rules must provide for written notice and an opportunity to be heard before the association may
- 27 terminate the rights of any owners to receive the benefits or services until the correction of any
- 28 violation covered by the rule has occurred;
- 29 (n) Impose charges for late payment of assessments and attorney fees related to the collection
- 30 of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines
- 31 for violations of the declaration, bylaws, rules and regulations of the association, provided that the
- 32 charge imposed or the fine levied by the association is based:
- 33 (A) On a schedule contained in the declaration or bylaws, or an amendment to either that is
- 34 delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses
- 35 designated in writing by the owners; or
- 36 (B) On a resolution of the association or its board of directors that is delivered to each lot,
- 37 mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing
- 38 by the owners;
- 39 (o) Impose reasonable charges for the preparation and recordation of amendments to the decla-
- 40 ration;
- 41 (p) Provide for the indemnification of its officers and the board of directors and maintain li-
- 42 ability insurance for directors and officers;
- 43 (q) Assign its right to future income, including the right to receive common expense assess-
- 44 ments; and
- 45 (r) Exercise any other powers necessary and proper for the administration and operation of the

1 association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 94.572. (1)[(a)] A Class I or Class II planned community created before January 1, 2002, that was
 38 not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 (5)
 39 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,
 40 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,
 41 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
 42 and 94.780 and sections 7, 10, 11, 12 and 13 of this 2017 Act to the extent that those statutes are
 43 consistent with any governing documents of the planned community.

44 (2) If the governing documents of a planned community described in subsection (1) of this
 45 section do not provide for the formation of [an] a homeowners association, the requirements of this

1 [subsection] **section** are not effective until the formation of an association in accordance with [par-
2 agraph (b) of this subsection] **section 11 of this 2017 Act.**

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

6 [(A) In accordance with the procedures for the adoption of amendments in the governing documents
7 and subject to any limitations in the governing documents, the owners may amend the inconsistent
8 provisions of the governing documents to conform to the extent feasible with this section and ORS
9 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,
10 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,
11 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,
12 94.770, 94.775, 94.777 and 94.780. Nothing in this paragraph requires the owners to amend a declara-
13 tion or bylaws to include the information required by ORS 94.580 or 94.635.]

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

15 [(i) For an amendment to a recorded governing document other than bylaws, the owners may
16 amend the inconsistent provisions of the document to conform to this section and ORS 94.550, 94.590,
17 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,
18 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,
19 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
20 and 94.780 by a vote of at least 75 percent of the owners in the planned community.]

21 [(ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the
22 bylaws to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1),
23 (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,
24 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,
25 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
26 majority of the owners in the planned community.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 *[(i) Cause the articles of incorporation to be filed with the Secretary of State under ORS chapter*
41 *65;]*

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

44 *[(iii) Provide a copy of the notice of planned community to each owner, together with a copy of the*
45 *adopted articles of incorporation and bylaws, if any, or a statement of the procedure and method for*

1 adoption of bylaws described in subparagraph (C) of this paragraph. The copies and any statement
 2 shall be delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing ad-
 3 dresses designated by the owners in writing; and]

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

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

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

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

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

24 [(b) If the owners of lots in a Class III planned community elect to be subject to provisions of ORS
 25 94.550 to 94.783, the board of directors of the association shall cause the notice of planned community
 26 described in subsection (4) of this section to be prepared, executed and recorded in accordance with
 27 subsection (4) of this section.]

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

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

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

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

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

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

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

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

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

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

1 and]

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

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

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

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

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

15 [(10) As used in this section:]

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

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

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

25 **SECTION 10. (1)(a)(A) The owners in a Class I or Class II planned community created**
26 **before January 1, 2002, that was not created under ORS 94.550 to 94.783 may amend any**
27 **provision of the planned community's governing documents to conform with this section and**
28 **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,**
29 **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,**
30 **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,**
31 **94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 and sections 7, 11 and 12 of this 2017 Act.**

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

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

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

40 **(A) The owners may amend the inconsistent provisions of a governing document other**
41 **than bylaws to conform with this section and ORS 94.550, 94.572, 94.590, 94.595 (5) to (9),**
42 **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,**
43 **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,**
44 **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**
45 **and sections 11 and 12 of this 2017 Act by a vote of at least 75 percent of the owners in the**

1 **planned community.**

2 **(B) The owners may amend the inconsistent provisions of the bylaws to conform with**
 3 **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 **(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,**
 5 **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,**
 6 **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**
 7 **of this 2017 Act by a vote of at least a majority of the owners in the planned community.**

8 **(C) The owners may adopt an amendment to the provisions of a governing document at**
 9 **a meeting held in accordance with the governing documents or by another procedure per-**
 10 **mitted by the governing documents that follows the procedures prescribed in ORS 94.647,**
 11 **94.650 or 94.660.**

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

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

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

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

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

24 **(b) A statement that the amendment is adopted.**

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (4) At the organizational meeting:

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

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

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

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

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

26 (i) Shall adopt articles of incorporation;

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

28 (iii) Shall adopt bylaws; and

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

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

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

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

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

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

42 (d) Each owner to receive a copy of the notice of planned community, together with a
 43 copy of the adopted articles of incorporation and bylaws, if any, or a statement of the pro-
 44 cedure and method for adoption of bylaws described in subsection (4) of this section. The
 45 copies and any statement must be delivered to each lot, mailed to the mailing address of each

1 lot or mailed to the mailing addresses designated by the owners in writing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 94.671. The requirements of ORS 94.670 (5) first apply:

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

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

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