

A-Engrossed
House Bill 2466

Ordered by the House March 29
Including House Amendments dated March 29

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon Condominium Working Group)

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.

Requires **certain** homeowners associations and **all** condominium unit owners associations to *[be audited by certified public accountant at least once every three years if annual assessments exceed \$500,000]* **carry fidelity bond coverage, unless owners and board have elected otherwise in the preceding year.**

A BILL FOR AN ACT

1
2 Relating to financial practices in associations; amending ORS 94.675 and 100.435.

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

4 **SECTION 1.** ORS 94.675 is amended to read:

5 94.675. (1) The board of directors of a homeowners association shall obtain and maintain:

6 (a) Insurance for all insurable improvements in the common property against loss or damage by
7 fire or other hazards, including extended coverage, vandalism and malicious mischief. The insurance
8 shall cover the full replacement costs of any repair or reconstruction in the event of damage or
9 destruction from any such hazard if the insurance is available at reasonable cost; and

10 (b) A public liability policy covering all common property and all damage or injury caused by
11 the negligence of the association.

12 (2) Premiums for insurance obtained under this section shall be a common expense of the asso-
13 ciation.

14 (3) A policy may contain a deductible in the amount specified in the declaration or bylaws. The
15 deductible amount shall be added to the face amount of the policy in determining whether the in-
16 surance equals at least the full replacement cost.

17 (4) Notwithstanding a provision in the declaration or bylaws that imposes a maximum deductible
18 amount in an association insurance policy, if the board of directors determines that it is in the best
19 interest of the association and owners as provided in subsection (5) of this section, the board may
20 adopt a resolution authorizing the association to obtain and maintain an insurance policy with a
21 deductible amount exceeding the specified maximum, but not in excess of the greater of:

22 (a) The maximum deductible acceptable to the Federal National Mortgage Association; or

23 (b) \$10,000.

24 (5) In making the determination under subsection (4) of this section, the board of directors shall
25 consider such factors as the availability and cost of insurance and the loss experience of the asso-
26 ciation.

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 (6) Not later than 10 days after adoption of a resolution under subsection (4) of this section, the
2 board of directors shall ensure that a copy of the resolution and a notice described in ORS 94.676
3 are:

4 (a) Delivered to each owner; or

5 (b) Mailed to the mailing address of each owner or to the mailing address designated in writing
6 by the owner.

7 **(7)(a) The homeowners association of a Class I or Class II planned community created**
8 **under ORS 94.550 to 94.783 or a planned community described in ORS 94.572 shall maintain**
9 **fidelity bond coverage for:**

10 **(A) All persons with access to association funds, including directors, officers, employees,**
11 **managing agents and employees of a management company or other entity with which the**
12 **association contracts.**

13 **(B) Computer fraud and funds transfer fraud.**

14 **(b) The fidelity bond required under paragraph (a) of this subsection must be in an**
15 **amount that is at least equal to the combined amount of:**

16 **(A) Funds maintained in the name of the association in accounts under ORS 94.670; and**

17 **(B) Any obligations issued by the United States government purchased by the association**
18 **under ORS 94.670.**

19 **(8) Subsection (7) of this section applies to a Class I or Class II planned community under**
20 **ORS 94.550 to 94.783, or a planned community described in ORS 94.572, created before, on or**
21 **after the effective date of this 2019 Act.**

22 **(9) Following the turnover meeting described in ORS 94.616, on an annual basis, with the**
23 **approval of owners representing a majority of the votes present at a meeting, the board of**
24 **directors may elect for the following year to not maintain the fidelity bond coverage required**
25 **under subsection (7)(a) of this section or to maintain fidelity bond coverage in an amount**
26 **less than that required under subsection (7)(b) of this section for the following year.**

27 **SECTION 2.** ORS 100.435 is amended to read:

28 100.435. (1) If the bylaws provide that the association of unit owners has the sole authority to
29 decide whether to repair or reconstruct a unit that has suffered damage or that a unit must be re-
30 paired or reconstructed, the board of directors shall obtain and maintain at all times and shall pay
31 for out of the common expense funds, the following insurance covering both the common elements
32 and individual units:

33 (a) Property insurance including, but not limited to, fire, extended coverage, vandalism and ma-
34 licious mischief; and

35 (b) Insurance covering the legal liability of the association of unit owners, the unit owners in-
36 dividually and the manager including, but not limited to, the board of directors, the public and the
37 unit owners and their invitees or tenants, incident to ownership, supervision, control or use of the
38 property. There may be excluded from the policy required under this paragraph, coverage of a unit
39 owner, other than coverage as a member of the association of unit owners or board of directors, for
40 liability arising out of acts or omissions of that unit owner and liability incident to the ownership
41 or use of the part of the property as to which that unit owner has the exclusive use or occupancy.
42 Liability insurance required under this paragraph shall be issued on a comprehensive liability basis
43 and shall provide a cross liability indorsement providing that the rights of a named insured under
44 the policy do not prejudice any action against another named insured.

45 (2) If the bylaws require the individual unit owners to obtain insurance for their units, the by-

1 laws also shall contain a provision requiring the board of directors to obtain the following insurance
2 covering the common elements:

3 (a) Property insurance including, but not limited to, fire, extended coverage, vandalism and ma-
4 licious mischief; and

5 (b) Insurance covering the legal liability of the association of unit owners and the manager in-
6 cluding, but not limited to, the board of directors, to the public or the unit owners and their invitees
7 or tenants, incident to supervision, control or use of the property.

8 (3) The board of directors shall obtain, if reasonably available, terms in insurance policies under
9 this section that provide a waiver of subrogation by the insurer as to any claims against the board
10 of directors of the association.

11 (4) Notwithstanding a provision in the declaration or bylaws of a condominium, including a
12 condominium created before September 27, 2007, that imposes a maximum deductible amount of
13 \$10,000 or less in an association insurance policy, if the board of directors determines that it is in
14 the best interest of the association of unit owners and of the unit owners, as provided in subsection
15 (5) of this section, the board may adopt a resolution authorizing the association to obtain and
16 maintain an insurance policy with a deductible amount exceeding the specified maximum, but not
17 in excess of the greater of:

18 (a) The maximum deductible acceptable to the Federal National Mortgage Association; or

19 (b) \$10,000.

20 (5) In making the determination under subsection (4) of this section, the board of directors shall
21 consider such factors as the availability and cost of insurance and the loss experience of the asso-
22 ciation.

23 (6) If the declaration or bylaws of a condominium created before September 27, 2007, do not
24 assign the responsibility for payment of the amount of the deductible in an association insurance
25 policy, the board of directors may adopt a resolution that assigns the responsibility for payment of
26 the amount of the deductible. The resolution must include, but need not be limited to:

27 (a) The circumstances under which the deductible will be charged against:

28 (A) A unit owner or the unit owners affected by a loss; or

29 (B) All unit owners;

30 (b) The allocation of the deductible charged under paragraph (a) of this subsection; and

31 (c) If a unit owner and the association have duplicate insurance coverage, the insurance policy
32 that is primary, unless otherwise provided in the declaration or bylaws.

33 (7) If the board of directors adopts a resolution described in subsection (6) of this section, the
34 resolution may require that a unit owner, in addition to any other insurance required by the decla-
35 ration or bylaws, obtain and maintain:

36 (a) An insurance policy that insures the unit owner's unit and appurtenant limited common el-
37 ements for not less than the amount of the deductible in the association's insurance policy for which
38 the unit owner may be responsible and that insures the unit owner's personal property for any loss
39 or damage; and

40 (b) Comprehensive liability insurance that includes, but is not limited to, coverage for negligent
41 acts of unit owners and tenants, guests of unit owners and tenants and occupants of other units for
42 damage to the general and limited common elements, to other units and to the personal property
43 of other persons that is located in other units or the common elements.

44 (8) Unless otherwise provided in the declaration or bylaws, the board of directors may adopt a
45 resolution that:

1 (a) Prescribes a procedure for processing insurance claims. The procedure may require that all
2 claims against the association's insurance policy be processed through and coordinated by the board
3 of directors or the managing agent, if authorized by the board.

4 (b) Assigns the responsibility for payment of charges for handling claims, including any charges
5 by a managing agent.

6 (9) Not later than 10 days after adoption of a resolution under subsection (4), (6) or (8) of this
7 section, the board of directors shall ensure that a copy of the resolution and a notice described in
8 subsection (10) of this section are:

9 (a) Delivered to each unit owner; or

10 (b) Mailed to the mailing address of each unit owner or to the mailing address designated in
11 writing by the unit owner.

12 (10) The notice required under subsection (9) of this section shall:

13 (a) Advise the unit owner to contact the unit owner's insurance agent to determine the effect
14 of the resolution on the unit owner's individual insurance coverage; and

15 (b) Be in a form and style reasonably calculated to inform the unit owner of the importance of
16 the notice.

17 (11) Failure to provide a copy of a resolution or a notice required under this section does not
18 affect the responsibility of a unit owner to comply with a resolution adopted under this section.

19 **(12)(a) An association of unit owners shall maintain fidelity bond coverage for:**

20 **(A) All persons with access to association funds, including directors, officers, employees,**
21 **managing agents and employees of a management company or entity with which the associ-**
22 **ation contracts.**

23 **(B) Computer fraud and funds transfer fraud.**

24 **(b) The fidelity bond required under paragraph (a) of this subsection must be in an**
25 **amount that is at least equal to the combined amount of:**

26 **(A) Funds maintained in the name of the association in accounts under ORS 100.480; and**

27 **(B) Any obligations issued by the United States government purchased by the association**
28 **under ORS 100.480.**

29 **(13) Subsection (12) of this section applies to a condominium created before, on or after**
30 **the effective date of this 2019 Act.**

31 **(14) Following the turnover meeting described in ORS 100.210, on an annual basis, with**
32 **the approval of owners representing a majority of the voting rights present at a meeting, the**
33 **board of directors may elect for the following year to not maintain the fidelity bond coverage**
34 **required under subsection (12)(a) of this section or to maintain fidelity bond coverage in an**
35 **amount less than required under subsection (12)(b) of this section.**

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