

# Enrolled House Bill 3059

Sponsored by Representative VIAL; Representative HELM

CHAPTER .....

AN ACT

Relating to special declarant rights; creating new provisions; and amending ORS 94.623 and 100.220.

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

**SECTION 1.** ORS 100.220 is amended to read:

100.220. (1) As used in this section, “affiliate” means any person who controls a transferor or successor declarant, is controlled by a transferor or successor declarant or is under common control with a transferor or successor declarant. A person “controls” or “is controlled by” a transferor or successor declarant if the person:

- (a) Is a general partner, officer, director or employee;
- (b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests of the transferor or successor declarant;
- (c) Controls in any manner the election of a majority of the directors; or
- (d) Has contributed more than 20 percent of the capital of the transferor or successor declarant.

(2) Upon the transfer of any special declarant right, the liabilities and obligations of a transferor are as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed under ORS 100.185. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(b) If a transferor retains any special declarant right, or if a successor declarant is an affiliate of the transferor, the transferor is subject to liability for all obligations and liabilities imposed on a declarant by the provisions of this chapter or by the declaration or bylaws arising after the transfer and is jointly and severally liable with the successor declarant for the liabilities and obligations of the successor declarant that relate to the special declarant rights.

(c) A transferor who does not retain special declarant rights does not have an obligation or liability for an act or omission or for a breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) Upon transfer of any special declarant right, the liabilities and obligations of a successor declarant are as follows:

(a) A successor declarant who is an affiliate of the transferor is subject to all obligations and liabilities imposed on a declarant by the provisions of this chapter or by the declaration or bylaws.

(b) A successor declarant who is not an affiliate of the transferor is not liable for any misrepresentations or warranties made or required to be made, including without limitation warranties

required under ORS 100.185, by the declarant or previous successor declarant or for any breach of fiduciary obligation by such person. Such a successor declarant, however, shall:

(A) Comply with any provisions of the declaration and bylaws which pertain to such successor declarant's ownership of the unit or units and the exercise of any special declarant right;

(B) Comply with the provisions of ORS 100.015 and 100.635 to 100.910 in connection with the sale of any unit or units, except as provided in ORS 100.665; and

(C) Give the warranties described in ORS 100.185 only with respect to common elements or units constructed by the successor declarant.

**(4)(a) Upon transfer of any special declarant right under this section, any interest held by the transferor in the special declarant right is extinguished and the transferor has no right of recovery.**

**(b) A transferor may only recover a transferred special declarant right by execution of a subsequent conveyance or other instrument that evidences an intent to convey the special declarant right from the successor declarant to the transferor.**

**SECTION 2.** ORS 94.623 is amended to read:

94.623. (1) Except as otherwise provided in subsections (2) and (3) of this section, a developer, vendor under a land sale contract, mortgagee of a mortgage or beneficiary of a trust deed affecting the declarant's interest in the property shall acquire all special declarant rights of the transferor upon transfer by the declarant or prior successor declarant of all of such transferor's interest in a planned community, unless:

(a) The conveyance evidences an intent not to transfer any special declarant rights;

(b) An instrument executed by the transferor and the transferee evidences an intent not to transfer any special declarant rights and is recorded in the office of the recording officer of every county in which the property is located; or

(c) The transferee executes an instrument disclaiming any right to exercise any special declarant rights and such instrument is recorded in the office of the recording officer of every county in which the property is located.

(2) A transferee under subsection (1) of this section shall acquire less than all special declarant rights if:

(a) The conveyance from the transferor or an instrument executed by the transferor and the transferee evidences an intent to transfer less than all special declarant rights and states the specific rights being transferred, and such instrument is recorded in the office of the recording officer of every county in which the property is located; or

(b) The transferee executes an instrument disclaiming specific special declarant rights and the instrument is recorded in the office of the recording officer of every county in which the property is located.

(3) When a transferee acquires all of the declarant's interest in the planned community in which the declarant has reserved the right to expand the planned community under ORS 94.580, the transferee shall not acquire the right to annex property unless the transferee simultaneously acquires from the declarant property adjacent to the planned community, or unless the conveyance evidences an intent to transfer such right to the transferee.

(4) A declarant or a successor declarant may transfer all or less than all of the transferor's special declarant rights to a transferee, whether or not any interest in real property is conveyed, by an instrument executed by the declarant or successor declarant and the transferee evidencing an intent to transfer all or specific special declarant rights, which instrument shall be recorded in the office of the recording officer of every county in which the property is located. If the transfer is not subject to subsection (1) of this section, it shall also bear the written consent of any holder of a blanket encumbrance on the planned community.

(5) An instrument disclaiming or transferring special declarant rights shall be properly acknowledged as provided by law.

(6)(a) Upon transfer of any special declarant right under this section, any interest held by the transferor in the special declarant right is extinguished and the transferor has no right of recovery.

(b) A transferor may only recover a transferred special declarant right through execution by both the transferor and the successor declarant of a subsequent conveyance or other instrument that evidences an intent to convey the special declarant right from the successor declarant to the transferor.

**SECTION 3.** The amendments to ORS 94.623 and 100.220 by sections 1 and 2 of this 2017 Act apply to special declarant rights transferred 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:

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

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