

Enrolled
House Bill 3057

Sponsored by Representatives VIAL, HELM, GREENLICK

CHAPTER

AN ACT

Relating to shared finances; creating new provisions; and amending ORS 94.595, 94.670, 100.175 and 100.480.

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

SECTION 1. ORS 94.595 is amended to read:

94.595. (1) The declarant, on behalf of a homeowners association, shall:

- (a) Conduct an initial reserve study as described in subsection (3) of this section;
- (b) Prepare an initial maintenance plan as described in subsection (4) of this section; and
- (c) Establish a reserve account as provided in subsection (2) of this section.

(2)(a) **A homeowners association shall establish** a reserve account [*shall be established*] to fund major maintenance, repair or replacement of all items of common property which will normally require major maintenance, repair or replacement, in whole or in part, in more than one and less than 30 years, for exterior painting if the common property includes exterior painted surfaces, for other items, whether or not involving common property, if the association has responsibility to maintain the items and for other items required by the declaration or bylaws. The reserve account need not include reserves for those items:

(A) That can reasonably be funded from the general budget or other funds or accounts of the association; or

(B) For which one or more, but less than all, owners are responsible for maintenance and replacement under the provisions of the declaration or bylaws.

(b) The reserve account shall be established in the name of the homeowners association. The association is responsible for administering the account and for making periodic payments into the account.

(c) The reserve portion of the initial assessment determined by the declarant shall be based on:

- (A) The reserve study described in subsection (3) of this section; or
- (B) Other reliable information.

(d) A reserve account established under this section must be funded by assessments against the individual lots for which the reserves are established.

(e) Unless the declaration provides otherwise, the assessments under this subsection begin accruing for all lots from the date the first lot is conveyed.

(3)(a) [*The board of directors of the association annually shall conduct a reserve study or review and update an existing study to determine the reserve account requirements.*] **The board of directors of the association shall annually determine the reserve account requirements by conducting a reserve study or reviewing and updating an existing study using the following information:**

- (A) **The starting balance of the reserve account for the current fiscal year;**

(B) The estimated remaining useful life of each item for which reserves are or will be established, as of the date of the study or review;

(C) The estimated cost of maintenance and repair and replacement at the end of the useful life of each item for which reserves are or will be established;

(D) The rate of inflation during the current fiscal year; and

(E) Returns on any invested reserves or investments.

(b) Subject to subsection (8) of this section, after review of the reserve study or reserve study update, the board of directors may, without any action by owners:

(A) Adjust the amount of payments as indicated by the study or update; and

(B) Provide for other reserve items that the board of directors, in its discretion, may deem appropriate.

[(b)] (c) The reserve study shall:

(A) Identify all items for which reserves are or will be established;

(B) Include the estimated remaining useful life of each item, as of the date of the reserve study; and

(C) Include for each item, as applicable, an estimated cost of maintenance and repair and replacement at the end of the item's useful life.

(4)(a) The board of directors shall prepare a maintenance plan for the maintenance, repair and replacement of all property for which the association has maintenance, repair or replacement responsibility under the declaration or bylaws or ORS 94.550 to 94.783. The maintenance plan shall:

(A) Describe the maintenance, repair and replacement to be conducted;

(B) Include a schedule for the maintenance, repair and replacement;

(C) Be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the association; and

(D) Address issues that include but are not limited to warranties and the useful life of the items for which the association has maintenance, repair and replacement responsibility.

(b) The board of directors shall review and update the maintenance plan described under this subsection as necessary.

(5)(a) If the declaration or bylaws require a reserve account, the reserve study requirements of subsection (3) of this section and the maintenance plan requirements of subsection (4) of this section first apply to the association of a subdivision that meets the definition of a planned community under ORS 94.550 and is recorded prior to October 23, 1999, when:

(A) The board of directors adopts a resolution in compliance with the bylaws that applies the requirements of subsections (3) and (4) of this section to the association; or

(B) A petition signed by a majority of owners is submitted to the board of directors mandating that the requirements of subsections (3) and (4) of this section apply to the association.

(b) A reserve study and maintenance plan shall be completed within one year of adoption of the resolution or submission of the petition to the board of directors.

(6)(a) Except as provided in paragraph (b) of this subsection, the reserve account may be used only for the purposes for which reserves have been established and is to be kept separate from other funds.

(b) After the individual lot owners have assumed responsibility for administration of the planned community under ORS 94.616, if the board of directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds:

(A) The board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses.

(B) Not later than the adoption of the budget for the following year, the board of directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

(7) The reserve account is subject to the requirements and restrictions of ORS 94.670 and any additional restrictions or requirements imposed by the declaration, bylaws or rules of the homeowners association.

(8)(a) Except as provided under paragraph (b) of this subsection, unless the board of directors under subsection (3) of this section determines that the reserve account will be adequately funded for the following year, the board of directors or the owners may not vote to eliminate funding a reserve account required under this section or under the declaration or bylaws.

(b) Following the turnover meeting described in ORS 94.609, on an annual basis, the board of directors, with the approval of all owners, may elect not to fund the reserve account for the following year.

(9) Assessments paid into the reserve account are the property of the association and are not refundable to sellers or owners of lots.

SECTION 2. ORS 94.670 is amended to read:

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

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

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

(2)(a) All assessments, including declarant subsidies and all other association funds, shall be deposited and maintained in the name of the association in one or more separate federally insured accounts, including certificates of deposit, at a financial institution, as defined in ORS 706.008, other than an extranational institution. Except as provided in paragraph (b) of this subsection, funds must be maintained in an association account until disbursed.

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

(c) All expenses of the association shall be paid from the association account.

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

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

(a) Prepare or cause to be prepared an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year; and

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

(5) Subject to ORS 94.671, the association of a planned community that has annual assessments exceeding \$75,000 shall cause the financial statement required under subsection (4) of this section to be reviewed within [180] **300** days after the end of the fiscal year by an independent certified public accountant licensed in the State of Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

(6) The association of a planned community created on or after January 1, 2004, or the association of a planned community described in ORS 94.572 that has annual assessments of \$75,000 or less shall cause the most recent financial statement required by subsection (4) of this section to be reviewed in the manner described in subsection (5) of this section within [180] **300** days after the association receives a petition requesting review signed by at least a majority of the owners.

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

(8)(a) The association shall provide, within 10 business days of receipt of a written request from an owner, a written statement that provides:

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

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

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

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

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

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

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

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

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

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

(D) Disclosure of information in violation of law.

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

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

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

(10) The association shall maintain a copy, suitable for the purpose of duplication, of the following:

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

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

(c) The current operating budget of the association.

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

(e) Architectural standards and guidelines, if any.

(11) The association, within 10 business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under subsection (10) of this section.

(12) The board of directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs for furnishing the documents, information or records.

SECTION 3. ORS 100.175 is amended to read:

100.175. (1) The declarant, on behalf of the association of unit owners, shall:

(a) Conduct an initial reserve study as described in subsection (3) of this section;

- (b) Prepare an initial maintenance plan as described in subsection (4) of this section; and
- (c) Establish a reserve account as provided in subsection (2) of this section.

(2)(a) **An association of unit owners shall establish** a reserve account [*shall be established*] to fund major maintenance, repair or replacement of those common elements all or part of which will normally require major maintenance, repair or replacement in more than one and less than 30 years, for exterior painting if the common elements include exterior painted surfaces, and for such other items as may be required by the declaration or bylaws. The reserve account need not include:

(A) Items that can reasonably be funded from the general budget or other funds or accounts of the association; or

(B) A reserve for limited common elements for which maintenance and replacement are the responsibility of one or more, but less than all, unit owners under the provisions of the declaration or bylaws.

(b) The reserve account shall be established in the name of the association of unit owners. The association is responsible for administering the account and for making periodic payments into the account.

(c) The reserve portion of the initial assessment determined by the declarant shall be based on:

(A) The reserve study described in subsection (3) of this section;

(B) In the case of a conversion condominium, the statement described in ORS 100.655 (1)(g); or

(C) Other reliable information.

(d) The reserve account must be funded by assessments against the individual units for the purposes for which the reserve account is established.

(e) The assessment under this subsection accrues from the time of the conveyance of the first individual unit assessed as provided in ORS 100.530.

(3)(a) [*The board of directors of the association annually shall conduct a reserve study or review and update an existing study to determine the reserve account requirements.*] **The board of directors of the association shall annually determine the reserve account requirements by conducting a reserve study or reviewing and updating an existing study using the following information:**

(A) **The starting balance of the reserve account for the current fiscal year;**

(B) **The estimated remaining useful life of each item for which reserves are or will be established, as of the date of the study or review;**

(C) **The estimated cost of maintenance and repair and replacement at the end of the useful life of each item for which reserves are or will be established;**

(D) **The rate of inflation during the current fiscal year; and**

(E) **Returns on any invested reserves or investments.**

(b) Subject to subsection (10) of this section, after a review of the reserve study or the reserve study update, the board may, without any action by the unit owners:

(A) Adjust the amount of payments in accordance with the study or review; and

(B) Provide for other reserve items that the board of directors, in its discretion, may deem appropriate.

[(b)] (c) The reserve study shall:

(A) Identify all items for which reserves are or will be established;

(B) Include the estimated remaining useful life of each item, as of the date of the reserve study; and

(C) Include for each item, as applicable, an estimated cost of maintenance and repair and replacement at the end of the item's useful life.

(4)(a) The board of directors shall prepare a maintenance plan for the maintenance, repair and replacement of all property for which the association has maintenance, repair or replacement responsibility under the declaration or bylaws or this chapter. The maintenance plan shall:

(A) Describe the maintenance, repair and replacement to be conducted;

(B) Include a schedule for the maintenance, repair and replacement;

(C) Be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the association; and

(D) Address issues that include but are not limited to warranties and the useful life of the items for which the association has maintenance, repair or replacement responsibility.

(b) The board of directors shall review and update the maintenance plan described under this subsection as necessary.

(5)(a) Except as provided in paragraph (b) of this subsection, the reserve study requirements under subsection (3) of this section and the maintenance plan requirements under subsection (4) of this section do not apply to a condominium consisting of one or two units, excluding units used for parking, storage or other uses ancillary to a unit:

(A) After the sale of the first unit to a person other than a successor declarant, if the condominium is created on or after September 27, 2007; or

(B) If the condominium was created before September 27, 2007, notwithstanding any requirement in the declaration or bylaws.

(b) The reserve study requirements under subsection (3) of this section and the maintenance plan requirements under subsection (4) of this section apply to a flexible condominium or a staged condominium created on or after September 27, 2007, if the condominium might in the future consist of more than two units.

(6)(a) If the declaration or bylaws require a reserve account, the reserve study requirements of subsection (3) of this section and the maintenance plan requirements of subsection (4) of this section first apply to the association of a condominium recorded prior to October 23, 1999:

(A) Upon adoption of a resolution by the board of directors in accordance with the bylaws providing that the requirements of subsections (3) and (4) of this section apply to the association; or

(B) Upon submission to the board of directors of a petition signed by a majority of unit owners mandating that the requirements of subsections (3) and (4) of this section apply to the association.

(b) The reserve study and the maintenance plan shall be completed within one year of the date of adoption of the resolution or submission of the petition to the board of directors.

(7)(a) Except as provided in paragraph (b) of this subsection, the reserve account is to be used only for the purposes for which reserves have been established and is to be kept separate from other funds.

(b) After the individual unit owners have assumed administrative responsibility for the association under ORS 100.210, if the board of directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds:

(A) The board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses.

(B) Not later than the adoption of the budget for the following year, the board of directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

(8) The reserve account is subject to the requirements and restrictions of ORS 100.480 and any additional requirements or restrictions imposed by the declaration, bylaws or rules of the association of unit owners.

(9) Assessments paid into the reserve account are the property of the association of unit owners and are not refundable to sellers of units.

(10)(a) Except as provided under paragraph (b) of this subsection, unless the board of directors under subsection (3) of this section determines that the reserve account will be adequately funded for the following year, the board of directors or the owners may not vote to eliminate funding a reserve account required under this section or under the declaration or bylaws.

(b) Following the turnover meeting described in ORS 100.210, on an annual basis, the board of directors, with the approval of all owners, may elect not to fund the reserve account for the following year.

SECTION 4. ORS 100.480 is amended to read:

100.480. (1) An association of unit owners shall retain within this state the documents, information and records delivered to the association under ORS 100.210 and all other records of the as-

sociation for not less than the period specified for the record in ORS 65.771 or any other applicable law, except that:

(a) The documents specified in ORS 100.210 (5)(j), if received, must be retained as permanent records of the association.

(b) Proxies and ballots must be retained for one year from the date of determination of the vote, except proxies and ballots relating to an amendment to the declaration, supplemental declaration plat, supplemental plat or bylaws must be retained for one year from the date the amendment is recorded.

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

(3)(a) All assessments and other association funds shall be deposited and maintained in the name of the association in one or more separate federally insured accounts, including certificates of deposit, at a financial institution, as defined in ORS 706.008, other than an extranational institution. Except as provided in paragraph (b) of this subsection, funds must be maintained in an association account until disbursed.

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

(c) All expenses of the association shall be paid from the association account.

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

(a) Prepare or cause to be prepared an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year; and

(b) Distribute to each unit owner a copy of the annual financial statement.

(5) Subject to ORS 100.481, the association of unit owners of a condominium that has annual assessments exceeding \$75,000 shall cause the financial statement required under subsection (4) of this section to be reviewed within [180] **300** days after the end of the fiscal year by an independent certified public accountant licensed in the State of Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

(6) The association of unit owners of a condominium that has annual assessments of \$75,000 or less shall cause the most recent financial statement required by subsection (4) of this section to be reviewed in the manner described in subsection (5) of this section within [180] **300** days after the board of directors receives the petition requesting review signed by at least a majority of the owners.

(7) An association of unit owners subject to the requirements of subsection (5) of this section may elect, on an annual basis, not to comply with the requirements of subsection (5) of this section by an affirmative vote of at least 60 percent of the owners, not including the votes of the declarant with respect to units owned by the declarant.

(8)(a) The association shall provide, within 10 business days of receipt of a written request from an owner, a written statement that provides:

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

(i) Regular and special assessments;

(ii) Fines and other charges;

(iii) Accrued interest; and

(iv) Late payment charges.

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

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

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

(9)(a) Except as provided in paragraph (b) of this subsection, the documents, information and records described in subsections (1) to (4) of this section and all other records of the association of unit owners must be reasonably available for examination and, upon written request, available for duplication by a unit owner and any mortgagee of a unit that makes the request in good faith for a proper purpose.

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

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

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

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

(D) Disclosure of information in violation of law.

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

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

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

(10) The association of unit owners shall maintain a copy, suitable for the purpose of duplication, of the following:

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

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

(c) The current operating budget of the association;

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

(e) Architectural standards and guidelines, if any.

(11) The association, within 10 business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under subsection (10) of this section.

(12) The board of directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

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

SECTION 5. The amendments to ORS 94.595, 94.670, 100.175 and 100.480 by sections 1 to 4 of this 2017 Act apply to:

(1) Reserve account studies conducted or reviewed on or after the effective date of this 2017 Act.

(2) Financial statement reviews conducted on or after the effective date of this 2017 Act.

Passed by House April 18, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 10, 2017

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

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

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Kate Brown, Governor

Filed in Office of Secretary of State:

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

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Dennis Richardson, Secretary of State