

HB 3746-2
(LC 4199)
4/3/25 (RLM/ps)

Requested by Senator MEEK

**PROPOSED AMENDMENTS TO
HOUSE BILL 3746**

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

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

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

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

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

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

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

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

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

20 “(b) Inform each owner of the general nature of the litigation or pro-
21 ceeding;

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

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

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

9 “(f) Inform the owner that exercising the owner’s right not to have dam-
10 ages sought on the owner’s behalf:

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

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

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

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

19 “(2) Within 10 days of **the mailing of** the notice described in this section,
20 any owner may request in writing that the association not seek damages on
21 the owner’s behalf. If an owner makes such a request, the association
22 *[shall]* **may** not make or continue any claim or action for damages with re-
23 gard to the objecting owner’s lot and shall be relieved of any duty to reim-
24 burse or indemnify the owner for damages under the litigation or proceeding.

25 **“(3)(a) A homeowners association may only initiate or intervene in
26 litigation or an administrative proceeding under ORS 94.630 (1)(e)(E)
27 to recover damages for a claim regarding a matter that results from
28 a defect as defined in ORS 701.560, or damage arising from a defect, if
29 approved by the board at a meeting held pursuant to ORS 94.644.**

30 **“(b) The meeting held under paragraph (a) of this subsection must**

1 occur:

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

4 “(B) After sending a second notice by first class mail with certif-
5 icate of mailing; and

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

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

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

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

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

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

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

17 “ _____

18

19 **WARNING:**

20 **If the board decides to proceed with the proposed litigation or ad-
21 ministrative proceeding, your ability to sell your lot in this planned
22 community may be limited while the litigation or proceeding is pend-
23 ing.**

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

27 “ _____

28 **“(d) The association shall send a copy of the notice by certified mail
29 to each person identified in the notice as a party the association con-
30 siders responsible for the defect. The requirement for sending notice**

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

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

5 “100.490. (1) At least 10 days prior to instituting any litigation or ad-
6 ministrative proceeding to recover damages under ORS 100.405 (4)(e)(E), the
7 association of unit owners shall provide written notice to each affected
8 owner of the association’s intent to seek damages on behalf of the owner.

9 The notice shall, at a minimum:

10 “(a) Be mailed to the mailing address of each unit or to the mailing ad-
11 dresses designated by the owners in writing to the association;

12 “(b) Inform each owner of the general nature of the litigation or pro-
13 ceeding;

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

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

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

22 “(f) Inform the owner that exercising the owner’s right not to have dam-
23 ages sought on the owner’s behalf:

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

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

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

30 “(D) Does not interfere with the association’s right to make repairs to

1 common elements.

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

9 “(3)(a) **A condominium association may only initiate or intervene**
10 **in litigation or an administrative proceeding under ORS 100.405**
11 **(4)(e)(E) to recover damages for a claim regarding a matter that re-**
12 **sults from a defect as defined in ORS 701.560, or damage arising from**
13 **a defect, if approved by the board at a meeting held pursuant to ORS**
14 **100.420.**

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

17 “(A) **At least 90 days after the association first sends a notice de-**
18 **scribed in paragraph (c) of this subsection to each owner;**

19 “(B) **After sending a second notice by first class mail with certif-**
20 **icate of mailing; and**

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

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

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

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

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

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

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

2 “ _____

4 **WARNING:**

5 **If the board decides to proceed with the proposed litigation or ad-**
6 **ministrative proceeding, your ability to sell your lot in this condo-**
7 **minium may be limited while the litigation or proceeding is pending.**

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

11 “ _____

12 **“(d) The association shall send a copy of the notice by certified mail**
13 **to each person identified in the notice as a party the association con-**
14 **siders responsible for the defect. The requirement for sending notice**
15 **under this subsection is in addition to the notice of defect requirement**
16 **in ORS 701.565 and does not initiate the procedure described in ORS**
17 **701.560 to 701.595.**

18 **“NOTE:** Sections 5 and 6 were deleted by amendment. Subsequent
19 sections were not renumbered.”.

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

21 “(8) The board of directors shall cause a specialty inspection of the con-
22 dominium for moisture intrusion, as described in ORS 100.210 (5), to be per-
23 formed:

24 “(a) Before the end of the second year following the condominium’s sub-
25 stantial completion, as defined in ORS 12.135, and paid for from the reserve
26 account under ORS 100.175; and

27 “(b) Before the end of the sixth year following the condominium’s sub-
28 stantial completion.”.

29 On page 16, delete lines 4 through 45 and delete pages 17 through 20 and
30 insert:

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

2 “100.210. (1) A turnover meeting shall be called by the declarant within
3 90 days of the expiration of any period of declarant control reserved in the
4 declaration or bylaws under ORS 100.200. If no control has been reserved, the
5 declarant shall call the turnover meeting within 90 days of the earlier of:

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

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

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

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

21 “(4) At the turnover meeting:

22 “(a) The declarant shall relinquish control of the administration of the
23 association of unit owners and the unit owners shall assume the control;

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

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

30 “(5) At the turnover meeting the declarant shall deliver to the association

1 all property of the unit owners and the association of unit owners held or
2 controlled by the declarant including, but not limited to, the following items,
3 if applicable:

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

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

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

9 “(d) The reserve study, the maintenance plan and all updates described
10 in ORS 100.175 and other sources of information that serve as a basis for
11 calculating reserves in accordance with ORS 100.175.

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

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

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

17 “(A) Must consist of a balance sheet and an income and expense state-
18 ment for the preceding 12-month period or the period following the recording
19 of the declaration, whichever period is shorter.

20 “(B) Must be reviewed, in accordance with the Statements on Standards
21 for Accounting and Review Services issued by the American Institute of
22 Certified Public Accountants, by an independent certified public accountant
23 licensed in the State of Oregon if the annual assessments of an association
24 of unit owners exceed \$75,000.

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

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

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

1 “(A) The as-built architectural, structural, engineering, mechanical, elec-
2 trical and plumbing plans.

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

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

6 “(D) Any other plans and information relevant to future repair or main-
7 tenance of the property.

8 “(k) Insurance policies.

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

11 “(m) Any other permits issued by governmental bodies applicable to the
12 condominium in force or issued within one year prior to the date the unit
13 owners assume control of the administration of the association of unit own-
14 ers.

15 “(n) A list of the general contractor and the subcontractors responsible
16 for construction or installation of the major plumbing, electrical, mechanical
17 and structural components of the common elements.

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

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

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

26 **“(r) The results from an independent specialty inspection for
27 moisture intrusion conducted in a manner approved by the Depart-
28 ment of Consumer and Business Services under ORS 455.463 and the
29 name of the person who performed the inspection.**

30 “[(r)] (s) Any other contracts to which the association of unit owners is

1 a party.

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

7 “(7) If the declarant has complied with this section, unless the declarant
8 otherwise has sufficient voting rights as a unit owner to control the associa-
9 tion, the declarant is not responsible for the failure of the unit owners to
10 elect the number of directors sufficient to constitute a quorum of the board
11 of directors and assume control of the association in accordance with sub-
12 section (4) of this section. The declarant shall be relieved of any further re-
13 sponsibility for the administration of the association except as a unit owner
14 of any unsold unit.

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

19 “(a) At any time before the election of the number of directors sufficient
20 to constitute a quorum, a unit owner or first mortgagee of a unit may call
21 a special meeting for the purpose of election of directors and shall give no-
22 tice of the meeting in accordance with the notice requirements in the bylaws
23 for special meetings. The unit owners and first mortgagees present at the
24 special meeting shall select a person to preside over the meeting.

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

27
