

House Bill 2466

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 **as introduced**.

Requires homeowners associations and condominium unit owners associations to be audited by certified public accountant at least once every three years if annual assessments exceed \$500,000.

A BILL FOR AN ACT

1
2 Relating to financial practices in associations; amending ORS 94.640, 94.670, 100.417 and 100.480.

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

4 **SECTION 1.** ORS 94.670 is amended to read:

5 94.670. (1) A homeowners association shall retain within this state the documents, information
6 and records delivered to the association under ORS 94.616 and all other records of the association
7 for not less than the period specified for the record in ORS 65.771 or any other applicable law ex-
8 cept that:

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

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

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

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

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

23 (3) The association shall keep financial records sufficiently detailed for proper accounting pur-
24 poses.

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

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

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

30 (5) Subject to ORS 94.671, the association of a planned community that has annual assessments
31 exceeding \$75,000 shall cause the financial statement required under subsection (4) of this section

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 to be reviewed within 300 days after the end of the fiscal year by an independent certified public
 2 accountant licensed in the State of Oregon in accordance with the Statements on Standards for
 3 Accounting and Review Services issued by the American Institute of Certified Public Accountants.

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

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

13 **(8) In addition to and not in lieu of the requirements of subsections (5) to (7) of this**
 14 **section, an association that has annual assessments exceeding \$500,000 shall, no less than**
 15 **once every three years, cause the financial statement required under subsection (4) of this**
 16 **section to be audited within 300 days after the end of the fiscal year by an independent cer-**
 17 **tified public accountant licensed in this state. The audit must be prepared in accordance with**
 18 **generally accepted auditing standards issued by the American Institute of Certified Public**
 19 **Accountants.**

20 [(8)(a)] **(9)(a)** The association shall provide, within 10 business days of receipt of a written re-
 21 quest from an owner, a written statement that provides:

22 (A) The amount of assessments due from the owner and unpaid at the time the request was re-
 23 ceived, including:

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

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

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

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

34 [(9)(a)] **(10)(a)** Except as provided in paragraph (b) of this subsection, the association shall make
 35 the documents, information and records described in subsections (1) and (4) of this section and all
 36 other records of the association reasonably available for examination and, upon written request,
 37 available for duplication by an owner and any mortgagee of a lot that makes the request in good
 38 faith for a proper purpose.

39 (b) Records kept by or on behalf of the association may be withheld from examination and du-
 40 plication to the extent the records concern:

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

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

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

1 litigation or criminal matters.

2 (D) Disclosure of information in violation of law.

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

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

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

10 [(10)] (11) The association shall maintain a copy, suitable for the purpose of duplication, of the
11 following:

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

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

15 (c) The current operating budget of the association.

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

17 (e) Architectural standards and guidelines, if any.

18 [(11)] (12) The association, within 10 business days after receipt of a written request by an
19 owner, shall furnish the requested information required to be maintained under subsection [(10)] (11)
20 of this section.

21 [(12)] (13) The board of directors, by resolution, may adopt reasonable rules governing the fre-
22 quency, time, location, notice and manner of examination and duplication of association records and
23 the imposition of a reasonable fee for furnishing copies of any documents, information or records
24 described in this section. The fee may include reasonable personnel costs for furnishing the docu-
25 ments, information or records.

26 **SECTION 2.** ORS 100.480 is amended to read:

27 100.480. (1) An association of unit owners shall retain within this state the documents, infor-
28 mation and records delivered to the association under ORS 100.210 and all other records of the as-
29 sociation for not less than the period specified for the record in ORS 65.771 or any other applicable
30 law, except that:

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

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

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

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

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

1 United States government.

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

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

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

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

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

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

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

21 **(8) In addition to and not in lieu of the requirements of subsections (5) to (7) of this**
22 **section, an association that has annual assessments exceeding \$500,000 shall, no less than**
23 **once every three years, cause the financial statement required under subsection (4) of this**
24 **section to be audited within 300 days after the end of the fiscal year by an independent cer-**
25 **tified public accountant licensed in this state. The audit must be prepared in accordance with**
26 **generally accepted auditing standards issued by the American Institute of Certified Public**
27 **Accountants.**

28 [(8)(a)] **(9)(a)** The association shall provide, within 10 business days of receipt of a written re-
29 quest from an owner, a written statement that provides:

30 (A) The amount of assessments due from the owner and unpaid at the time the request was re-
31 ceived, including:

32 (i) Regular and special assessments;

33 (ii) Fines and other charges;

34 (iii) Accrued interest; and

35 (iv) Late payment charges.

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

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

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

42 [(9)(a)] **(10)(a)** Except as provided in paragraph (b) of this subsection, the documents, information
43 and records described in subsections (1) to (4) of this section and all other records of the association
44 of unit owners must be reasonably available for examination and, upon written request, available for
45 duplication by a unit owner and any mortgagee of a unit that makes the request in good faith for

1 a proper purpose.

2 (b) Records kept by or on behalf of the association may be withheld from examination and du-
 3 plication to the extent the records concern:

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

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

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

10 (D) Disclosure of information in violation of law.

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

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

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

18 [(10)] (11) The association of unit owners shall maintain a copy, suitable for the purpose of du-
 19 plication, of the following:

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

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

24 (c) The current operating budget of the association;

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

26 (e) Architectural standards and guidelines, if any.

27 [(11)] (12) The association, within 10 business days after receipt of a written request by an
 28 owner, shall furnish the requested information required to be maintained under subsection [(10)] (11)
 29 of this section.

30 [(12)] (13) The board of directors, by resolution, may adopt reasonable rules governing the fre-
 31 quency, time, location, notice and manner of examination and duplication of association records and
 32 the imposition of a reasonable fee for furnishing copies of any documents, information or records
 33 described in this section. The fee may include reasonable personnel costs incurred to furnish the
 34 information.

35 [(13)] (14) Subsection (4) of this section first applies to property submitted to the provisions of
 36 this chapter before January 1, 1982, when the board of directors of the association of unit owners
 37 receives a written request from at least one unit owner that a copy of the annual financial statement
 38 be distributed in accordance with subsection (4) of this section.

39 **SECTION 3.** ORS 94.640 is amended to read:

40 94.640. (1) The board of directors of an association may act on behalf of the association except
 41 as limited by the declaration and the bylaws. In the performance of their duties, officers and mem-
 42 bers of the board of directors are governed by this section and the applicable provisions of ORS
 43 65.357, 65.361, 65.367, 65.369 and 65.377, whether or not the association is incorporated under ORS
 44 chapter 65.

45 (2) Subject to subsection (7) of this section, unless otherwise provided in the bylaws, the board

1 of directors may fill vacancies in its membership for the unexpired portion of any term.

2 (3) At least annually, the board of directors of an association shall review the insurance cover-
3 age of the association.

4 (4) The board of directors of the association annually shall cause to be filed the necessary in-
5 come tax returns for the association.

6 (5) The board of directors of the association may record a statement of association information
7 as provided in ORS 94.667.

8 (6)(a) Unless otherwise provided in the declaration or bylaws, at a meeting of the owners at
9 which a quorum is present, the owners may remove a director from the board of directors, other
10 than directors appointed by the declarant or individuals who are ex officio directors, with or without
11 cause, by a majority vote of owners who are present and entitled to vote.

12 (b) Notwithstanding contrary provisions in the declaration or bylaws:

13 (A) Before a vote to remove a director, owners must give the director whose removal has been
14 proposed an opportunity to be heard at the meeting.

15 (B) The owners must vote on the removal of each director whose removal is proposed as a sep-
16 arate question.

17 (C) Removal of a director by owners is effective only if the matter of removal was an item on
18 the agenda and was stated in the notice of the meeting if notice is required under ORS 94.650.

19 (c) A director who is removed by the owners remains a director until a successor is elected by
20 the owners or the vacancy is filled as provided in subsection (7) of this section.

21 (7) Unless the declaration or bylaws specifically prescribe a different procedure for filling a
22 vacancy created by the removal of a director by owners, the owners shall fill a vacancy created by
23 the removal of a director by the owners at a meeting of owners. The notice of the meeting must
24 state that filling a vacancy is an item on the agenda.

25 (8)(a) All meetings of the board of directors of the association shall be open to owners, except
26 that at the discretion of the board, the board may close the meeting to owners other than board
27 members and meet in executive session to:

28 (A) Consult with legal counsel.

29 (B) Consider the following:

30 (i) Personnel matters, including salary negotiations and employee discipline;

31 (ii) Negotiation of contracts with third parties; or

32 (iii) Collection of unpaid assessments.

33 (b) Except in the case of an emergency, the board of directors of an association shall vote in
34 an open meeting whether to meet in executive session. If the board of directors votes to meet in
35 executive session, the presiding officer of the board of directors shall state the general nature of the
36 action to be considered and, as precisely as possible, when and under what circumstances the de-
37 liberations can be disclosed to owners. The statement, motion or decision to meet in executive ses-
38 sion must be included in the minutes of the meeting.

39 (c) A contract or an action considered in executive session does not become effective unless the
40 board of directors, following the executive session, reconvenes in open meeting and votes on the
41 contract or an action, which must be reasonably identified in the open meeting and included in the
42 minutes.

43 (9) The meeting and notice requirements in subsections (8) and (10) of this section may not be
44 circumvented by chance or social meetings or by any other means.

45 (10) In a planned community in which the majority of the lots are the principal residences of the

1 occupants, meetings of the board of directors must comply with the following:

2 (a) For other than emergency meetings, notice of board of directors' meetings shall be posted
 3 at a place or places on the property at least three days prior to the meeting or notice shall be
 4 provided by a method otherwise reasonably calculated to inform lot owners of such meetings;

5 (b) Emergency meetings may be held without notice, if the reason for the emergency is stated
 6 in the minutes of the meeting; and

7 (c) Only emergency meetings of the board of directors may be conducted by telephonic commu-
 8 nication or by the use of a means of communication that allows all members of the board of direc-
 9 tors participating to hear each other simultaneously or otherwise to be able to communicate during
 10 the meeting. A member of the board of directors participating in a meeting by this means is deemed
 11 to be present in person at the meeting.

12 (11) The board of directors, in the name of the association, shall maintain a current mailing
 13 address of the association.

14 (12) The board of directors shall [*cause*] **maintain and keep current** the information required
 15 to enable the association to comply with ORS 94.670 [(8)] **(9)** [*to be maintained and kept current*].

16 (13) As used in this section, "meeting" means a convening of a quorum of members of the board
 17 of directors at which association business is discussed, except a convening of a quorum of members
 18 of the board of directors for the purpose of participating in litigation, mediation or arbitration pro-
 19 ceedings.

20 **SECTION 4.** ORS 100.417 is amended to read:

21 100.417. (1) The board of directors of an association of unit owners may act on behalf of the
 22 association except as limited by the declaration or bylaws. In the performance of their duties, offi-
 23 cers and members of the board of directors shall be governed by this section and the applicable
 24 provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377 whether or not the association is incor-
 25 porated under ORS chapter 65.

26 (2) Subject to subsection (8) of this section, unless otherwise provided in the bylaws, the board
 27 of directors of an association may fill vacancies in its membership for the unexpired portion of any
 28 term.

29 (3) At least annually, the board of directors of an association shall review the insurance cover-
 30 age of the association.

31 (4) The board of directors of the association annually shall cause to be filed the necessary in-
 32 come tax returns for the association.

33 (5) The board of directors of the association may record a statement of association information
 34 as provided in ORS 94.667.

35 (6) The board of directors, in the name of the association, shall maintain a current mailing ad-
 36 dress.

37 (7) The board of directors shall [*cause to be maintained and kept*] **maintain and keep** current
 38 the information required to enable the association to comply with ORS 100.480 [(11)] **(12)**.

39 (8)(a) Unless otherwise provided in the declaration or bylaws, at a meeting of the unit owners
 40 at which a quorum is present, the unit owners may remove a director from the board of directors,
 41 other than directors appointed by the declarant or individuals who are ex officio directors, with or
 42 without cause, by a majority vote of unit owners who are present and entitled to vote.

43 (b) Notwithstanding contrary provisions in the declaration or bylaws:

44 (A) Before a vote to remove a director, unit owners must give the director whose removal has
 45 been proposed an opportunity to be heard at the meeting.

1 (B) The unit owners must vote on the removal of each director whose removal is proposed as
2 a separate question.

3 (C) Removal of a director by unit owners is effective only if the matter of removal was an item
4 on the agenda and was stated in the notice of the meeting required under ORS 100.407.

5 (c) A director who is removed by the unit owners remains a director until a successor is elected
6 by the unit owners or the vacancy is filled as provided in subsection (9) of this section.

7 (9) Unless the declaration or bylaws specifically prescribe a different procedure for filling a
8 vacancy created by the removal of a director by unit owners, the unit owners shall fill a vacancy
9 created by the removal of a director by the unit owners at a meeting of unit owners. The notice of
10 the meeting must state that filling a vacancy is an item on the agenda.

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