

House Bill 2798

Sponsored by Representative GOMBERG (at the request of Pacific Homes Beach Club Homeowners Association)

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**.

Allows housing associations to invest funds in high-rated municipal bonds.

A BILL FOR AN ACT

Relating to association investments; amending ORS 94.670 and 100.480.

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

SECTION 1. ORS 94.670 is amended to read:

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

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

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

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

(b) Subject to any limitations imposed by the declaration or bylaws, **association** funds *[of the association]* maintained in accounts established under this subsection may be used to purchase *[obligations of]* **any obligation issued by the United States government[.] or United States municipal bond that, on the settlement date, is rated no lower than:**

(A) A3 by Moody's Investors Service;

(B) A- or A-3 by Standard & Poor's Financial Services; or

(C) A rating equivalent to the ratings described in subparagraph (A) or (B) of this paragraph given by a reputable, nationally recognized statistical rating organization.

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

(3) The association shall keep financial records sufficiently detailed for proper accounting purposes.

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

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

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

3 (5) Subject to ORS 94.671, the association of a planned community that has annual assessments
4 exceeding \$75,000 shall cause the financial statement required under subsection (4) of this section
5 to be reviewed within 300 days after the end of the fiscal year by an independent certified public
6 accountant licensed in the State of Oregon in accordance with the Statements on Standards for
7 Accounting and Review Services issued by the American Institute of Certified Public Accountants.

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

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

17 (8)(a) The association shall provide, within 10 business days of receipt of a written request from
18 an owner, a written statement that provides:

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

- 21 (i) Regular and special assessments;
- 22 (ii) Fines and other charges;
- 23 (iii) Accrued interest; and
- 24 (iv) Late payment charges.

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

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

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

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

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

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

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

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

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

45 (E) Documents, correspondence or management or board reports compiled for or on behalf of the

1 association or the board of directors by its agents or committees for consideration by the board of
 2 directors in executive session held in accordance with ORS 94.640 (8).

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

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

7 (10) The association shall maintain a copy, suitable for the purpose of duplication, of the fol-
 8 lowing:

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

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

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

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

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

15 (11) The association, within 10 business days after receipt of a written request by an owner,
 16 shall furnish the requested information required to be maintained under subsection (10) of this sec-
 17 tion.

18 (12) The board of directors, by resolution, may adopt reasonable rules governing the frequency,
 19 time, location, notice and manner of examination and duplication of association records and the
 20 imposition of a reasonable fee for furnishing copies of any documents, information or records de-
 21 scribed in this section. The fee may include reasonable personnel costs [*for furnishing the docu-*
 22 *ments,*] **incurred to furnish the** information [*or records*].

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

24 100.480. (1) An association of unit owners shall retain within this state the documents, infor-
 25 mation and records delivered to the association under ORS 100.210 and all other records of the as-
 26 sociation for not less than the period specified for the record in ORS 65.771 or any other applicable
 27 law, except that:

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

30 (b) Proxies and ballots must be retained for one year from the date of determination of the vote,
 31 except **that** proxies and ballots relating to an amendment to the declaration, supplemental declara-
 32 tion plat, supplemental plat [*or*], bylaws **or other governing document** must be retained for one
 33 year from the date the amendment is recorded.

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

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

41 (b) Subject to any limitations imposed by the declaration or bylaws, association funds maintained
 42 in accounts established under this subsection may be used to purchase [*obligations*] **any obligation**
 43 issued by the United States government[.] **or United States municipal bond that, on the settle-**
 44 **ment date, is rated no lower than:**

45 **(A) A3 by Moody's Investors Service;**

1 **(B) A- or A-3 by Standard & Poor's Financial Services; or**
 2 **(C) A rating equivalent to the ratings described in subparagraph (A) or (B) of this para-**
 3 **graph given by a reputable, nationally recognized statistical rating organization.**

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

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

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

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

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

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

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

23 (8)(a) The association shall provide, within 10 business days of receipt of a written request from
 24 an owner, a written statement that provides:

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

27 (i) Regular and special assessments;

28 (ii) Fines and other charges;

29 (iii) Accrued interest; and

30 (iv) Late payment charges.

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

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

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

37 (9)(a) Except as provided in paragraph (b) of this subsection, the **association shall make the**
 38 **documents, information and records** described in subsections (1) to (4) of this section and all other
 39 records of the association of unit owners [*must be*] reasonably available for examination and, upon
 40 written request, available for duplication by a unit owner and any mortgagee of a unit that makes
 41 the request in good faith for a proper purpose.

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

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

45 (B) Contracts, leases and other business transactions that are currently under negotiation to

1 purchase or provide goods or services.

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

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

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

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

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

13 (10) The association of unit owners shall maintain a copy, suitable for the purpose of dupli-
 14 cation, of the following:

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

17 (b) The most recent [*annual*] financial statement prepared [*in accordance with*] **pursuant to**
 18 subsection (4) of this section;

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

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

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

22 (11) The association, within 10 business days after receipt of a written request by an owner,
 23 shall furnish the requested information required to be maintained under subsection (10) of this sec-
 24 tion.

25 (12) The board of directors, by resolution, may adopt reasonable rules governing the frequency,
 26 time, location, notice and manner of examination and duplication of association records and the
 27 imposition of a reasonable fee for furnishing copies of any documents, information or records de-
 28 scribed in this section. The fee may include reasonable personnel costs incurred to furnish the in-
 29 formation.

30 (13) Subsection (4) of this section first applies to property submitted to the provisions of this
 31 chapter before January 1, 1982, when the board of directors of the association of unit owners re-
 32 ceives a written request from at least one unit owner that a copy of the annual financial statement
 33 be distributed in accordance with subsection (4) of this section.

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