

## HOUSE AMENDMENTS TO HOUSE BILL 3746

By COMMITTEE ON HOUSING AND HOMELESSNESS

April 15

1 On page 1 of the printed bill, line 2, after “12.135,” delete the rest of the line and line 3 and  
2 insert “94.662, 100.115, 100.210, 100.417, 100.490 and 100.680.”.

3 On page 2, delete lines 19 through 23 and insert:

4 “(a) Seven years after substantial completion or abandonment of the construction, alteration or  
5 repair of the structure; or

6 “(b) If a construction defect described in this subsection is discovered more than six but less  
7 than seven years after substantial completion or abandonment, one year after discovery of the de-  
8 fect.”.

9 On page 3, delete lines 16 through 45 and delete pages 4 through 11.

10 On page 12, delete lines 1 through 26 and insert:

11 “**SECTION 3.** ORS 94.662 is amended to read:

12 “94.662. (1) At least 10 days prior to instituting any litigation or administrative proceeding to  
13 recover damages under ORS 94.630 (1)(e)(E), the homeowners association shall provide written no-  
14 tice to each affected owner of the association’s intent to seek damages on behalf of the owner. The  
15 notice shall, at a minimum:

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

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

19 “(c) Describe the specific nature of the damages to be sought on the owner’s behalf;

20 “(d) Set forth the terms under which the association is willing to seek damages on the owner’s  
21 behalf, including any mechanism proposed for the determination and distribution of any damages  
22 recovered;

23 “(e) Inform each owner of the owner’s right not to have the damages sought on the owner’s  
24 behalf and specify the procedure for exercising the right; and

25 “(f) Inform the owner that exercising the owner’s right not to have damages sought on the  
26 owner’s behalf:

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

28 “(B) Does not relieve the owner from the owner’s obligation to pay dues or assessments relating  
29 to the litigation or proceeding;

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

31 “(D) Does not interfere with the association’s right to make repairs to common areas.

32 “(2) Within 10 days of **the** mailing **of** the notice described in this section, any owner may re-  
33 quest in writing that the association not seek damages on the owner’s behalf. If an owner makes  
34 such a request, the association [*shall*] **may** not make or continue any claim or action for damages  
35 with regard to the objecting owner’s lot and shall be relieved of any duty to reimburse or indemnify

1 the owner for damages under the litigation or proceeding.

2 “(3)(a) A homeowners association may only initiate or intervene in litigation or an ad-  
3 ministrative proceeding under ORS 94.630 (1)(e)(E) to recover damages for a claim regarding  
4 a matter that results from a defect as defined in ORS 701.560, or damage arising from a de-  
5 fect, if approved by the board at a meeting held pursuant to ORS 94.644.

6 “(b) The meeting held under paragraph (a) of this subsection must occur:

7 “(A) At least 90 days after the homeowners association first sends a notice described in  
8 paragraph (c) of this subsection to each owner;

9 “(B) After sending a second notice by first class mail with certificate of mailing; and

10 “(C) At least 15 days after sending a third notice by first class mail.

11 “(c) In addition to the contents described in subsection (1) of this section, a notice given  
12 under this subsection must:

13 “(A) State that the association believes that a defect in the common property exists;

14 “(B) Provide a detailed description of the defect;

15 “(C) Identify the parties the association considers responsible for the defect;

16 “(D) Include the names of each board member and a method by which each member may  
17 be contacted electronically or by mail; and

18 “(E) Include a warning in substantially the following form:

19 “

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22 **WARNING:**

23 **If the board decides to proceed with the proposed litigation or administrative proceeding,**  
24 **your ability to sell your lot in this planned community may be limited while the litigation or**  
25 **proceeding is pending.**

26 **If you have opinions or information that you wish the board to consider in making its**  
27 **decision, you are advised to contact the board promptly.**

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30 “(d) The association shall send a copy of the notice by certified mail to each person  
31 identified in the notice as a party the association considers responsible for the defect. The  
32 requirement for sending notice under this subsection is in addition to the notice of defect  
33 requirement in ORS 701.565 and does not initiate the procedure described in ORS 701.560 to  
34 701.595.

35 “**SECTION 4.** ORS 100.490 is amended to read:

36 “100.490. (1) At least 10 days prior to instituting any litigation or administrative proceeding to  
37 recover damages under ORS 100.405 (4)(e)(E), the association of unit owners shall provide written  
38 notice to each affected owner of the association’s intent to seek damages on behalf of the owner.  
39 The notice shall, at a minimum:

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

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

43 “(c) Describe the specific nature of the damages to be sought on the owner’s behalf;

44 “(d) Set forth the terms under which the association is willing to seek damages on the owner’s  
45 behalf, including any mechanism proposed for the determination and distribution of any damages

1 recovered;

2 “(e) Inform each owner of the owner’s right not to have the damages sought on the owner’s  
3 behalf and specify the procedure for exercising the right; and

4 “(f) Inform the owner that exercising the owner’s right not to have damages sought on the  
5 owner’s behalf:

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

7 “(B) Does not relieve the owner from the owner’s obligation to pay dues or assessments relating  
8 to the litigation or proceeding;

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

10 “(D) Does not interfere with the association’s right to make repairs to common elements.

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

16 “(3)(a) **A condominium association may only initiate or intervene in litigation or an ad-  
17 ministrative proceeding under ORS 100.405 (4)(e)(E) to recover damages for a claim regarding  
18 a matter that results from a defect as defined in ORS 701.560, or damage arising from a de-  
19 fect, if approved by the board at a meeting held pursuant to ORS 100.420.**

20 “(b) **The meeting held under paragraph (a) of this subsection must occur:**

21 “(A) **At least 90 days after the association first sends a notice described in paragraph (c)  
22 of this subsection to each owner;**

23 “(B) **After sending a second notice by first class mail with certificate of mailing; and**

24 “(C) **At least 15 days after sending a third notice by first class mail.**

25 “(c) **In addition to the contents described in subsection (1) of this section, a notice given  
26 under this subsection must:**

27 “(A) **State that the association believes that a defect in the common property exists;**

28 “(B) **Provide a detailed description of the defect;**

29 “(C) **Identify the parties the association considers responsible for the defect;**

30 “(D) **Include the names of each board member and a method by which each member may  
31 be contacted electronically or by mail; and**

32 “(E) **Includes a warning in substantially the following form:**

33 “  
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36 **WARNING:**

37 **If the board decides to proceed with the proposed litigation or administrative proceeding,  
38 your ability to sell your lot in this condominium may be limited while the litigation or pro-  
39 ceeding is pending.**

40 **If you have opinions or information that you wish the board to consider in making its  
41 decision, you are advised to contact the board promptly.**

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44 “(d) **The association shall send a copy of the notice by certified mail to each person  
45 identified in the notice as a party the association considers responsible for the defect. The**

1 **requirement for sending notice under this subsection is in addition to the notice of defect**  
2 **requirement in ORS 701.565 and does not initiate the procedure described in ORS 701.560 to**  
3 **701.595.**

4 “**NOTE:** Sections 5 and 6 were deleted by amendment. Subsequent sections were not renum-  
5 bered.”.

6 On page 15, delete lines 30 and 31 and insert:

7 “(8) The board of directors shall cause an independent inspection of the condominium for  
8 moisture intrusion, as described in ORS 100.210 (5), to be performed:

9 “(a) Before the end of the second year following the condominium’s substantial completion, as  
10 defined in ORS 12.135, and paid for from the reserve account under ORS 100.175; and

11 “(b) Before the end of the sixth year following the condominium’s substantial completion.”.

12 On page 16, delete lines 4 through 45 and delete pages 17 through 19 and insert:

13 “**SECTION 10.** ORS 100.210 is amended to read:

14 “100.210. (1) A turnover meeting shall be called by the declarant within 90 days of the expiration  
15 of any period of declarant control reserved in the declaration or bylaws under ORS 100.200. If no  
16 control has been reserved, the declarant shall call the turnover meeting within 90 days of the earlier  
17 of:

18 “(a) In a single stage condominium, three years from the date of conveyance of the first unit to  
19 a person other than a successor declarant or conveyance of 50 percent of the units.

20 “(b) In a staged or flexible condominium, seven years from the date of conveyance of the first  
21 unit to a person other than the declarant or conveyance to persons other than a successor declarant  
22 of 50 percent of the total number of units which the declarant may submit to the provisions of this  
23 chapter under ORS 100.125 or 100.150.

24 “(2) The declarant shall give notice of the turnover meeting in accordance with the bylaws of  
25 the condominium to each unit owner at least 10 but not more than 50 days prior to the meeting.  
26 The notice shall state the purpose of the meeting and the time and place where it is to be held.

27 “(3) If the meeting required under subsection (1) of this section is not called by the declarant  
28 within the time specified, the meeting may be called and notice given by a unit owner or any first  
29 mortgagee of a unit.

30 “(4) At the turnover meeting:

31 “(a) The declarant shall relinquish control of the administration of the association of unit own-  
32 ers and the unit owners shall assume the control;

33 “(b) If a quorum of the unit owners is present, the unit owners shall elect not fewer than the  
34 number of directors sufficient to constitute a quorum of the board of directors in accordance with  
35 the declaration or bylaws of the condominium; and

36 “(c) The declarant shall deliver to the association the items specified in subsection (5) of this  
37 section.

38 “(5) At the turnover meeting the declarant shall deliver to the association all property of the  
39 unit owners and the association of unit owners held or controlled by the declarant including, but  
40 not limited to, the following items, if applicable:

41 “(a) The original or a photocopy of the recorded declaration and bylaws of the condominium and  
42 any supplements and amendments thereto.

43 “(b) A copy of the articles of incorporation.

44 “(c) The minute books, including all minutes, and other books and records of the association.

45 “(d) The reserve study, the maintenance plan and all updates described in ORS 100.175 and other

1 sources of information that serve as a basis for calculating reserves in accordance with ORS 100.175.

2 “(e) Any rules and regulations which have been promulgated.

3 “(f) Resignations of officers and members of the board of directors who are required to resign  
4 because of the expiration of any period of declarant control reserved under ORS 100.200.

5 “(g) A financial statement. The financial statement:

6 “(A) Must consist of a balance sheet and an income and expense statement for the preceding  
7 12-month period or the period following the recording of the declaration, whichever period is  
8 shorter.

9 “(B) Must be reviewed, in accordance with the Statements on Standards for Accounting and  
10 Review Services issued by the American Institute of Certified Public Accountants, by an independ-  
11 ent certified public accountant licensed in the State of Oregon if the annual assessments of an as-  
12 sociation of unit owners exceed \$75,000.

13 “(h) Association funds or control thereof, including, but not limited to, funds for reserve required  
14 under ORS 100.530 (3)(b) and any bank signature cards.

15 “(i) All tangible personal property that is property of the association and an inventory of such  
16 property.

17 “(j) A copy of the following, if available:

18 “(A) The as-built architectural, structural, engineering, mechanical, electrical and plumbing  
19 plans.

20 “(B) The original specifications indicating thereon all material changes.

21 “(C) The plans for underground site service, site grading, drainage and landscaping together  
22 with cable television drawings.

23 “(D) Any other plans and information relevant to future repair or maintenance of the property.

24 “(k) Insurance policies.

25 “(L) Copies of any occupancy permits which have been issued for the condominium.

26 “(m) Any other permits issued by governmental bodies applicable to the condominium in force  
27 or issued within one year prior to the date the unit owners assume control of the administration  
28 of the association of unit owners.

29 “(n) A list of the general contractor and the subcontractors responsible for construction or in-  
30 stallation of the major plumbing, electrical, mechanical and structural components of the common  
31 elements.

32 “(o) A roster of unit owners and their addresses and telephone numbers, if known, as shown on  
33 the records of the declarant.

34 “(p) Leases of the common elements and any other leases to which the association is a party.

35 “(q) Employment or service contracts in which the association is one of the contracting parties  
36 or service contracts in which the association or the unit owners have an obligation or responsibility,  
37 directly or indirectly, to pay some or all of the fee or charge of the person performing the service.

38 “(r) **The results from an independent inspection for moisture intrusion and the name of**  
39 **the person who performed the inspection.**

40 “[~~(r)~~] (s) Any other contracts to which the association of unit owners is a party.

41 “(6) In order to facilitate an orderly transition, during the three-month period following the  
42 turnover meeting, the declarant or an informed representative shall be available to meet with the  
43 board of directors on at least three mutually acceptable dates to review the documents delivered  
44 under subsection (5) of this section.

45 “(7) If the declarant has complied with this section, unless the declarant otherwise has sufficient

1 voting rights as a unit owner to control the association, the declarant is not responsible for the  
2 failure of the unit owners to elect the number of directors sufficient to constitute a quorum of the  
3 board of directors and assume control of the association in accordance with subsection (4) of this  
4 section. The declarant shall be relieved of any further responsibility for the administration of the  
5 association except as a unit owner of any unsold unit.

6 “(8) If the unit owners present do not constitute a quorum or the unit owners fail to elect the  
7 number of directors sufficient to constitute a quorum of the board of directors at the turnover  
8 meeting held in accordance with subsection (1) of this section:

9 “(a) At any time before the election of the number of directors sufficient to constitute a quorum,  
10 a unit owner or first mortgagee of a unit may call a special meeting for the purpose of election of  
11 directors and shall give notice of the meeting in accordance with the notice requirements in the  
12 bylaws for special meetings. The unit owners and first mortgagees present at the special meeting  
13 shall select a person to preside over the meeting.

14 “(b) A unit owner or first mortgagee of a unit may request a court to appoint a receiver as  
15 provided in ORS 100.418.”.

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