

House Bill 2661

Sponsored by Representative POWER (Pre-session filed.)

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**.

Shortens period of limitation for tort action by homeowner association or association of unit owners arising out of structure construction defect.

Shortens period of limitation by homeowner arising out of single-family dwelling construction defect.

Prohibits homeowner association or association of unit owners from initiating or intervening in litigation or administrative proceeding arising out of construction defect unless approved by majority of lots or units voting at meeting called for purpose.

Establishes separate procedures regarding response to notices of construction defect given by owner that is homeowner association or association of unit owners.

A BILL FOR AN ACT

1
2 Relating to construction defect claims; creating new provisions; and amending ORS 12.135, 94.630,
3 94.662, 100.105, 100.405, 100.490, 701.570, 701.575 and 701.585.

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

5 **SECTION 1.** ORS 12.135 is amended to read:

6 12.135. (1) **As used in this section:**

7 (a) **“Association of unit owners” has the meaning given that term in ORS 100.005.**

8 (b) **“Homeowners association” has the meaning given that term in ORS 94.550.**

9 (c) **“Large commercial structure,” “residential structure” and “small commercial struc-**
10 **ture” have the meanings given those terms in ORS 701.005.**

11 (d) **“Manufactured dwelling” has the meaning given that term in ORS 446.003.**

12 (e) **“Prefabricated structure” has the meaning given that term in ORS 455.010.**

13 (f) **“Public body” has the meaning given that term in ORS 174.109.**

14 (g) **“Single-family dwelling” means a residential structure designed as a residence for one**
15 **family and sharing no common walls with another residence of any type.**

16 (h) **“Substantial completion” means the date when the contractee accepts in writing the**
17 **construction, alteration or repair of the improvement to real property or any designated**
18 **portion thereof as having reached that state of completion when it may be used or occupied**
19 **for its intended purpose or, if there is no such written acceptance, the date of acceptance**
20 **of the completed construction, alteration or repair of such improvement by the contractee.**

21 *[(1)]* (2) An action against a person by a plaintiff who is not a public body, whether in contract,
22 tort or otherwise, arising from the person having performed the construction, alteration or repair
23 of any improvement to real property or the supervision or inspection thereof, or from the person
24 having furnished design, planning, surveying, architectural or engineering services for the improve-
25 ment, must be commenced before the earliest of:

26 (a) The applicable period of limitation otherwise established by law;

27 (b) Ten years after substantial completion or abandonment of the construction, alteration or

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 repair **of a residential structure or** of a small commercial structure[, *as defined in ORS 701.005,*
 2 *a residential structure, as defined in ORS 701.005, or a large commercial structure, as defined in ORS*
 3 *701.005, that is owned or maintained by a homeowners association, as defined in ORS 94.550, or that*
 4 *is owned or maintained by an association of unit owners, as defined in ORS 100.005]; or*

5 (c) Six years after substantial completion or abandonment of the construction, alteration or re-
 6 pair of a large commercial structure[, *as defined in ORS 701.005, other than a large commercial*
 7 *structure described in paragraph (b) of this subsection].*

8 [(2)] **(3)** An action against a person by a public body, whether in contract, tort or otherwise,
 9 arising from the person having performed the construction, alteration or repair of any improvement
 10 to real property or the supervision or inspection thereof, or from the person having furnished design,
 11 planning, surveying, architectural or engineering services for the improvement, must be commenced
 12 not more than 10 years after substantial completion or abandonment of such construction, alteration
 13 or repair of the improvement to real property.

14 **(4)(a) Notwithstanding subsection (2) of this section, except as provided in paragraph (c)**
 15 **of this subsection, the period of limitation for a tort action against a person by an associ-**
 16 **ation of unit owners or homeowner’s association arising from the defective construction,**
 17 **alteration or repair of a structure or the supervision or inspection thereof, is six years after**
 18 **substantial completion or abandonment of the construction, alteration or repair of the**
 19 **structure.**

20 **(b) Except as provided in paragraph (c) of this subsection, the period of limitation for a**
 21 **tort action against a person by a homeowner arising from the defective construction, alter-**
 22 **ation or repair of a single-family dwelling or the supervision or inspection thereof, is six**
 23 **years after substantial completion or abandonment of the construction, alteration or repair**
 24 **of the single-family dwelling.**

25 **(c) If a construction defect is discovered more than five but less than six years after**
 26 **substantial completion or abandonment, the period of limitation under this subsection for a**
 27 **tort action arising from the construction defect is one year after discovery of the defect.**

28 [(3)(a)] **(5)(a)** Notwithstanding subsections [(1) and] (2) and (3) of this section, an action against
 29 a person registered to practice architecture under ORS 671.010 to 671.220, a person registered to
 30 practice landscape architecture under ORS 671.310 to 671.459 or a person registered to practice
 31 engineering under ORS 672.002 to 672.325 to recover damages for injury to a person, property or to
 32 any interest in property, including damages for delay or economic loss, regardless of legal theory,
 33 arising out of the construction, alteration or repair of any improvement to real property must be
 34 commenced before the earliest of:

35 (A) Two years after the date the injury or damage is first discovered or in the exercise of rea-
 36 sonable care should have been discovered;

37 (B) Ten years after substantial completion or abandonment of the construction, alteration or
 38 repair **of a residential structure or** of a small commercial structure[, *as defined in ORS 701.005,*
 39 *a residential structure, as defined in ORS 701.005, or a large commercial structure, as defined in ORS*
 40 *701.005, that is owned or maintained by a homeowners association, as defined in ORS 94.550, or that*
 41 *is owned or maintained by an association of unit owners, as defined in ORS 100.005]; or*

42 (C) Six years after substantial completion or abandonment of the construction, alteration or re-
 43 pair of a large commercial structure[, *as defined in ORS 701.005, other than a large commercial*
 44 *structure described in subparagraph (B) of this paragraph].*

45 (b) This subsection applies to actions brought by any person or public body.

1 [(4) For purposes of this section:]

2 [(a) "Public body" has the meaning given that term in ORS 174.109; and]

3 [(b) "Substantial completion" means the date when the contractee accepts in writing the con-
4 struction, alteration or repair of the improvement to real property or any designated portion thereof as
5 having reached that state of completion when it may be used or occupied for its intended purpose or,
6 if there is no such written acceptance, the date of acceptance of the completed construction, alteration
7 or repair of such improvement by the contractee.]

8 [(5)] (6) For purposes of this section, an improvement to real property is considered abandoned
9 on the same date that the improvement is considered abandoned under ORS 87.045.

10 [(6)] (7) This section:

11 (a) Applies to an action against a manufacturer, distributor, seller or lessor of a manufactured
12 dwelling[, as defined in ORS 446.003,] or of a prefabricated structure[, as defined in ORS 455.010];
13 and

14 (b) Does not apply to actions against any person in actual possession and control of the im-
15 provement, as owner, tenant or otherwise, at the time such cause of action accrues.

16 **SECTION 2.** ORS 94.630 is amended to read:

17 94.630. (1) Subject to subsection (2) of this section and ORS 94.779, and except as otherwise
18 provided in its declaration or bylaws, a homeowners association may:

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

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

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

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

25 (e) Subject to [subsection] **subsections (2)(b) and (4)** of this section, initiate or intervene in
26 litigation or administrative proceedings in its own name and without joining the individual owners
27 in the following:

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

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

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

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

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

37 (ii) Common property;

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

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

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

44 (F) Any other matter to which the association has standing under law or pursuant to the dec-
45 laration or bylaws;

- 1 (f) Make contracts and incur liabilities;
- 2 (g) Regulate the use, maintenance, repair, replacement and modification of common property;
- 3 (h) Cause additional improvements to be made as a part of the common property;
- 4 (i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or
- 5 personal property, except that common property may be conveyed or subjected to a security interest
- 6 only pursuant to ORS 94.665;
- 7 (j) Grant easements, leases, licenses and concessions through or over the common property as
- 8 provided in ORS 94.665;
- 9 (k) Modify, close, remove, eliminate or discontinue the use of common property, including any
- 10 improvement or landscaping, regardless of whether the common property is mentioned in the decla-
- 11 ration, provided that:
 - 12 (A) Nothing in this paragraph is intended to limit the authority of the association to seek ap-
 - 13 proval of the modification, closure, removal, elimination or discontinuance by the owners; and
 - 14 (B) Modification, closure, removal, elimination or discontinuance other than on a temporary
 - 15 basis of any swimming pool, spa or recreation or community building must be approved by at least
 - 16 a majority of owners voting on the matter at a meeting or by written ballot held in accordance with
 - 17 the declaration, bylaws or ORS 94.647;
 - 18 (L) Impose and receive any payments, fees or charges for the use, rental or operation of the
 - 19 common property and services provided to owners;
 - 20 (m) Adopt rules regarding the termination of utility services paid for out of assessments of the
 - 21 association and access to and use of recreational and service facilities available to owners. The
 - 22 rules must provide for written notice and an opportunity to be heard before the association may
 - 23 terminate the rights of any owners to receive the benefits or services until the correction of any
 - 24 violation covered by the rule has occurred;
 - 25 (n) Impose charges for late payment of assessments and attorney fees related to the collection
 - 26 of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines
 - 27 for violations of the declaration, bylaws, rules and regulations of the association, provided that the
 - 28 charge imposed or the fine levied by the association is based:
 - 29 (A) On a schedule contained in the declaration or bylaws, or an amendment to either that is
 - 30 delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses
 - 31 designated in writing by the owners; or
 - 32 (B) On a resolution of the association or its board of directors that is delivered to each lot,
 - 33 mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing
 - 34 by the owners;
 - 35 (o) Impose reasonable charges for the preparation and recordation of amendments to the decla-
 - 36 ration;
 - 37 (p) Provide for the indemnification of its officers and the board of directors and maintain li-
 - 38 ability insurance for directors and officers;
 - 39 (q) Assign its right to future income, including the right to receive common expense assess-
 - 40 ments; and
 - 41 (r) Exercise any other powers necessary and proper for the administration and operation of the
 - 42 association.
 - 43 (2)(a) A declaration may not impose any limitation on the ability of the association to deal with
 - 44 a declarant that is more restrictive than the limitations imposed on the ability of the association to
 - 45 deal with any other person, except during the period of declarant control under ORS 94.600.

1 **(b) Notwithstanding any contrary provision in a declaration or bylaws, a homeowners**
 2 **association may not initiate or intervene in litigation or administrative proceedings under**
 3 **subsection (1)(e)(E) of this section regarding a matter that results from a defect in, or**
 4 **damage arising from a defect in, common property or individually owned real property unless**
 5 **the association calls an owners' meeting for the purpose of determining whether the associ-**
 6 **ation may initiate or intervene in the litigation or administrative proceeding and receives**
 7 **approval from a majority of the lots voting at the meeting.**

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

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

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

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

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

21 (4)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an administrative
 22 proceeding in which the association and an owner have an adversarial relationship, the party that
 23 intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution
 24 program available within the county in which the planned community is located that is in substan-
 25 tial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must
 26 be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in
 27 the records of the association, for the other party.

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

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

39 (d) Unless a stay has been granted under paragraph (c) of this subsection, if the dispute resolu-
 40 tion process is not completed within 30 days after receipt of the initial offer, the initiating party
 41 may commence litigation or an administrative proceeding without regard to whether the dispute
 42 resolution is completed.

43 (e) Once made, the decision of the court or administrative body arising from litigation or an
 44 administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolu-
 45 tion program was not made.

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

4 **SECTION 3.** ORS 94.662 is amended to read:

5 94.662. (1) At least 10 days prior to instituting any litigation or administrative proceeding to
 6 recover damages under ORS 94.630 (1)(e)(E), the homeowners association shall provide written no-
 7 tice to each affected owner of the association's intent to seek damages on behalf of the owner. The
 8 notice shall, at a minimum:

9 (a) Be mailed to the mailing address of each lot or to the mailing address designated in writing
 10 to the association by the owner;

11 (b) Inform each owner of the general nature of the litigation or proceeding;

12 (c) Describe the specific nature of the damages to be sought on the owner's behalf;

13 (d) Set forth the terms under which the association is willing to seek damages on the owner's
 14 behalf, including any mechanism proposed for the determination and distribution of any damages
 15 recovered;

16 (e) Inform each owner of the owner's right not to have the damages sought on the owner's behalf
 17 and specify the procedure for exercising the right; *[and]*

18 (f) Inform the owner that exercising the owner's right not to have damages sought on the
 19 owner's behalf:

20 (A) Relieves the association of its duty to reimburse or indemnify the owner for the damages;

21 (B) Does not relieve the owner from the owner's obligation to pay dues or assessments relating
 22 to the litigation or proceeding;

23 (C) Does not impair any easement owned or possessed by the association; and

24 (D) Does not interfere with the association's right to make repairs to common areas; **and**

25 **(g) If the action is for a claim described in ORS 94.630 (2)(b), inform the owner of an**
 26 **owners' meeting for the purpose of voting whether to allow the association to initiate or in-**
 27 **tervene in the litigation or proceeding.**

28 (2) Within 10 days of mailing the notice described in this section, any owner may request in
 29 writing that the association not seek damages on the owner's behalf. If an owner makes such a re-
 30 quest, the association shall not make or continue any claim or action for damages with regard to
 31 the objecting owner's lot and shall be relieved of any duty to reimburse or indemnify the owner for
 32 damages under the litigation or proceeding.

33 **(3) Unless the bylaws provide for different timing, if the action is for a claim described**
 34 **in ORS 94.630 (2)(b), no earlier than seven days after sending notice under this section, the**
 35 **association shall hold a meeting for the purpose of determining whether a majority of the**
 36 **lots voting at the meeting approve allowing the association to initiate or intervene in the**
 37 **litigation or proceeding.**

38 **SECTION 4.** ORS 100.405 is amended to read:

39 100.405. (1)(a) An association of unit owners shall be organized to serve as a means through
 40 which the unit owners may take action with regard to the administration, management and opera-
 41 tion of the condominium.

42 (b) The association of a condominium created on or after September 27, 2007, shall be organized:

43 (A) As a corporation for profit or a nonprofit corporation; or

44 (B) If the condominium consists of four or fewer units, excluding units used for parking, storage
 45 or other use ancillary to a unit, as an unincorporated association, corporation for profit or a

1 nonprofit corporation.

2 (c) If the association is incorporated, the name of the association shall include the complete
3 name of the condominium.

4 (d) Notwithstanding a provision in the declaration or bylaws of a condominium created before
5 September 27, 2007, that states that the association shall be unincorporated or that requires ap-
6 proval of owners to incorporate as a nonprofit corporation under ORS chapter 65, an unincorporated
7 association may be incorporated as a nonprofit corporation under ORS chapter 65 if the board of
8 directors adopts a resolution that states the association will be incorporated.

9 (e) A separate association is not created when an unincorporated association formed under this
10 section is incorporated, reinstated after administrative dissolution under ORS 60.654 or 65.654 or
11 again incorporated following dissolution. The association automatically continues and, without any
12 further action by incorporators, directors or officers that may otherwise be required under Oregon
13 corporation laws:

14 (A) The incorporated association has all of the property, powers and obligations of the associ-
15 ation that existed immediately prior to incorporation in addition to the powers and obligations under
16 Oregon corporation laws.

17 (B) The bylaws in effect immediately prior to incorporation or reinstatement constitute the by-
18 laws of the incorporated association.

19 (C) The members of the board of directors and the officers continue to serve as directors and
20 officers.

21 (f) If an incorporated association is at any time dissolved, whether inadvertently or deliberately:

22 (A) The association continues as an unincorporated association under the same name.

23 (B) The unincorporated association has all of the property, powers and obligations of the in-
24 corporated association existing immediately prior to dissolution.

25 (C) The unincorporated association shall be governed by the bylaws, and to the extent applica-
26 ble, the articles of incorporation of the incorporated association.

27 (D) The board of directors and the officers serving immediately prior to the dissolution continue
28 to serve as the directors and officers of the unincorporated association.

29 (2) Membership in the association of unit owners shall be limited to unit owners.

30 (3) The affairs of the association shall be governed by a board of directors as provided for in
31 the bylaws adopted under ORS 100.410.

32 (4) Subject to the provisions of the condominium's declaration and bylaws, and whether or not
33 the association is unincorporated, the association may:

34 (a) Adopt and amend bylaws and rules and regulations;

35 (b) Adopt and amend budgets for revenues, expenditures and reserves and levy and collect as-
36 sessments for common expenses from unit owners;

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

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

40 (e) Subject to [subsection (11)] **subsections (5) and (12)** of this section, initiate or intervene in
41 litigation or administrative proceedings in its own name, and without joining the individual unit
42 owners, in the following:

43 (A) Matters relating to the collection of assessments and the enforcement of declarations and
44 bylaws;

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

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

3 (D) Matters relating to or affecting common elements, including but not limited to actions for
 4 damage, destruction, impairment or loss of use of any common element;

5 (E) Matters relating to or affecting the units or interests of unit owners including but not lim-
 6 ited to damage, destruction, impairment or loss of use of a unit or portion thereof, if:

7 (i) Resulting from a nuisance or a defect in or damage to a common element; or

8 (ii) Required to facilitate repair to any common element; and

9 (F) Any other matter to which the association has standing under law or pursuant to the dec-
 10 laration, bylaws or any articles of incorporation;

11 (f) Make contracts and incur liabilities;

12 (g) Regulate the use, maintenance, repair, replacement and modification of common elements;

13 (h) Cause additional improvement to be made as a part of the common elements;

14 (i) Acquire by purchase, lease, devise, gift or voluntary grant real or personal property or any
 15 interest therein and take, hold, possess and convey real or personal property or any interest therein;

16 (j) Impose and receive any payments, fees or charges for the use, rental or operation of the
 17 common elements;

18 (k) Impose charges for late payments of assessments, attorney fees for collection of assessments
 19 and, after giving written notice and an opportunity to be heard, levy reasonable fines for violations
 20 of the declaration, bylaws and rules and regulations of the association, provided that the charge
 21 imposed or fine levied by the association is based:

22 (A) On a schedule contained in the declaration or bylaws, or an amendment to either that is
 23 delivered to each unit, mailed to the mailing address of each unit or mailed to the mailing addresses
 24 designated in writing by the owners; or

25 (B) On a resolution adopted by the board of directors or the association that is delivered to each
 26 unit, mailed to the mailing address of each unit or mailed to the mailing addresses designated by the
 27 owners in writing;

28 (L) Adopt rules regarding the termination of utility services paid for out of assessments of the
 29 association and access to and use of recreational and service facilities available to unit owners that
 30 must provide for written notice and an opportunity to be heard before the association may terminate
 31 the rights of any owners to receive such benefits or services until the correction of any violation
 32 covered by the rule has occurred;

33 (m) Impose reasonable charges for the preparation and recordation of amendments to the dec-
 34 laration or statements of assessments;

35 (n) Assign its right to future income, including the right to receive common expense assess-
 36 ments;

37 (o) Provide for the indemnification of its officers and executive board, as may be limited by ORS
 38 61.218 (3)(d) (1987 Replacement Part), and maintain directors' and officers' liability insurance;

39 (p) Exercise any other powers conferred by the declaration or bylaws;

40 (q) Exercise all other powers that may be exercised in this state by any such association; and

41 (r) Exercise any other powers determined by the association to be necessary and proper for the
 42 governance and operation of the association.

43 **(5) Notwithstanding any contrary provision in a declaration or bylaws, an association**
 44 **may not initiate or intervene in litigation or administrative proceedings under subsection**
 45 **(4)(e) of this section regarding a matter that results from a defect in, or damage arising from**

1 **a defect in, common elements or units unless the association calls an owners' meeting for**
 2 **the purpose of determining whether the association may initiate or intervene in the litigation**
 3 **or administrative proceeding and receives approval from a majority of the units voting at the**
 4 **meeting. This subsection does not apply to a breach of warranty claim against a declarant**
 5 **under ORS 100.185.**

6 [(5)] (6) Subject to subsection [(6)] (7) of this section, unless expressly limited or prohibited by
 7 the declaration, the association has the authority to grant, execute, acknowledge and deliver on
 8 behalf of the unit owners leases, easements, rights of way, licenses and other similar interests af-
 9 fecting the general common elements and consent to vacation of roadways within and adjacent to
 10 the condominium.

11 [(6)(a)(A)] (7)(a)(A) Except as provided in subparagraph (B) of this paragraph, the granting of
 12 a lease, easement, right of way, license or other similar interest pursuant to subsection [(5)] (6) of
 13 this section shall be first approved by at least 75 percent of owners present at a meeting of the as-
 14 sociation or with the consent of at least 75 percent of all owners solicited by any means the board
 15 of directors determines is reasonable. If a meeting is held to conduct the vote, the meeting notice
 16 must include a statement that the approval of the grant will be an item of business on the agenda
 17 of the meeting.

18 (B) Unless the declaration otherwise provides:

19 (i) The granting of a lease, easement, right of way, license or other similar interest affecting the
 20 general common elements for a term of two years or less shall require the approval of a majority
 21 of the board of directors.

22 (ii) The granting of a lease, easement, right of way, license or other similar interest affecting
 23 the general common elements for a term of more than two years to a public body, as defined in ORS
 24 174.109, or to a utility or a communications company for installation and maintenance of power, gas,
 25 electric, water or other utility and communication lines and services requires the approval of a
 26 majority of the board of directors.

27 (iii) The granting of a lease, easement, license or other similar interest to an owner for the ex-
 28 clusive use of a part of the general common elements to which the owner's unit provides primary
 29 access requires the approval of a majority of the board of directors. If the approval by the board
 30 of directors includes the right of the owner to make improvements to the general common elements
 31 to which the owner is being granted exclusive use, ORS 100.535 applies to the general common el-
 32 ements to the same extent that ORS 100.535 applies to a unit, including the right of the board under
 33 ORS 100.535 to require an owner, at owner's expense, to submit an opinion of a registered architect
 34 or registered professional engineer that the proposed improvement will not impair the structural
 35 integrity or mechanical systems of the condominium.

36 (b) Unless the declaration otherwise provides, the consent to vacation of roadways within and
 37 adjacent to the condominium must be approved first by at least a majority of unit owners present
 38 and voting at a meeting of the association or with consent of at least a majority of all owners so-
 39 licited by any means the board of directors determines is reasonable. If a meeting is held to conduct
 40 the vote, the meeting notice must include a statement that the roadway vacation will be an item
 41 of business on the agenda of the meeting.

42 [(7)] (8) The instrument granting an interest or consent pursuant to subsection [(5)] (6) of this
 43 section shall be executed by the chairperson and secretary of the association and acknowledged in
 44 the manner provided for acknowledgment of such instruments by such officers and shall state that
 45 such grant or consent was approved, if appropriate, by at least the percent of owners required under

1 subsection [(6)] (7) of this section.

2 [(8)(a)] (9)(a) Unless expressly prohibited by the declaration, any action permitted under sub-
 3 sections [(5) and] (6) **and** (7) of this section regarding a general common element may be taken with
 4 respect to any limited common element as provided in this subsection.

5 (b) Except as provided in paragraph (c) of this subsection, the easement, lease or other action
 6 under this section requires the approval or consent of the owner of the unit to which the use of the
 7 limited common element is reserved and the holder of a first mortgage or first trust deed affecting
 8 the unit. However, if the use of the limited common element is reserved for five or more units:

9 (A) When the action is for more than two years, the owners of 75 percent of the units to which
 10 the use of the limited common element is reserved must approve or consent.

11 (B) When the action is for two years or less, the owners of a majority of the units to which the
 12 use of the limited common element is reserved must approve or consent.

13 (c) The instrument granting an interest or consent under this section must:

14 (A) Be executed by the chairperson and secretary of the association and acknowledged in the
 15 manner provided for acknowledgment of the instruments by the officers.

16 (B) State that the grant or consent is given pursuant to this subsection.

17 (C) Include a certification by the chairperson and secretary that the action was approved by the
 18 owners in accordance with this subsection.

19 [(9)] (10) Except as otherwise provided in the association's declaration or bylaws, the board of
 20 directors of the association may modify, close, remove, eliminate or discontinue the use of a general
 21 common element facility or improvement or portion of the common element landscaping, regardless
 22 of whether such facility, improvement or landscaping is mentioned in the declaration or shown on
 23 the plat provided that:

24 (a) Nothing in this subsection shall be construed as limiting the authority of the board of di-
 25 rectors, in its discretion, to seek approval of such modification, closure, removal, elimination or
 26 discontinuance by the unit owners; and

27 (b) Modification, closure, removal, elimination or discontinuance other than on a temporary ba-
 28 sis of any swimming pool, spa or recreation or community building must be approved by at least a
 29 majority of the unit owners voting on such matter at a meeting or by written ballot held in ac-
 30 cordance with the declaration, bylaws or ORS 100.425.

31 [(10)(a)] (11)(a) A permit or authorization issued by the board of directors pursuant to authority
 32 granted to the board under law, the declaration or the bylaws, may be recorded in the deed records
 33 of the county where the condominium is located. An instrument recorded under this subsection shall:

34 (A) Include the name of the condominium and a reference to where the declaration and any
 35 applicable supplemental declarations are recorded;

36 (B) Identify, by the designations stated in the declaration or applicable supplemental declaration,
 37 all affected units and common elements;

38 (C) Include such other information and signatures as may be required by law, under the decla-
 39 ration or bylaws or as the board of directors may desire; and

40 (D) Be executed by the chairperson and secretary of the association and acknowledged in the
 41 manner provided for acknowledgment of such instruments by the officers.

42 (b) The board of directors may record an amendment, modification, termination or other instru-
 43 ment relating to the permit or authorization described in this subsection. Any such instrument shall
 44 include a reference to the location of the recorded instrument and be executed by the chairperson
 45 and secretary of the association and acknowledged in the manner provided for acknowledgment of

1 such instruments.

2 [(11)(a)] (12)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an ad-
 3 ministrative proceeding in which the association and an owner have an adversarial relationship, the
 4 party that intends to initiate litigation or an administrative proceeding shall offer to use any dispute
 5 resolution program available within the county in which the condominium is located that is in sub-
 6 stantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer
 7 must be hand-delivered or mailed by certified mail, return receipt requested, to the address, con-
 8 tained in the records of the association, for the other party.

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

15 (c) If a qualified dispute resolution program exists within the county in which the condominium
 16 is located and an offer to use the program is not made as required under paragraph (a) of this sub-
 17 section, litigation or an administrative proceeding may be stayed for 30 days upon a motion of the
 18 noninitiating party. If the litigation or administrative action is stayed under this paragraph, both
 19 parties shall participate in the dispute resolution process.

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

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

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

30 **SECTION 5.** ORS 100.490 is amended to read:

31 100.490. (1) At least 10 days prior to instituting any litigation or administrative proceeding to
 32 recover damages under ORS 100.405 (4)(e)(E), the association of unit owners shall provide written
 33 notice to each affected owner of the association's intent to seek damages on behalf of the owner.
 34 The notice shall, at a minimum:

35 (a) Be mailed to the mailing address of each unit or to the mailing addresses designated by the
 36 owners in writing to the association;

37 (b) Inform each owner of the general nature of the litigation or proceeding;

38 (c) Describe the specific nature of the damages to be sought on the owner's behalf;

39 (d) Set forth the terms under which the association is willing to seek damages on the owner's
 40 behalf, including any mechanism proposed for the determination and distribution of any damages
 41 recovered;

42 (e) Inform each owner of the owner's right not to have the damages sought on the owner's behalf
 43 and specify the procedure for exercising the right; [and]

44 (f) Inform the owner that exercising the owner's right not to have damages sought on the
 45 owner's behalf:

1 (A) Relieves the association of its duty to reimburse or indemnify the owner for the damages;

2 (B) Does not relieve the owner from the owner's obligation to pay dues or assessments relating
3 to the litigation or proceeding;

4 (C) Does not impair any easement owned or possessed by the association; and

5 (D) Does not interfere with the association's right to make repairs to common elements; and

6 **(g) If the action is for a claim described in ORS 105.405 (5), inform the owner of an**
7 **owners' meeting for the purpose of voting whether to allow the association to initiate or in-**
8 **tervene in the litigation or proceeding.**

9 (2) Within 10 days of mailing the notice described in this section, any owner may request in
10 writing that the association not seek damages on the owner's behalf. If an owner makes such a re-
11 quest, the association shall not make or continue any claim or action for damages with regard to
12 the objecting owner's unit or interest and shall be relieved of any duty to reimburse or indemnify
13 the owner for damages under the litigation or proceeding.

14 **(3) Unless the bylaws provide for different timing, if the action is for a claim described**
15 **in ORS 100.405 (5), no earlier than seven days after sending notice under this section, the**
16 **association shall hold a meeting for the purpose of determining whether a majority of the**
17 **units voting at the meeting approve allowing the association to initiate or intervene in the**
18 **litigation or proceeding.**

19 **SECTION 6.** ORS 701.570 is amended to read:

20 701.570. (1) A contractor, subcontractor or supplier that receives a notice of defect sent under
21 ORS 701.565 shall, not later than 14 days after receiving the notice of defect, send a secondary no-
22 tice to any other known contractor, subcontractor or supplier that may be responsible for some or
23 all of the defects described in the notice of defect. The contractor, subcontractor or supplier must
24 send the secondary notice by registered or certified mail, return receipt requested, to an address
25 described in ORS 701.565 (2). The secondary notice must be accompanied by a statement describing
26 the basis for contending that the other contractor, subcontractor or supplier may be responsible for
27 some or all of the defects.

28 (2) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice
29 may send the owner a written request to conduct a visual examination of the residence. **Except as**
30 **provided in section 11 of this 2019 Act,** the written request must be sent not later than 14 days
31 after the requesting contractor, subcontractor or supplier receives a notice of defect or secondary
32 notice. The written request to conduct a visual examination of the residence must state the esti-
33 mated time required for the visual examination.

34 (3) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice
35 may send the owner a written request to inspect the residence. **Except as provided in section 11**
36 **of this 2019 Act,** the written request must be sent not later than 14 days after the requesting con-
37 tractor, subcontractor or supplier conducted a visual examination of the residence. The written re-
38 quest to inspect the residence must state the nature and scope of the inspection, whether any testing
39 is to be performed and the estimated time required for the inspection. The recipient of a secondary
40 notice that requests to inspect the residence shall send a copy of the request to the sender of the
41 secondary notice.

42 (4) A contractor, subcontractor or supplier that sends a secondary notice and intends to hold
43 the recipient of the secondary notice liable for a defect described in a notice of defect shall coor-
44 dinate the scheduling of any inspection with the owner and all recipients of a secondary notice from
45 the contractor, subcontractor or supplier. The contractor, subcontractor or supplier shall deliver a

1 copy of any written request to inspect the residence to each recipient of the secondary notice in
 2 time to provide the recipient with an opportunity to attend the requested inspection and to partic-
 3 ipate in any remediation. The sender of a secondary notice shall give reasonable advance notice to
 4 the owner or the owner’s legal representative, if any, of the identity of any contractor, subcontrac-
 5 tor or supplier who will attend the inspection. **If the owner sending the notice of defect is a**
 6 **homeowners association or an association of unit owners, the notice must also conform to**
 7 **section 11 of this 2019 Act.**

8 (5) **Except as provided in section 11 of this 2019 Act**, unless otherwise agreed to by the
 9 owner, a contractor, subcontractor or supplier that receives a notice of defect or secondary notice
 10 shall send a written response to the owner not later than 90 days after the contractor, subcontractor
 11 or supplier receives a notice of defect or secondary notice. A contractor, subcontractor or supplier
 12 that receives a secondary notice also shall send a copy of the written response to the sender of the
 13 secondary notice. The written response must be sent by registered or certified mail, return receipt
 14 requested. The written response must include:

15 (a) One or more of the following for each defect described in the notice of defect or secondary
 16 notice or discovered during the course of any visual examination or inspection:

17 (A) An acknowledgment of the existence, nature and extent of the defect without regard to re-
 18 sponsibility for the defect.

19 (B) A statement describing the existence of a defect different in nature or extent from the defect
 20 described in the notice of defect or secondary notice, without regard to responsibility for the defect.

21 (C) A denial of the existence of the defect.

22 (b) A copy of the documents described in ORS 701.575 (4).

23 (c) One or more of the following:

24 (A) An offer to perform some or all of the remediation. The offer must specify the date by which
 25 the offered remediation will be completed.

26 (B) An offer to pay a stated amount of monetary compensation to the owner for some or all of
 27 the acknowledged defects and any incidental damage. The offer must specify the date by which
 28 payment will be made.

29 (C) A denial of responsibility for some or all of the acknowledged defects or incidental damage.

30 **SECTION 7.** ORS 701.575 is amended to read:

31 701.575. (1) An owner sending a notice of defect under ORS 701.565 shall make the residence
 32 available for visual examination pursuant to any written request sent under ORS 701.570 **or section**
 33 **11 of this 2019 Act.** The owner shall make the residence available for visual examination, during
 34 normal business hours or as otherwise agreed, not later than 20 days after receiving the written
 35 request for visual examination.

36 (2) An owner sending a notice of defect under ORS 701.565 shall make the residence available
 37 for an inspection pursuant to any written request sent under ORS 701.570 **or section 11 of this 2019**
 38 **Act.** The owner shall make the residence available for inspection during normal business hours or
 39 at a time that is mutually agreeable to the owner and the requester.

40 (3) An inspection by a contractor, subcontractor or supplier may include any reasonable meas-
 41 ures, including testing, for determining the nature, cause and extent of the defects described in the
 42 notice of defect or incidental damage and the nature and extent of the necessary remediation. Unless
 43 the contractor, subcontractor or supplier conducting the inspection and the owner agree otherwise,
 44 the contractor, subcontractor or supplier conducting the inspection shall repair any damage caused
 45 by the inspection. Any damage caused by the inspection that is not repaired may be sought as in-

1 incidental damage in any subsequent arbitration or court action by an owner against the contractor,
 2 subcontractor or supplier conducting the inspection.

3 (4) A contractor, subcontractor or supplier that requests to inspect a residence must include as
 4 part of the written response of the contractor, subcontractor or supplier under ORS 701.570 or
 5 **section 11 of this 2019 Act**[,] a written report or other document evidencing the result of the in-
 6 spection and the existence or nonexistence of the defects described in the notice of defect or dis-
 7 covered during the inspection.

8 **SECTION 8.** ORS 701.585 is amended to read:

9 701.585. (1) If an owner sends a contractor, subcontractor or supplier a notice of defect within
 10 the time allowed for the owner to commence a court action against that contractor, subcontractor
 11 or supplier for a claim described in ORS 701.565, the time for the owner to commence the action
 12 shall be extended, notwithstanding any statute of limitation or statute of ultimate repose, until the
 13 later of:

14 (a) One hundred and twenty days after the owner receives a written response from the con-
 15 tractor, subcontractor or supplier that received the notice of defect if the written response does not
 16 contain a written offer to perform remediation or pay monetary compensation for one or more of the
 17 defects or incidental damage described in the notice of defect;

18 (b) One hundred and twenty days after the owner rejects a written offer by any contractor,
 19 subcontractor or supplier to perform remediation or pay monetary compensation for one or more of
 20 the defects or incidental damage described in the notice of defect; or

21 (c) Thirty days after the date specified in an accepted written offer by which the offering con-
 22 tractor, subcontractor or supplier is to complete the remediation or complete payment of monetary
 23 compensation for one or more of the defects and any incidental damage described in the notice of
 24 defect.

25 (2) Subsection (1) of this section does not shorten or terminate the time for bringing a claim in
 26 accordance with applicable statutes of ultimate repose and statutes of limitation.

27 (3) Delivery of a secondary notice sent by a contractor, subcontractor or supplier under ORS
 28 701.570 or **section 11 of this 2019 Act** does not act to toll the expiration of any right of the owner
 29 to commence a court action against the recipient of the secondary notice.

30 (4) Any remediation performed pursuant to an accepted offer made under ORS 701.570 or **sec-**
 31 **tion 11 of this 2019 Act** does not constitute a new performance and, for purposes of ORS 12.135,
 32 relates back to the earliest date of substantial completion or abandonment of the construction, al-
 33 teration or repair of the improvement to real property.

34 **SECTION 9.** ORS 100.105 is amended to read:

35 100.105. (1) A declaration shall contain:

36 (a) A description of the property, including property on which a unit or a limited common ele-
 37 ment is located, whether held in fee simple, leasehold, easement or other interest or combination
 38 thereof, that is being submitted to the condominium form of ownership and that conforms to the
 39 description in the surveyor's certificate provided under ORS 100.115 (1).

40 (b) Subject to subsection (11) of this section, a statement of the interest in the property being
 41 submitted to the condominium form of ownership, whether fee simple, leasehold, easement or other
 42 interest or combination thereof.

43 (c) Subject to subsection (5) of this section, the name by which the property shall be known and
 44 a general description of each unit and the building or buildings, including the number of stories and
 45 basements of each building, the total number of units and the principal materials of which they are

1 constructed.

2 (d) The unit designation, a statement that the location of each unit is shown on the plat, a de-
3 scription of the boundaries and area in square feet of each unit and any other data necessary for
4 proper identification. The area of a unit shall be the same as shown for that unit on the plat de-
5 scribed in ORS 100.115 (1).

6 (e) A notice in substantially the following form in at least 12-point type that is either all capitals
7 or boldface:

8
9
10 NOTICE

11
12 THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION AND THE PLAT ARE
13 BASED ON THE BOUNDARIES OF THE UNITS AS DESCRIBED IN THIS DECLARATION AND
14 MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PURPOSES.
15

16
17 (f) A description of the general common elements.

18 (g) An allocation to each unit of an undivided interest in the common elements in accordance
19 with ORS 100.515 and the method used to establish the allocation.

20 (h) The designation of any limited common elements including:

21 (A) A general statement of the nature of the limited common element;

22 (B) A statement of the unit to which the use of each limited common element is reserved, pro-
23 vided the statement is not a reference to an assignment of use specified on the plat; and

24 (C) The allocation of use of any limited common element appertaining to more than one unit.

25 (i) The method of determining liability for common expenses and right to common profits in ac-
26 cordance with ORS 100.530.

27 (j) The voting rights allocated to each unit in accordance with ORS 100.525 or in the case of
28 condominium units committed as property in a timeshare plan defined in ORS 94.803, the voting
29 rights allocated in the timeshare instrument.

30 (k) A statement of the use, residential or otherwise, for which the building or buildings and each
31 of the units is intended.

32 (L) A statement that the designated agent to receive service of process in cases provided in ORS
33 100.550 (1) is named in the Condominium Information Report which will be filed with the Real Estate
34 Agency in accordance with ORS 100.250 (1)(a).

35 (m) The method of amending the declaration and the percentage of voting rights required to
36 approve an amendment of the declaration in accordance with ORS 100.135.

37 (n) A statement as to whether or not the association of unit owners pursuant to ORS 100.405
38 [(5) and (8)] **(6) and (9)** has authority to grant leases, easements, rights of way, licenses and other
39 similar interests affecting the general and limited common elements of the condominium and consent
40 to vacation of roadways within and adjacent to the condominium.

41 (o) If the condominium contains a floating structure described in ORS 100.020 (3), a statement
42 regarding the authority of the board of directors of the association, subject to ORS 100.410, to
43 temporarily relocate the floating structure without a majority vote of affected unit owners.

44 (p) Any restrictions on alienation of units. Any such restrictions created by documents other
45 than the declaration may be incorporated by reference in the declaration to the official records of

1 the county in which the property is located.

2 (q) Any other details regarding the property that the person executing the declaration considers
 3 desirable. However, if a provision required to be in the bylaws under ORS 100.415 is included in the
 4 declaration, the voting requirements for amending the bylaws shall also govern the amendment of
 5 the provision in the declaration.

6 (2) In the event the declarant proposes to annex additional property to the condominium under
 7 ORS 100.125, the declaration shall also contain a general description of the plan of development,
 8 including:

9 (a) The maximum number of units to be included in the condominium.

10 (b) The date after which any right to annex additional property will terminate.

11 (c) A general description of the nature and proposed use of any additional common elements
 12 which declarant proposes to annex to the condominium, if such common elements might substantially
 13 increase the proportionate amount of the common expenses payable by existing unit owners.

14 (d) A statement that the method used to establish the allocation of undivided interest in the
 15 common elements, the method used to determine liability for common expenses and right to common
 16 profits and the method used to allocate voting rights for each unit annexed shall be as stated in the
 17 declaration in accordance with subsection (1)(g), (i) and (j) of this section.

18 (e) Such other information as the Real Estate Commissioner shall require in order to carry out
 19 the purposes of ORS 100.015, 100.116, 100.635 to 100.730 and 100.740 to 100.910.

20 (3) Except where expressly prohibited by the declaration and subject to the requirements of ORS
 21 100.135 (2) and subsections (9) and (10) of this section:

22 (a) Not later than two years following the termination dates specified in subsections (2)(b) and
 23 (7)(d) of this section, such termination dates may be extended for a period not exceeding two years;
 24 and

25 (b) The general description under subsection (2)(c) of this section and the information included
 26 in the declaration in accordance with subsection (7)(c), (g) and (h) of this section may be changed
 27 by an amendment to the declaration.

28 (4) The information included in the declaration in accordance with subsection (2)(a) and (d) of
 29 this section and subsection (7)(a), (b), (e), (f) and (k) of this section may not be changed unless all
 30 owners agree to the change and record an amendment to the declaration in accordance with this
 31 chapter.

32 (5) The name of the property shall include the word “condominium” or “condominiums” or the
 33 words “a condominium.”

34 (6) A condominium may not bear a name which is the same as or deceptively similar to the name
 35 of any other condominium located in the same county.

36 (7) If the condominium is a flexible condominium containing variable property, the declaration
 37 shall also contain a general description of the plan of development, including:

38 (a) A statement that the rights provided for under ORS 100.150 (1) are being reserved.

39 (b) A statement:

40 (A) Of any limitations on rights reserved under ORS 100.150 (1), including whether the consent
 41 of any unit owner shall be required, and if so, a statement of the method by which the consent shall
 42 be ascertained; or

43 (B) That there are no limitations on rights reserved under ORS 100.150 (1).

44 (c) A statement of the total number of tracts of variable property within the condominium, in-
 45 cluding:

- 1 (A) A designation of each tract as withdrawable or nonwithdrawable variable property;
- 2 (B) Identification of each variable tract by a label in accordance with ORS 100.115 (1)(i);
- 3 (C) A statement of the method of labeling each tract depicted on the plat in accordance with
4 ORS 100.115 (1)(i); and
- 5 (D) A statement of the total number of tracts of each type of variable property.
- 6 (d) The termination date, which is the date or time period after which any right reserved under
7 ORS 100.150 (1) will terminate, and a statement of the circumstances, if any, that will terminate any
8 right on or before the date or time period specified. The date or time period may not exceed seven
9 years from the recording of the conveyance of the first unit in the condominium to a person other
10 than the declarant. Recording shall be in the county in which the property is located.
- 11 (e) The maximum number of units that may be created.
- 12 (f) A statement that the method used to establish the allocations of undivided interest in the
13 common elements, the method used to determine liability for common expenses and right to common
14 profits and the method used to allocate voting rights as additional units are created shall be the
15 same as stated in the declaration in accordance with subsection (1)(g), (i) and (j) of this section.
- 16 (g) A general description of all existing improvements and the nature and proposed use of any
17 improvements that may be made on variable property if the improvements might substantially in-
18 crease the proportionate amount of the common expenses payable by existing unit owners.
- 19 (h) A statement of whether or not the declarant reserves the right to create limited common
20 elements within any variable property, and if so, a general description of the types that may be
21 created.
- 22 (i) A statement that the plat shows the location and dimensions of all withdrawable variable
23 property that is labeled "WITHDRAWABLE VARIABLE PROPERTY."
- 24 (j) A statement that if by the termination date all or a portion of the withdrawable variable
25 property has not been withdrawn or reclassified, the withdrawable property shall automatically be
26 withdrawn from the condominium as of the termination date.
- 27 (k) A statement of the rights of the association under ORS 100.155 (2).
- 28 (L) A statement of whether or not all or any portion of the variable property may not be with-
29 drawn from the condominium and, if so, with respect to the nonwithdrawable variable property:
- 30 (A) A statement that the plat shows the location and dimensions of all nonwithdrawable prop-
31 erty that is labeled "NONWITHDRAWABLE VARIABLE PROPERTY."
- 32 (B) A description of all improvements that may be made and a statement of the intended use of
33 each improvement.
- 34 (C) A statement that, if by the termination date all or a portion of the variable property desig-
35 nated as "nonwithdrawable variable property" has not been reclassified, the property shall auto-
36 matically be reclassified as of the termination date as a general common element of the
37 condominium and any interest in such property held for security purposes shall be automatically
38 extinguished by such classification.
- 39 (D) A statement of the rights of the association under ORS 100.155 (3).
- 40 (m) A statement by the local governing body or appropriate department thereof that the with-
41 drawal of any variable property designated as "withdrawable variable property" in the declaration
42 in accordance with paragraph (L) of this subsection, will not violate any applicable planning or
43 zoning regulation or ordinance. The statement may be attached as an exhibit to the declaration.
- 44 (8) The plan of development for any variable property included in the declaration or any sup-
45 plemental declaration of any stage in accordance with subsection (7) of this section shall be subject

1 to any plan of development included in the declaration in accordance with subsection (2) of this
 2 section, except that the time limitation specified in subsection (7)(d) of this section shall govern any
 3 right reserved under ORS 100.150 (1) with respect to any variable property.

4 (9) The information included in the declaration in accordance with subsection (7)(j), (k) and (m)
 5 of this section may not be deleted by amendment.

6 (10) Approval by the unit owners shall not be required to redesignate variable property as
 7 “nonwithdrawable variable property” by supplemental declaration or amendment if such redesi-
 8 gnation is required by the local governing body or appropriate department thereof to comply with
 9 any planning or zoning regulation or ordinance. If as a result of such redesignation the information
 10 required to be included in the supplemental declaration or an amendment under subsection (7)(L)(B)
 11 of this section is inconsistent with the information included in the declaration or supplemental
 12 declaration in accordance with subsection (7)(g) of this section, an amendment to the declaration
 13 approved by at least 75 percent of owners shall be required.

14 (11) The statement of an interest in property other than fee simple submitted to the condomin-
 15 ium form of ownership and any easements, rights or appurtenances belonging to property submitted
 16 to the condominium form of ownership, whether leasehold or fee simple, shall include:

17 (a) A reference to the recording index numbers and date of recording of the instrument creating
 18 the interest; or

19 (b) A reference to the law, administrative rule, ordinance or regulation that creates the interest
 20 if the interest is created under law, administrative rule, ordinance or regulation and not recorded
 21 in the office of the recording officer of the county in which the property is located.

22 **SECTION 10. Section 11 of this 2019 Act is added to and made a part of ORS 701.560 to**
 23 **701.595.**

24 **SECTION 11. (1) If the owner sending the notice of defect under ORS 701.565 is a home-**
 25 **owners association or an association of unit owners:**

26 (a) **A written request under ORS 701.570 (2) for visual examination of a residence must**
 27 **be sent not later than 30 days after the requesting contractor, subcontractor or supplier**
 28 **receives a notice of defect or secondary notice.**

29 (b) **A written request under ORS 701.570 (3) to inspect a residence must be sent not later**
 30 **than 30 days after the requesting contractor, subcontractor or supplier receives a notice of**
 31 **defect or secondary notice.**

32 (c) **The contractor, subcontractor or supplier may have a technical or construction ex-**
 33 **pert attend the inspection. However, the selection of the expert must be mutually agreed to**
 34 **by the contractor, subcontractor or supplier and the owner or owner’s representative. In**
 35 **addition to the information described in ORS 701.570 (3), a request under ORS 701.570 (3)**
 36 **must identify an expert acceptable to the contractor, subcontractor or supplier. If the owner**
 37 **or owner’s representative disapproves of the expert, the owner or owner’s representative**
 38 **shall give the contractor, subcontractor or supplier written notice of the disapproval and of**
 39 **the identity of an expert acceptable to the owner or owner’s representative. If the contrac-**
 40 **tor, subcontractor or supplier disapproves of the expert identified by the owner or owner’s**
 41 **representative, the two identified and disapproved experts shall jointly select a third expert**
 42 **to be the expert that attends the inspection. The contractor, subcontractor or supplier shall**
 43 **include the identity of a selected expert in any advance notice that the contractor, subcon-**
 44 **tractor or supplier sends under ORS 701.570 (4).**

45 (d) **The contractor, subcontractor or supplier shall send the owner a response to the**

1 notice of defect not later than:

2 (A) Fourteen days after conducting an inspection of the residence under ORS 701.575 (3);

3 or

4 (B) If no inspection of the residence is conducted under ORS 701.575 (3), not later than
5 90 days after the contractor, subcontractor or supplier receives a notice of defect or sec-
6 ondary notice.

7 (2) A response under subsection (1)(d) of this section must contain:

8 (a) An offer to cure the defect;

9 (b) An offer to pay an amount equal to the cost of curing the defect;

10 (c) An offer allowing the owner a choice between cure of the defect or an amount equal
11 to the cost of curing the defect; or

12 (d) A statement that the contractor, subcontractor or supplier declines to pursue a cure
13 in lieu of litigation.

14 (3) If the contractor, subcontractor or supplier does not send a timely response under
15 subsection (1)(d) of this section, or if the response does not conform to subsection (2) of this
16 section, the owner is excused from further compliance with this section.

17 (4) An owner may accept an offer contained in a written response under this section by
18 delivering a written acceptance to the offering contractor, subcontractor or supplier within
19 30 days after receiving the offer. If an owner fails to accept an offer within 30 days after
20 receipt, the offer is deemed rejected.

21 (5) If a response under subsection (2) of this section offers to pay an amount equal to the
22 cost of curing the defect, the contractor, subcontractor or supplier shall have 30 days after
23 sending the response to determine the payment amount. For purposes of subsection (4) of
24 this section, the offer contained in the response is not complete until the owner receives the
25 written determination by the contractor, subcontractor or supplier. If the owner wishes to
26 accept an offer of payment, but disputes the amount, the parties may select a mediator to
27 attempt resolution. If the parties cannot agree on a mediator after 45 days, they may re-
28 quest that the board administrator select a mediator.

29 (6) If an owner accepts payment of an amount equal to the cost of curing the defect, the
30 owner must make a good faith effort to have a construction contractor correct the defect.

31 (7) If the owner accepts a contractor, subcontractor or supplier's offer to perform re-
32 mediation or to pay monetary compensation, completion of the remediation or payment sat-
33 isfies the claims by the owner for those defects included in the offer for which remediation
34 was performed or compensation paid, but not for any other defect. Except as provided in
35 subsection (8) of this section, if the owner accepts an offer by a contractor, subcontractor
36 or supplier that received a secondary notice, completion of the remediation or payment sat-
37 isfies claims for those defects included in the offer for which remediation was performed or
38 compensation paid, including claims by the owner and claims for contribution or indemnity
39 against the contractor, subcontractor or supplier by the sender of the secondary notice, but
40 not for any other defect.

41 (8) If the owner accepts an offer by a contractor, subcontractor or supplier that received
42 a secondary notice to perform remediation or to pay monetary compensation and the con-
43 tractor, subcontractor or supplier fails to perform in accordance with the accepted offer,
44 then the sender of the secondary notice may perform the remediation or pay the monetary
45 compensation offered by the nonperforming contractor, subcontractor or supplier.

1 **(9) A response under subsection (2) of this section that is rejected by an owner is not**
2 **admissible to establish contractor, subcontractor or supplier liability for a defect, or for**
3 **damages arising out of a defect, in a subsequent arbitration or court action. If the contrac-**
4 **tor, subcontractor or supplier offers, as part of a response under subsection (2) of this sec-**
5 **tion, an amount determined by the contractor, subcontractor or supplier to be equal to the**
6 **cost of curing a defect, and the owner compels arbitration or commences a court action to**
7 **recover the cost of curing the defect, notwithstanding ORCP 54 E:**

8 **(a) If the owner recovers an amount for the cost of curing the defect that is greater than**
9 **the amount determined by the contractor, subcontractor or supplier and offered to the**
10 **owner under ORS 701.580 (1), the court shall award the owner reasonable attorney fees; or**

11 **(b) If the owner recovers an amount for the cost of curing the defect that is equal to or**
12 **less than the amount determined by the contractor, subcontractor or supplier and offered**
13 **to the owner under ORS 701.580 (1), the court shall award the contractor, subcontractor or**
14 **supplier reasonable attorney fees.**

15 **SECTION 12.** **The amendments to ORS 12.135 by section 1 of this 2019 Act apply to claims**
16 **arising from construction, alteration or repair work performed on or after the effective date**
17 **of this 2019 Act.**

18 **SECTION 13.** **Section 11 of this 2019 Act and the amendments to ORS 701.570 by section**
19 **6 of this 2019 Act apply to notices of construction defect sent by an owner on or after the**
20 **effective date of this 2019 Act and to any resulting secondary notices.**

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