

A-Engrossed
House Bill 3447

Ordered by the House April 24
Including House Amendments dated April 24

Sponsored by Representative LIVELY

SUMMARY

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

Prohibits provision in instrument conveying real property that restricts use of real property as certified or registered family child care home or as premises of exempt family child care provider. Prohibits enforcement of condominium or homeowners association prohibition or restriction of use of unit as certified or registered family child care home or as premises of exempt family child care provider.

Applies to instruments conveying fee title to real property executed, and provisions of governing documents and guidelines adopted, on or after effective date of Act.

A BILL FOR AN ACT

1
2 Relating to the use of real property for child care; creating new provisions; and amending ORS
3 93.270, 94.550, 94.630 and 100.005.

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

5 **SECTION 1.** ORS 93.270 is amended to read:

6 93.270. (1) A person conveying or contracting to convey fee title to real property may not in-
7 clude in an instrument for that purpose a provision:

8 (a) Restricting the use of the real property by any person or group of persons by reason of race,
9 color, religion, sex, sexual orientation, national origin or disability.

10 (b) Restricting the use of the real property:

11 **(A) As a certified or registered family child care home pursuant to ORS 329A.250 to**
12 **329A.450 or as the premises of an exempt family child care provider participating in the**
13 **subsidy program under ORS 329A.500; or**

14 **(B)** By any home or facility that is licensed under ORS 443.400 to 443.455 or 443.705 to 443.825
15 to provide residential care alone or in conjunction with treatment or training or a combination
16 thereof.

17 (2) Any provision in an instrument executed in violation of subsection (1) of this section is void
18 and unenforceable.

19 (3) An instrument that contains a provision restricting the use of real property in a manner
20 listed in subsection (1)(b) of this section does not give rise to any public or private right of action
21 to enforce the restriction.

22 (4)(a) An instrument that contains a provision restricting the use of real property by requiring
23 roofing materials with a lower fire rating than that required in the state building code established
24 under ORS chapter 455 does not give rise to any public or private right of action to enforce the
25 restriction in an area determined by a local jurisdiction as a wildfire hazard zone. Prohibitions on

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 public or private right of action under this paragraph are limited solely to considerations of fire
2 rating.

3 (b) As used in this subsection, “wildfire hazard zones” are areas that are legally declared by a
4 governmental agency having jurisdiction over the area to have special hazards caused by a combi-
5 nation of combustible natural fuels, topography and climatic conditions that result in a significant
6 hazard of catastrophic fire over relatively long periods each year. Wildfire hazard zones shall be
7 determined using criteria established by the State Forestry Department.

8 **SECTION 2.** ORS 100.005 is amended to read:

9 100.005. As used in this chapter, unless the context requires otherwise:

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

13 (2) “Association of unit owners” or “**association**” means the association provided for under
14 ORS 100.405.

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

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

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

24 (6) “Commissioner” means the Real Estate Commissioner.

25 (7) “Common elements” means the general common elements and the limited common elements.

26 (8) “Common expenses” means:

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

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

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

31 (9) “Condominium” means:

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

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

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

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

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

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

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

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

45 (11) “Declarant” means a person who records a declaration under ORS 100.100 or a supple-

1 mental declaration under ORS 100.110.

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

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

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

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

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

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

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

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

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

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

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

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

27 **(17) "Governing document" means articles of incorporation, bylaws, a declaration or any**
28 **other instrument or plat relating to common ownership or common maintenance of a portion**
29 **of a condominium that is binding upon units within the condominium.**

30 [(17)] (18) "Leasehold" means the interest of a person, firm or corporation [who] **that** is the
31 lessee under a lease from the owner in fee and [who] **that** files a declaration creating a condomin-
32 ium under ORS 100.100.

33 [(18)] (19) "Limited common elements" means those common elements designated in the decla-
34 ration, as reserved for the use of a certain unit or number of units, to the exclusion of the other
35 units.

36 [(19)] (20) "Majority" or "majority of unit owners" means more than 50 percent of the voting
37 rights allocated to the units by the declaration.

38 [(20)] (21) "Mortgagee" means any person who is:

39 (a) A mortgagee under a mortgage;

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

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

42 [(21)] (22) "Negotiation" means any activity preliminary to the execution by either developer
43 or purchaser of a unit sales agreement, including but not limited to advertising, solicitation and
44 promotion of the sale of a unit.

45 [(22)] (23) "Nonwithdrawable property" means property which pursuant to ORS 100.150 (1)(b):

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

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

4 [(23)] (24) "Percent of owners" or "percentage of owners" means the percent of the voting rights
5 determined under ORS 100.525.

6 [(24)] (25) "Purchaser" means an actual or prospective purchaser of a condominium unit pursu-
7 ant to a sale.

8 [(25)] (26) "Recording officer" means the county officer charged with the duty of filing and re-
9 cording deeds and mortgages or any other instruments or documents affecting the title to real
10 property.

11 [(26)] (27) "Reservation agreement" means an agreement relating to the future sale of a unit
12 which is not binding on the purchaser and which grants purchaser the right to cancel the agreement
13 without penalty and obtain a refund of any funds deposited at any time until purchaser executes a
14 unit sales agreement.

15 [(27)] (28) "Sale" [*includes every*] **means any** disposition or transfer of a condominium unit, or
16 an interest or estate therein, by a developer, including the offering of the property as a prize or gift
17 when a monetary charge or consideration for whatever purpose is required by the developer. **As**
18 **used in this subsection**, "interest or estate" includes a lessee's interest in a unit for more than
19 three years or less than three years if the interest may be renewed under the terms of the lease for
20 a total period of more than three years. "Interest or estate" does not include any interest held for
21 security purposes or a timeshare regulated or otherwise exempt under ORS 94.803 and 94.807 to
22 94.945.

23 [(28)] (29) "Special declarant right" means any right, in addition to the regular rights of the
24 declarant as a unit owner, reserved for the benefit of or created by the declarant under the decla-
25 ration, bylaws or the provisions of this chapter.

26 [(29)] (30) "Staged condominium" means a condominium which provides for annexation of addi-
27 tional property pursuant to ORS 100.115 and 100.120.

28 [(30)] (31) "Successor declarant" means the transferee of any special declarant right.

29 [(31)] (32) "Termination date" means that date described in ORS 100.105 (2)(b) or (7)(d).

30 [(32)] (33) "Transitional committee" means the committee provided for under ORS 100.205.

31 [(33)] (34) "Turnover meeting" means the meeting provided for under ORS 100.210.

32 [(34)] (35) "Unit" or "condominium unit" means a part of the property which:

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

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

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

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

38 [(36)] (37) "Unit owner" means, except to the extent the declaration or bylaws provide other-
39 wise, the person owning fee simple interest in a unit, the holder of a vendee's interest in a unit
40 under a recorded installment contract of sale and, in the case of a leasehold condominium, the
41 holder of the leasehold estate in a unit.

42 [(37)] (38) "Unit sales agreement" means a written offer or agreement for the sale of a condo-
43 minium unit which when fully executed will be binding on all parties. "Unit sales agreement" in-
44 cludes but is not limited to an earnest money receipt and agreement to purchase and other such
45 agreements which serve as an agreement of sale for a cash transaction or which are preliminary to

1 the execution of an installment contract of sale, but does not include a reservation agreement.

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

4 [(39)] (40) "Voting rights" means the portion of the votes allocated to a unit by the declaration
5 in accordance with ORS 100.105 (1)(j).

6 **SECTION 3. Section 4 of this 2017 Act is added to and made a part of ORS chapter 100.**

7 **SECTION 4. (1) Except as provided in subsections (2) and (3) of this section, the following**
8 **provisions of a condominium's governing documents are void and unenforceable:**

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

13 (b) **If the condominium unit does not share a wall, floor or ceiling surface in common**
14 **with another unit, a provision that prohibits or restricts the use of the unit owner's condo-**
15 **minium unit or any limited common element designated for exclusive use by the occupants**
16 **of the unit as a certified or registered family child care home pursuant to ORS 329A.250 to**
17 **329A.450.**

18 (2) **Subsection (1) of this section does not prohibit an association of unit owners from**
19 **adopting or enforcing a provision of the condominium's governing document that regulates**
20 **parking, noise, odors, nuisance, use of common elements or activities that impact the cost**
21 **of insurance policies held by the condominium, provided the provision:**

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

23 (b) **Does not have the effect of prohibiting or restricting the use of a unit as the premises**
24 **of an exempt family child care provider participating in the subsidy program under ORS**
25 **329A.500 or as a certified or registered family child care home pursuant to ORS 329A.250 to**
26 **329A.450.**

27 (3)(a) **Subsection (1) of this section does not apply to condominiums that provide housing**
28 **for older persons.**

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

31 **SECTION 5. ORS 94.550 is amended to read:**

32 94.550. As used in ORS 94.550 to 94.783:

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

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

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

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

43 (b) **Has an estimated annual assessment, including an amount required for reserves under ORS**
44 **94.595, exceeding \$10,000 for all lots or \$100 per lot[, whichever is greater,] based on:**

45 (A) **For a planned community created on or after January 1, 2002, the initial estimated annual**

1 assessment, including a constructive assessment based on a subsidy of the association through a
2 contribution of funds, goods or services by the declarant; or

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

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

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

8 (b) Contains at least five lots; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (13) "Governing document" means *[an]* **articles of incorporation, bylaws, a declaration or**
41 **any other** instrument or plat relating to common ownership or common maintenance of a portion
42 of a planned community *[and]* that is binding upon lots within the planned community.

43 (14) "Homeowners association" or "association" means the organization of owners of lots in a
44 planned community, created under ORS 94.625, required by a governing document or formed under
45 ORS 94.572.

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

3 (16) "Mortgagee" means any person who is:

- 4 (a) A mortgagee under a mortgage;
- 5 (b) A beneficiary under a trust deed; or
- 6 (c) The vendor under a land sale contract.

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

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

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

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

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

21 (20) "Purchaser" means any person other than a declarant who, by means of a voluntary trans-
22 fer, acquires a legal or equitable interest in a lot, other than as security for an obligation.

23 (21) "Purchaser for resale" means any person who purchases from the declarant more than two
24 lots for the purpose of resale whether or not the purchaser for resale makes improvements to the
25 lots before reselling them.

26 (22) "Special declarant rights" means any rights, in addition to the rights of the declarant as a
27 lot owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to 94.783,
28 including but not limited to:

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

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

33 (c) Converting lots into common property;

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

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

36 (23) "Successor declarant" means the transferee of any special declarant right.

37 (24) "Turn over" means the act of turning over administrative responsibility pursuant to ORS
38 94.609 and 94.616.

39 (25) "Unit" means a building or portion of a building located upon a lot in a planned community
40 and designated for separate occupancy or ownership, but does not include any building or portion
41 of a building located on common property.

42 (26) "Votes" means the votes allocated to lots in the declaration under ORS 94.580 (2).

43 **SECTION 6.** ORS 94.630, as amended by section 1, chapter 86, Oregon Laws 2016, is amended
44 to read:

45 94.630. (1) Subject to subsections (2) and (5) of this section and except as otherwise provided in

1 its declaration or bylaws, a homeowners association may:

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

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

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

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

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

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

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

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

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

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

19 (ii) Common property;

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

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

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

26 (F) Any other matter to which the association has standing under law or pursuant to the decla-
27 ration or bylaws;

28 (f) Make contracts and incur liabilities;

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

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

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

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

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

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

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

45 (L) Impose and receive any payments, fees or charges for the use, rental or operation of the

1 common property and services provided to owners;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (4)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an administrative
42 proceeding in which the association and an owner have an adversarial relationship, the party that
43 intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution
44 program available within the county in which the planned community is located that is in substan-
45 tial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must

1 be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in
2 the records of the association, for the other party.

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

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

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

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

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

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

27 **(5) The following provisions of a planned community's governing documents are void and
28 unenforceable:**

29 **(a) Except as provided in subsection (6) of this section:**

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

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

36 **(b) A provision that imposes irrigation requirements on an owner while any of the fol-
37 lowing is in effect:**

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

40 *[(b)]* **(B) A finding by the Water Resources Commission that a severe or continuing drought ex-
41 ists or is likely to occur in a political subdivision within which the planned community is lo-
42 cated; or**

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

45 **(6) Subsection (5)(a) of this section does not:**

