

§ 94.630¹

Powers of association

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

- (a) Adopt and amend bylaws, rules and regulations for the planned community;
- (b) Adopt and amend budgets for revenues, expenditures and reserves, and collect assessments from owners for common expenses and the reserve account established under **ORS94.595 (Reserve account for maintaining, repairing and replacing common property)**;
- (c) Hire and terminate managing agents and other employees, agents and independent contractors;
- (d) Defend against any claims, proceedings or actions brought against it;
- (e) Subject to subsection (4) of this section, initiate or intervene in litigation or administrative proceedings in its own name and without joining the individual owners in the following:
 - (A) Matters relating to the collection of assessments and the enforcement of governing documents;
 - (B) Matters arising out of contracts to which the association is a party;
 - (C) Actions seeking equitable or other nonmonetary relief regarding matters that affect the common interests of the owners, including but not limited to the abatement of nuisance;
 - (D) Matters, including but not limited to actions for damage, destruction, impairment or loss of use, relating to or affecting:
 - (i) Individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; **or**
 - (ii) Common property;
 - (E) Matters relating to or affecting the lots or interests of the owners including but not limited to damage, destruction, impairment or loss of use of a lot or portion thereof, if:
 - (i) Resulting from a nuisance or a defect in or damage to common property or individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; **or**
 - (ii) Required to facilitate repair to any common property; **and**
 - (F) Any other matter to which the association has standing under law or pursuant to the declaration or bylaws;
- (f) Make contracts and incur liabilities;

- (g) Regulate the use, maintenance, repair, replacement and modification of common property;
- (h) Cause additional improvements to be made as a part of the common property;
- (i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common property may be conveyed or subjected to a security interest only pursuant to ORS **94.665 (Authority of association to sell, transfer, convey or encumber common property)**;
- (j) Grant easements, leases, licenses and concessions through or over the common property as provided in ORS **94.665 (Authority of association to sell, transfer, convey or encumber common property)**;
- (k) Modify, close, remove, eliminate or discontinue the use of common property, including any improvement or landscaping, regardless of whether the common property is mentioned in the declaration, provided that:
- (A) Nothing in this paragraph is intended to limit the authority of the association to seek approval of the modification, closure, removal, elimination or discontinuance by the owners; **and**
 - (B) Modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreation or community building must be approved by at least a majority of owners voting on the matter at a meeting or by written ballot held in accordance with the declaration, bylaws or ORS **94.647 (Use of written ballot for approving or rejecting matters subject to meeting of association members)**;
 - (L) Impose and receive any payments, fees or charges for the use, rental or operation of the common property and services provided to owners;
- (m) Adopt rules regarding the termination of utility services paid for out of assessments of the association and access to and use of recreational and service facilities available to owners. The rules must provide for written notice and an opportunity to be heard before the association may terminate the rights of any owners to receive the benefits or services until the correction of any violation covered by the rule has occurred;
- (n) Impose charges for late payment of assessments and attorney fees related to the collection of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules and regulations of the association, provided that the charge imposed or the fine levied by the association is based:

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

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

(o) Impose reasonable charges for the preparation and recordation of amendments to the declaration;

(p) Provide for the indemnification of its officers and the board of directors and maintain liability insurance for directors and officers;

(q) Assign its right to future income, including the right to receive common expense assessments; **and**

(r) Exercise any other powers necessary and proper for the administration and operation of the association.

(2) Notwithstanding subsection (1) of this section, a declaration may not impose any limitation on the ability of the association to deal with a declarant that is more restrictive than the limitations imposed on the ability of the association to deal with any other person, except during the period of declarant control under ORS 94.600 (**Declarant control of association**).

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

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

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

(c) Identify, by the designations stated or referenced in the declaration or applicable supplemental declaration, all affected lots and common property; **and**

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

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

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

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

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

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

(f) The requirements of this subsection do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines. [1981 c.782 §36; 1999 c.677 §13; 2001 c.756 §13

§ 94.635¹

Association bylaws

The bylaws of an association adopted under ORS **94.625 (Formation of homeowners association)**, or amended or adopted under ORS**94.630 (Powers of association)**, shall provide for the following:

- (1)The organization of the association of owners in accordance with ORS **94.625 (Formation of homeowners association)** and**94.630 (Powers of association)**, including when the initial meeting shall be held and the method of calling that meeting.
- (2)If a Class I planned community, the formation of a transitional advisory committee in accordance with ORS **94.604 (Transitional advisory committee)**.
- (3)The turnover meeting required under ORS **94.609 (Notice of meeting to turn over administrative responsibility)**, including the time by which the meeting shall be called, the method of calling the meeting, the right of an owner under ORS **94.609(Notice of meeting to turn over administrative responsibility)** (3) to call the meeting and a statement of the purpose of the meeting.
- (4)(a) The method of calling the annual meeting and all other meetings of the owners in accordance with ORS **94.650(Meetings of lot owners)**; **and**
 - (b)The percentage of votes that constitutes a quorum in accordance with ORS **94.655 (Quorum for association meetings)**.
- (5)(a) The election of a board of directors and the number of persons constituting the board;
 - (b)The powers and duties of the board;
 - (c)Any compensation of the directors; **and**
 - (d)The method of removing directors from office in accordance with ORS **94.640 (Association board of directors)** (6).
- (6)The terms of office of directors.
- (7)The method of calling meetings of the board of directors in accordance with ORS **94.640 (Association board of directors)**(10) and a statement that all meetings of the board of directors shall be open to owners.
- (8)The offices of president, secretary and treasurer and any other offices of the association, and the method of selecting and removing officers and filling vacancies in the offices.
- (9)The preparation and adoption of a budget in accordance with ORS **94.645 (Adoption of annual budget)**.
- (10)(a) The program for maintenance, upkeep, repair and replacement of the common property;
 - (b)The method of payment for the expense of the program and other expenses of the planned community; **and**
 - (c)The method of approving payment vouchers.

- (11) The employment of personnel necessary for the administration of the planned community and maintenance, upkeep and repair of the common property.
- (12) The manner of collecting assessments from the owners.
- (13) Insurance coverage in accordance with ORS **94.675 (Insurance for common property)** and **94.685 (Specification of insurance for individual lots)**.
- (14) The preparation and distribution of the annual financial statement required under ORS **94.670 (Association duty to keep documents and records)**.
- (15) The method of adopting administrative rules and regulations governing the details for the operation of the planned community and use of the common property.
- (16) The method of amending the bylaws in accordance with ORS **94.630 (Powers of association)**. The bylaws may require no greater than an affirmative majority of votes to amend any provision of the bylaws.
- (17) If additional property is proposed to be annexed pursuant to ORS **94.580 (Declaration)** (3), the method of apportioning common expenses if new lots are added during the fiscal year.
- (18) Any other details regarding the planned community that the declarant or the association consider desirable. However, if a provision required to be in the declaration under ORS **94.580 (Declaration)** is included in the bylaws, the voting requirements for amending the declaration shall govern the amendment of that provision of the bylaws. [1981 c.782 §37; 1999 c.677 §14; 2001 c.756 §14; 2009 c.641 §7; 2011 c.532 §16]

§ **94.639**¹

Criteria for board of directors membership

- (1) Each member of the board of directors must be an individual and, except as provided in subsections (2) and (3) of this section, an owner or co-owner of a lot in the planned community.
- (2) A director appointed by a declarant under ORS **94.600 (Declarant control of association)** need not be an owner or co-owner of a lot in the planned community.
- (3)(a) Except as otherwise provided in the bylaws, prior to election to the board of directors, an individual described in this subsection shall, upon request of the board, provide the board with documentation satisfactory to the board that the individual is qualified to represent the entity or is a trustee or is serving in a fiduciary capacity for the owner of a lot.
- (b) If a corporation, limited liability company or partnership owns a lot in the planned community or owns an interest in an entity that owns a lot in the planned community, an officer, employee or agent of a corporation, a member, manager, employee or agent of a limited liability

company, or a partner, employee or agent of a partnership may serve on the board of directors.

(c) A trustee may serve on the board of directors if the trustee holds legal title to a lot in the planned community for the benefit of the owner of the beneficial interest in the lot.

(d) An executor, administrator, guardian, conservator, or other individual appointed by a court to serve in a fiduciary capacity for an owner of a lot in the planned community, or an officer or employee of an entity if an entity is appointed, may serve on the board of directors.

(4) The position of an individual serving on the board of directors under subsection (3) of this section automatically becomes vacant if the individual no longer meets the requirements of subsection (3) of this section. [2009 c.641 §2]

§ 94.640¹

Association board of directors

- powers and duties
- removal of director
- meetings
- executive sessions

(1) The board of directors of an association may act on behalf of the association except as limited by the declaration and the bylaws. In the performance of their duties, officers and members of the board of directors are governed by this section and the applicable provisions of

ORS [65.357 \(General standards for directors\)](#), [65.361 \(Director conflict of interest\)](#), [65.367 \(Liability for unlawful distributions\)](#), [65.369 \(Liability of qualified directors\)](#) and [65.377 \(Standards of conduct for officers\)](#), whether or not the association is incorporated under ORS chapter 65.

(2) Subject to subsection (7) of this section, unless otherwise provided in the bylaws, the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) At least annually, the board of directors of an association shall review the insurance coverage of the association.

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

(5) The board of directors of the association may record a statement of association information as provided in ORS [94.667 \(Recording association information with county clerk\)](#).

(6)(a) Unless otherwise provided in the declaration or bylaws, at a meeting of the owners at which a quorum is present, the owners may remove a director from the board of directors, other than

directors appointed by the declarant or individuals who are ex officio directors, with or without cause, by a majority vote of owners who are present and entitled to vote.

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

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

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

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

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

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

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

(A)Consult with legal counsel.

(B)Consider the following:

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

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

(iii) Collection of unpaid assessments.

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

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

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

(10)In a planned community in which the majority of the lots are the principal residences of the occupants, meetings of the board of directors must comply with the following:

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

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

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

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

(12)The board of directors shall cause the information required to enable the association to comply with ORS **94.670 (Association duty to keep documents and records)** (8) to be maintained and kept current.

(13)As used in this section, meeting means a convening of a quorum of members of the board of directors at which association business is discussed, except a convening of a quorum of members of the board of directors for the purpose of participating in litigation, mediation or arbitration proceedings. [1981 c.782 §38; 1983 c.206 §4; 1999 c.677 §15; 2001 c.756 §15; 2003 c.569 §12; 2009 c.641 §8; 2011 c.532 §3]

§ **94.641**¹

Assent of director to board action

(1)A director of a homeowners association who is present at a meeting of the board of directors at which action is taken on any association matter is presumed to have assented to the action unless

the director votes against the action or abstains from voting on the action because the director claims a conflict of interest.

(2)When action is taken on any matter at a meeting of the board of directors, the vote or abstention of each director present must be recorded in the minutes of the meeting.

(3)Directors may not vote by proxy or by secret ballot at meetings of the board of directors.

(4)Notwithstanding subsection (3) of this section, officers may be elected by secret ballot. [2007 c.409 §6]

§ 94.642¹

Receivership for failure of homeowners association to fill vacancies on board of directors

(1)Subject to subsection (2) of this section, if a homeowners association fails to fill vacancies on the board of directors sufficient to constitute a quorum in accordance with the bylaws, an owner or a first mortgagee may request the circuit court of the county in which the planned community is located to appoint a receiver under ORCP 80 to manage the affairs of the association.

(2)At least 45 days before an owner or first mortgagee requests the circuit court to appoint a receiver under subsection (1) of this section, the owner or first mortgagee shall mail, by certified or registered mail, a notice to the association and shall post a copy of the notice at a conspicuous place or places on the property or provide notice by a method otherwise reasonably calculated to inform owners of the proposed action.

(3)The notice shall be signed by the owner or first mortgagee and include:

(a)A description of the intended action.

(b)A statement that the intended action is pursuant to this section.

(c)The date, not less than 30 days after mailing of the notice, by which the association must fill vacancies on the board sufficient to constitute a quorum.

(d)A statement that if the association fails to fill vacancies on the board by the specified date, the owner or first mortgagee may file a petition with the court under subsection (1) of this section.

(e)A statement that if a receiver is appointed, all expenses of the receivership will be common expenses of the association as provided in subsection (4) of this section.

(4)If a receiver is appointed, the salary of the receiver, court costs, attorney fees and all other expenses of the receivership shall be common expenses of the association.

(5) A receiver appointed under this section has all of the powers and duties of a duly constituted board of directors and shall serve until a sufficient number of vacancies on the board are filled to constitute a quorum.

(6) If at a turnover meeting held in accordance with ORS 94.616 (Turnover meeting) the owners fail to elect the number of directors sufficient to constitute a quorum of the board of directors, in addition to the notice requirements specified in subsections (2) and (3) of this section, an owner shall give the notice to all other owners as provided in the bylaws.

(7) Notwithstanding subsections (2) and (3) of this section, in the case of an emergency, the court may waive the notice requirements of subsections (2) and (3) of this section. [2007 c.409 §2]

§ 94.645¹

Adoption of annual budget

(1) The board of directors at least annually shall adopt a budget for the planned community.

(2) The budget shall include moneys to be allocated to the reserve account under ORS 94.595 (Reserve account for maintaining, repairing and replacing common property).

(3) Within 30 days after adopting the annual budget for the planned community, the board of directors shall provide a summary of the budget to all owners.

(4) If the board fails to adopt a budget, the last adopted annual budget shall continue in effect. [1981 c.782 §39; 1999 c.677 §16; 2007 c.409 §8a]

§ 94.647¹

Use of written ballot for approving or rejecting matters subject to meeting of association members

- procedures
- exceptions

(1) Unless prohibited or limited by the declaration or bylaws, any action that may be taken at any annual, regular or special meeting of the homeowners association may be taken without a meeting if the association delivers a written ballot to every association member that is entitled to vote on the matter. Action by written ballot may not substitute for the following meetings:

(a) A turnover meeting required under ORS 94.616 (Turnover meeting).

(b) An annual meeting of an association if more than a majority of the lots are the principal residences of the occupants.

(c) A meeting of the association if the agenda includes a proposal to remove a director from the board of directors.

(d) A special meeting of the association called at the request of owners under

ORS **94.650 (Meetings of lot owners)** (2).

(2)(a) A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(b) The board of directors must provide owners with at least 10 days notice before written ballots are mailed or otherwise delivered. If, at least three days before written ballots are scheduled to be mailed or otherwise distributed, at least 10 percent of the owners petition the board of directors requesting secrecy procedures, subject to paragraph (d) of this subsection, a written ballot must be accompanied by:

(A) A secrecy envelope;

(B) A return identification envelope to be signed by the owner; **and**

(C) Instructions for marking and returning the ballot.

(c) The notice required under paragraph (b) of this subsection shall state:

(A) The general subject matter of the vote by written ballot;

(B) The right of owners to request secrecy procedures specified in paragraph (b) of this subsection;

(C) The date after which ballots may be distributed;

(D) The date and time by which any petition requesting secrecy procedures must be received by the board; **and**

(E) The address where any petition must be delivered.

(d) The requirements of paragraph (b)(A) and (B) of this subsection do not apply to a written ballot of an owner if the consent or approval of that owner is required by the declaration or bylaws or ORS **94.550 (Definitions for ORS 94.550 to 94.783)** to **94.783 (When certain administrative provisions apply)**.

(3) Matters that may be voted on by written ballot shall be deemed approved or rejected as follows:

(a) If approval of a proposed action otherwise would require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal shall be deemed to be approved when the date for the return of ballots has passed, a quorum of owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected; **or**

(b) If approval of a proposed action otherwise would require a meeting at which a specified percentage of owners must authorize the action, the proposal shall be deemed to be approved

when the percentage of total votes cast in favor of the proposal equals or exceeds the required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and the required percentage has not been met.

(4)All solicitations for votes by written ballot shall state the following:

(a)If approval of a proposal by written ballot requires that the total number of votes cast equal or exceed a certain quorum requirement, the number of responses needed to meet the quorum requirement;

(b)If approval of a proposal by written ballot requires that a certain percentage of total votes cast approve the proposal, the required percentage of total votes needed for approval;**and**

(c)The period during which the association will accept written ballots for counting in accordance with subsection (5) of this section.

(5)(a) The association shall accept written ballots for counting during the period specified in the solicitation under subsection (4) of this section. Except as provided in paragraph (b) of this subsection, the period shall end on the earliest of the following dates:

(A)If approval of a proposed action by written ballot requires that a certain percentage of the owners approve the proposal, the date on which the association has received a sufficient number of approving ballots;

(B)If approval of a proposed action by written ballot requires that a certain percentage of the owners approve the proposal, the date on which the association has received a sufficient number of disapproving ballots to render approval impossible; **or**

(C)In all cases, a specified date certain on which all ballots must be returned to be counted.

(b)If the vote is by secrecy procedure under subsection (2)(b) of this section, the period shall end on the date specified in the solicitation or any extension under paragraph (c) of this subsection.

(c)Except as otherwise provided in the declaration or bylaws, in the discretion of the board of directors, if a date certain is specified in the solicitation under subsection (4) of this section, the period may be extended by written notice of the extension given to all owners before the end of the specified date certain.

(6) Except as otherwise provided in the declaration or bylaws, unless the vote is by secrecy procedure under subsection (2)(b) of this section, a written ballot may be revoked before the final return date of the ballots.

(7) Unless otherwise prohibited by the declaration or bylaws, the votes may be counted from time to time before the final return date of the ballots to determine whether the proposal has passed or failed by the votes already cast on the date the ballots are counted.

(8) Notwithstanding subsection (7) of this section, written ballots that are returned in secrecy envelopes may not be examined or counted before the date certain specified in the solicitation or any extension under subsection (5)(c) of this section. [1999 c.677 §31; 2001 c.756 §16; 2003 c.569 §13; 2007 c.409 §9]

§ 94.650¹

Meetings of lot owners

• • notice

(1) The homeowners association shall hold at least one meeting of the owners each calendar year.

(2)(a) Special meetings of the association may be called by the president of the board of directors, by a majority of the board of directors or by the president or secretary upon receipt of a written request of a percentage of owners specified in the bylaws of the association. However, the bylaws may not require a percentage greater than 50 percent or less than 10 percent of the votes of the planned community for the purpose of calling a meeting.

(b) If the bylaws do not specify a percentage of owners that may request the calling of a special meeting, a special meeting shall be called if 30 percent or more of the owners make the request in writing. Notice of the special meeting shall be given as specified in this section.

(c) Business transacted at a special meeting shall be confined to the purposes stated in the notice.

(3) If the owners request a special meeting under subsection (2) of this section and the notice is not given within 30 days after the date the written request is delivered to the president or the secretary, an owner who signed the request may set the time and place of the meeting and give notice as provided in subsection (4) of this section.

(4) Not less than 10 or more than 50 days before any meeting called under this section, the secretary or other officer specified in the bylaws shall cause the notice to be hand delivered or mailed to the mailing address of each owner or to the mailing address designated in writing by the owner, and to all mortgagees that have requested the notice.

(5)The notice of a meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes or any proposal to remove a director or officer.

(6)Mortgagees may designate a representative to attend a meeting called under this section. [1981 c.782 §40; 1999 c.677 §17; 2001 c.756 §17; 2007 c.409 §10]

§ 94.652¹

Electronic notice to owner or director

(1)Subject to subsection (2) of this section and notwithstanding any requirement under the declaration or bylaws or ORS [94.550\(Definitions for ORS 94.550 to 94.783\)](#) to [94.783 \(When certain administrative provisions apply\)](#), in the discretion of the board of directors of the homeowners association, any notice, information or other written material required to be given to an owner or director under the declaration or bylaws or ORS [94.550\(Definitions for ORS 94.550 to 94.783\)](#) to [94.783 \(When certain administrative provisions apply\)](#), may be given by electronic mail, facsimile or other form of electronic communication.

(2)Notwithstanding subsection (1) of this section, electronic mail, facsimile or other form of electronic communication may not be used to give notice of:

- (a)Failure to pay an assessment;
- (b)Foreclosure of an association lien under ORS [94.709 \(Liens against lots\)](#); or
- (c)An action the association may take against an owner.

(3)An owner or director may decline to receive notice by electronic mail, facsimile or other form of electronic communication and may direct the board of directors to provide notice in the manner required under the declaration or bylaws or ORS [94.550\(Definitions for ORS 94.550 to 94.783\)](#) to [94.783 \(When certain administrative provisions apply\)](#). [2007 c.409 §4]

§ 94.655¹

Quorum for association meetings

(1)Unless the declaration or bylaws of a homeowners association specify a greater percentage, a quorum for any meeting of the association consists of the number of persons who are entitled to cast 20 percent of the votes in a planned community.

(2)If any meeting of the association cannot be organized because of a lack of a quorum, the owners who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

(3) Except as provided in subsection (4) of this section, the quorum for a meeting following a meeting adjourned for lack of a quorum is the greater of:

(a) One-half of the quorum required in the declaration or bylaws; **or**

(b) The number of persons who are entitled to cast 20 percent of the votes in the planned community.

(4) A quorum is not reduced under subsection (3) of this section unless:

(a) The meeting is adjourned to a date that is at least 48 hours from the time the original meeting was called; **or**

(b) The meeting notice specifies:

(A) That the quorum requirement will be reduced if the meeting cannot be organized because of a lack of a quorum; **and**

(B) The reduced quorum requirement.

(5) For the purpose of establishing a quorum under this section, an individual who holds a proxy and an absentee ballot, if absentee ballots are permitted, counts as a present owner. [1981 c.782 §41; 1999 c.677 §18; 2007 c.409 §11; 2009 c.641 §9; 2011 c.532 §4]

§ 94.657¹

Rules of order

(1) Unless other rules of order are required by the declaration or bylaws or by a resolution of the association or its board of directors, meetings of the association and the board of directors shall be conducted according to the latest edition of Roberts Rules of Order published by the Roberts Rules Association.

(2) A decision of the association or the board of directors may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(3) A decision of the association and the board of directors is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision. [2001 c.756 §4; 2009 c.641 §10]

§ 94.658¹

Voting or granting consent

(1) Unless the declaration provides otherwise, each lot of a planned community shall be entitled to one vote.

(2) Unless the declaration or bylaws provide otherwise:

(a) An attorney-in-fact, executor, administrator, guardian, conservator or trustee may vote or grant consent with respect to a lot owned or held in a fiduciary capacity if the fiduciary satisfies the secretary of the board of directors that the person is the attorney-in-fact, executor, administrator, guardian, conservator or trustee holding the lot in a fiduciary capacity.

(b) When a lot is owned by two or more persons jointly, according to the records of the association:

(A) Except as provided in this paragraph, the vote of the lot may be exercised by a co-owner in the absence of protest by another co-owner. If the co-owners cannot agree upon the vote, the vote of the lot shall be disregarded completely in determining the proportion of votes given with respect to such matter.

(B) A valid court order may establish the right of co-owners authority to vote. [2001 c.756 §2; 2007 c.409 §12; 2009 c.641 §11]

§ 94.660¹

Method of voting or consenting

(1) The vote or consent of a lot may be cast or given:

(a) In person at a meeting of the homeowners association.

(b) In the discretion of the board of directors, by absentee ballot in accordance with subsection (3) of this section.

(c) Unless the declaration or bylaws or ORS **94.550 (Definitions for ORS 94.550 to 94.783) to 94.783 (When certain administrative provisions apply)** provide otherwise, pursuant to a proxy in accordance with subsection (2) of this section.

(d) By written ballot in lieu of a meeting under ORS **94.647 (Use of written ballot for approving or rejecting matters subject to meeting of association members)**.

(e) By any other method specified by the declaration or bylaws or ORS **94.550 (Definitions for ORS 94.550 to 94.783) to 94.783 (When certain administrative provisions apply)**.

(2)(a) A proxy:

(A) Must be dated and signed by the owner;

(B) Is not valid if it is undated or purports to be revocable without notice; **and**

(C) Terminates one year after its date unless the proxy specifies a shorter term.

(b) The board of directors may not require that a proxy be on a form prescribed by the board.

(c)An owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association or to the board of directors if a vote is being conducted by written ballot in lieu of a meeting pursuant to ORS **94.647 (Use of written ballot for approving or rejecting matters subject to meeting of association members)**.

(d)A copy of a proxy in compliance with paragraph (a) of this subsection provided to the association by facsimile, electronic mail or other means of electronic communication utilized by the board of directors is valid.

(3)(a) An absentee ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(b)All solicitations for votes by absentee ballot shall include:

(A)Instructions for delivery of the completed absentee ballot, including the delivery location; **and**

(B)Instructions about whether the ballot may be canceled if the ballot has been delivered according to the instructions.

(c)An absentee ballot shall be counted as an owner present for the purpose of establishing a quorum.

(d)Even if an absentee ballot has been delivered to an owner, the owner may vote in person at a meeting if the owner has:

(A)Returned the absentee ballot; **and**

(B)Canceled the absentee ballot, if cancellation is permitted in the instructions given under paragraph (b) of this subsection. [1981 c.782 §42; 1999 c.677 §19; 2003 c.569 §14; 2007 c.409 §13]

§ **94.661**¹

Electronic ballot

(1)As used in this section, electronic ballot means a ballot given by:

(a)Electronic mail;

(b)Facsimile transmission;

(c)Posting on a website; **or**

(d)Other means of electronic communication acceptable to the board of directors.

(2)Unless the declaration or bylaws prohibit or provide for other methods of electronic ballots, the board of directors of a homeowners association, in its discretion, may provide that a vote, approval or consent of an owner may be given by electronic ballot.

- (3) An electronic ballot shall comply with the requirements of this section and the declaration or bylaws or ORS **94.550 (Definitions for ORS 94.550 to 94.783)** to **94.783 (When certain administrative provisions apply)**.
- (4) An electronic ballot may be accompanied by or contained in an electronic notice in accordance with ORS **94.652 (Electronic notice to owner or director)**.
- (5) If an electronic ballot is posted on a website, a notice of the posting shall be sent to each owner and shall contain instructions on obtaining access to the posting on the website.
- (6) A vote made by electronic ballot is effective when it is electronically transmitted to an address, location or system designated by the board of directors for that purpose.
- (7) Unless otherwise provided in the declaration or bylaws or rules adopted by the board of directors, a vote by electronic ballot may not be revoked.
- (8) The board of directors may not elect to use electronic ballots unless there are procedures to ensure:
- (a) Compliance with ORS **94.647 (Use of written ballot for approving or rejecting matters subject to meeting of association members)** if the vote conducted by written ballot under ORS **94.647 (Use of written ballot for approving or rejecting matters subject to meeting of association members)** uses the procedures specified in ORS **94.647 (Use of written ballot for approving or rejecting matters subject to meeting of association members)** (2)(b); **and**
 - (b) That the electronic ballot is secret, if the declaration or bylaws or rules adopted by the board require that electronic ballots be secret. [2007 c.409 §5]

§ **94.662**¹

Notice to lot owners of intent of association to commence judicial or administrative proceeding

- **contents of notice**
- **right of lot owner to opt out**

(1) At least 10 days prior to instituting any litigation or administrative proceeding to recover damages under ORS **94.630 (Powers of association)** (1)(e)(E), the homeowners association shall provide written notice to each affected owner of the associations intent to seek damages on behalf of the owner. The notice shall, at a minimum:

- (a) Be mailed to the mailing address of each lot or to the mailing address designated in writing to the association by the owner;
- (b) Inform each owner of the general nature of the litigation or proceeding;
- (c) Describe the specific nature of the damages to be sought on the owners behalf;

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

(e) Inform each owner of the owners right not to have the damages sought on the owners behalf and specify the procedure for exercising the right; **and**

(f) Inform the owner that exercising the owners right not to have damages sought on the owners behalf:

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

(B) Does not relieve the owner from the owners obligation to pay dues or assessments relating to the litigation or proceeding;

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

(D) Does not interfere with the associations right to make repairs to common areas.

(2) Within 10 days of mailing the notice described in this section, any owner may request in writing that the association not seek damages on the owners behalf. If an owner makes such a request, the association shall not make or continue any claim or action for damages with regard to the objecting owners lot and shall be relieved of any duty to reimburse or indemnify the owner for damages under the litigation or proceeding. [1999 c.677 §37; 2001 c.756 §18]

§ 94.667¹

Recording association information with county clerk

(1) As used in this section, association means an association formed under ORS [94.625 \(Formation of homeowners association\)](#), [94.846 \(Designation of managing entity\)](#) or [100.405 \(Association of unit owners\)](#), or any other association in which a person holds membership by virtue of owning or possessing a real estate interest subject to assessment and lien authority pursuant to a recorded instrument.

(2) The board of directors or managing agent of an association may record with the county clerk for the county where the subject property is located a statement of association information. Subject to subsection (3) of this section, the statement shall contain at least the following information:

(a) The name of the association as identified in the recorded declaration, conditions, covenants and restrictions or other governing instrument, and the current name of the association, if different;

(b)The name, address and daytime telephone number of a managing agent or treasurer of the association or other person authorized to receive:

(A)Assessments and fees imposed by the association; **or**

(B)Notice of a transfer of property;

(c)A list of the properties, as described for recordation in ORS**93.600 (Description of real property for purposes of recordation)**, subject to assessment by the association;

(d)Information identifying the recorded declaration, conditions, covenants and restrictions or other governing instrument, and a reference to where the instruments are recorded; **and**

(e)If an amended statement is being recorded, information identifying prior recorded statements.

(3)The statement may not include information for a purpose that is not related to the identification of the person specified in subsection (2)(b) of this section.

(4)The county clerk may charge a fee for recording a statement under this section according to the provisions of ORS **205.320(Fees collected by county clerk)** (4). [1999 c.447 §1; 2001 c.756 §19]

Note: **94.667 (Recording association information with county clerk)** was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 94 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

§ **94.670**¹

Association duty to keep documents and records

- **deposit of assessments**
- **payment of association expenses**
- **review of financial statement by certified public accountant**
- **examination of records by owner**

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

(a)The documents specified in ORS **94.616 (Turnover meeting)** (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 (Additional definitions for Bank Act), 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, funds of the association maintained in accounts established under this subsection may be used to purchase obligations of the United States government.

(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**

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

(5) Subject to section 24, chapter 803, Oregon Laws 2003, the association of a planned community that has annual assessments exceeding \$75,000 shall cause the financial statement required under subsection (4) of this section to be reviewed within 180 days after the end of the fiscal year by an independent certified public accountant licensed in the State of Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

(6) The association of a planned community created on or after January 1, 2004, or the association of a planned community described in ORS 94.572 (Applicability of certain provisions of ORS 94.550 to 94.783 to Class I or Class II planned communities) that has annual assessments of \$75,000 or less shall cause the most recent financial statement required by subsection (4) of this section to be reviewed in the manner described in subsection (5) of this section within 180 days after the association receives a petition requesting review signed by at least a majority of the owners.

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

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

(A) The amount of assessments due from the owner and unpaid at the time the request was received, including:

(i) Regular and special assessments;

(ii) Fines and other charges;

(iii) Accrued interest; **and**

(iv) Late payment charges.

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

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

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

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

(b) Records kept by or on behalf of the association may be withheld from examination and duplication to the extent the records concern:

(A) Personnel matters relating to a specific identified person or a persons medical records.

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

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

(D) Disclosure of information in violation of law.

(E) Documents, correspondence or management or board reports compiled for or on behalf of the association or the board of directors by its agents or committees for

consideration by the board of directors in executive session held in accordance with ORS **94.640(Association board of directors)** (8).

(F) Documents, correspondence or other matters considered by the board of directors in executive session held in accordance with ORS **94.640 (Association board of directors)** (8).

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

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

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

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

(c) The current operating budget of the association.

(d) The reserve study, if any, described in ORS **94.595(Reserve account for maintaining, repairing and replacing common property)**.

(e) Architectural standards and guidelines, if any.

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

(12) The board of directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs for furnishing the documents, information or records. [1981 c.782 §48; 1999 c.677 §21; 2001 c.756 §20; 2003 c.569 §15; 2003 c.803 §20a; 2007 c.340 §1; 2009 c.641 §13; 2011 c.532 §17]

Note: Section 24, chapter 803, Oregon Laws 2003, provides:

Sec. 24. The requirements of ORS **94.670 (Association duty to keep documents and records)** (5) first apply:

(1) Commencing with the fiscal year following the turnover meeting required by ORS **94.616 (Turnover meeting)** for the association of a planned community created under ORS **94.550 (Definitions for ORS 94.550 to 94.783)** to **94.783 (When certain administrative provisions apply)** prior to January 1, 2004, if the turnover meeting has not yet occurred on January 1, 2004.

(2) Commencing with the fiscal year beginning in calendar year 2004 for the association of a planned community created under ORS **94.550 (Definitions for ORS 94.550 to 94.783)** to **94.783(When**

certain administrative provisions apply) if the turnover meeting required by ORS **94.616 (Turnover meeting)** has occurred on or before January 1, 2004.

(3) Commencing with the fiscal year following the turnover meeting required by ORS **94.616 (Turnover meeting)** for the association of a planned community created under ORS **94.550 (Definitions for ORS 94.550 to 94.783)** to **94.783 (When certain administrative provisions apply)** on or after January 1, 2004.

(4) Commencing with the fiscal year following the year in which owners assume responsibility for administration of a planned community described in ORS **94.572 (Applicability of certain provisions of ORS 94.550 to 94.783 to Class I or Class II planned communities)** if the owners have not assumed responsibility for administration of the planned community on January 1, 2004.

(5) Commencing with the fiscal year beginning in calendar year 2004 for the association of a planned community described in ORS **94.572 (Applicability of certain provisions of ORS 94.550 to 94.783 to Class I or Class II planned communities)** if the owners have assumed responsibility for administration of the planned community on or before January 1, 2004. [2003 c.803 §24; 2009 c.641 §38]

§ **94.675**¹

Insurance for common property

(1) The board of directors of a homeowners association shall obtain and maintain:

(a) Insurance for all insurable improvements in the common property against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. The insurance shall cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable cost; **and**

(b) A public liability policy covering all common property and all damage or injury caused by the negligence of the association.

(2) Premiums for insurance obtained under this section shall be a common expense of the association.

(3) A policy may contain a deductible in the amount specified in the declaration or bylaws. The deductible amount shall be added to the face amount of the policy in determining whether the insurance equals at least the full replacement cost.

(4) Notwithstanding a provision in the declaration or bylaws that imposes a maximum deductible amount in an association insurance policy, if the board of directors determines that it is in the best

interest of the association and owners as provided in subsection (5) of this section, the board may adopt a resolution authorizing the association to obtain and maintain an insurance policy with a deductible amount exceeding the specified maximum, but not in excess of the greater of:

- (a) The maximum deductible acceptable to the Federal National Mortgage Association; **or**
- (b) \$10,000.

(5) In making the determination under subsection (4) of this section, the board of directors shall consider such factors as the availability and cost of insurance and the loss experience of the association.

(6) Not later than 10 days after adoption of a resolution under subsection (4) of this section, the board of directors shall ensure that a copy of the resolution and a notice described in

ORS **94.676 (Insurance deductible for certain planned communities)** are:

- (a) Delivered to each owner; **or**
- (b) Mailed to the mailing address of each owner or to the mailing address designated in writing by the owner. [1981 c.782 §51; 2007 c.409 §14]

§ **94.676**¹

Insurance deductible for certain planned communities

(1) If the declaration or bylaws of a planned community created under ORS **94.550 (Definitions for ORS 94.550 to 94.783)** to **94.783 (When certain administrative provisions apply)** before September 27, 2007, or a planned community subject to ORS **94.572 (Applicability of certain provisions of ORS 94.550 to 94.783 to Class I or Class II planned communities)** do not assign the responsibility for payment of the amount of the deductible in an association insurance policy, the board of directors of the homeowners association may adopt a resolution that assigns the responsibility for payment of the amount of the deductible. The resolution must include, but need not be limited to:

- (a) The circumstances under which the deductible will be charged against:
 - (A) An owner or the owners affected by a loss; **or**
 - (B) All owners;
- (b) The allocation of the deductible charged under paragraph (a) of this subsection; **and**
- (c) If an owner and the association have duplicate insurance coverage, the insurance policy that is primary, unless otherwise provided in the declaration or bylaws.

(2) If the board of directors adopts a resolution as described in subsection (1) of this section, the resolution may require that an owner, in addition to any other insurance required by the declaration or bylaws, obtain and maintain:

(a) An insurance policy that insures the owners lot for not less than the amount of the deductible in the associations insurance policy for which the owner may be responsible and that insures the owners personal property for any loss or damage; **and**

(b) Comprehensive liability insurance that includes, but is not limited to, coverage for negligent acts of owners and tenants, guests of owners and tenants and occupants of other lots for damage to the common property, to other lots and to the personal property of other persons that is located on other lots or the common property.

(3) Unless otherwise provided in the declaration or bylaws, the board of directors may adopt a resolution that:

(a) Prescribes a procedure for processing insurance claims. The procedure may require that all claims against the associations insurance policy be processed through and coordinated by the board of directors or the managing agent, if authorized by the board.

(b) Assigns the responsibility for payment of charges for handling claims, including any charges by a managing agent.

(4) Not later than 10 days after adoption of a resolution under subsection (1) or (3) of this section, the board of directors shall ensure that a copy of the resolution and a notice described in subsection (5) of this section are:

(a) Delivered to each lot; **or**

(b) Mailed to the mailing address of each owner or to the mailing address designated in writing by the owner.

(5) The notice required under subsection (4) of this section shall:

(a) Advise each owner to contact an insurance agent to determine the effect of the resolution on the owners individual insurance coverage; **and**

(b) Be in a form and style reasonably calculated to inform the owner of the importance of the notice.

(6) Failure to provide a copy of a resolution or a notice required under this section does not affect the responsibility of an owner to comply with a resolution adopted under this section. [2007 c.409 §3]

§ 94.677¹

Election to have ORS 94.645, 94.655 and 94.675 apply

Unless contrary to the covenants, conditions or restrictions of a recorded declaration or other similar instrument, or the bylaws of the association adopted in accordance with documents governing the

association, the homeowners association board of directors of a subdivision described in ORS 94.673 (When compliance with specified provisions of ORS 94.640 and 94.670 required) (1) may elect to be governed by ORS 94.645 (Adoption of annual budget), 94.655 (Quorum for association meetings) and 94.675 (Insurance for common property), without further action by the association. [1983 c.206 §7]

§ 94.680¹

Blanket all-risk insurance

(1) If a declaration or bylaws provide that the homeowners association has the sole authority to decide whether to repair or reconstruct a unit that has suffered damage or whether a unit must be repaired or reconstructed, the board of directors shall obtain blanket all-risk insurance for the full replacement cost of all structures in the planned community. Cost of the coverage shall be a common expense to the association.

(2) If the declaration or bylaws contain a provision described in subsection (1) of this section, the declaration or bylaws also shall provide:

(a) Requirements of or limitations on repairing or reconstructing damaged or destroyed property;

(b) The time within which the repair or reconstruction must begin; **and**

(c) The actions the board of directors must take if:

(A) Damage or destruction is not repaired or replaced; **or**

(B) Insurance proceeds exceed or fall short of the costs of repair or reconstruction. [1981 c.782 §52; 1999 c.677 §22; 2007 c.409 §15]

§ 94.700¹

Duration and termination of initial management agreements and service and employment contracts

• • exceptions

(1) Except as provided in subsection (2) of this section, if entered into prior to the meeting called under ORS 94.609 (Notice of meeting to turn over administrative responsibility), no management agreement, service contract or employment contract which is directly made by or on behalf of the association, the board of directors or the owners as a group shall be in excess of three years.

(2)(a) Subject to paragraph (b) of this subsection, the limitations under subsection (1) of this section do not apply to:

(A) Performance-based energy or water efficiency contracts; **or**

(B) Contracts relating to renewable energy facilities or output serving the planned community, including facilities leased to the association.

(b) A contract described in paragraph (a) of this subsection:

(A) May not have an initial term of more than 20 years; **and**

(B) Must be recorded with the recording officer in each county in which the planned community is located.

(c) As used in this subsection, renewable energy facilities means facilities generating electricity, heat or cooling by means of:

(A) Solar, wind, ocean, hydropower, biomass or geothermal resources; **or**

(B) Biofuels or hydrogen derived from renewable resources.

(3) Any contract or agreement subject to subsection (1) of this section and entered into after July 1, 1982, may terminate without penalty to the declarant, the association or the board of directors elected under ORS [94.616 \(Turnover meeting\)](#) if the board of directors gives not less than 30 days written notice of termination to the other party not later than 60 days after the meeting called under ORS [94.609 \(Notice of meeting to turn over administrative responsibility\)](#). [1981 c.782 §69; 2009 c.641 §14]

§ 94.590¹

Amendment of declaration by owners

(1)(a) The declaration may be amended only with the approval of owners representing at least 75 percent of the total votes in the planned community or any larger percentage specified in the declaration.

(b) An amendment under this section may not:

(A) Limit or diminish any right of a declarant reserved under ORS [94.580 \(Declaration\)](#) (3) or (4) or any other special declarant right without the consent of the declarant. A declarant may waive the declarants right of consent.

(B) Change the boundaries of any lot or any uses to which any lot or unit is restricted as stated in the declaration under ORS [94.580 \(Declaration\)](#) (2)(m) or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any lot or unit unless the owners of the affected lots or units unanimously consent to the amendment.

(c) Any changes to the plat, including required approvals or consents of owners or others, are governed by the applicable provisions of ORS **92.010 (Definitions for ORS 92.010 to 92.192)** to **92.192 (Property line adjustment)**.

(2)(a) Unless otherwise provided in the declaration, an amendment to the declaration may be proposed by a majority of the board of directors or by at least 30 percent of the owners in the planned community.

(b) When the association adopts an amendment to the declaration, the association shall record the amendment in the office of the recording officer in each county in which the planned community is located. An amendment of the declaration is effective only upon recordation.

(3) Notwithstanding a provision in a declaration that requires amendments to be executed and acknowledged by all owners approving the amendment, amendments to a declaration under this section shall be executed and certified on behalf of the association by the president and secretary as being adopted in accordance with the declaration and the provisions of this section and acknowledged in the manner provided for acknowledgment of deeds.

(4) An amendment to a declaration or plat shall be conclusively presumed to have been regularly adopted in compliance with all applicable procedures relating to such amendment unless an action is brought within one year after the date such amendment was recorded or the face of the recorded amendment indicates that the amendment received the approval of fewer votes than required for such approval. However, nothing in this subsection shall prevent the further amendment of an amended declaration or plat.

(5) During any period of declarant control, voting on an amendment under subsection (1) of this section shall be without regard to any weighted vote or special voting right reserved by the declarant except as otherwise provided under ORS **94.585 (Authority to amend declaration and initial bylaws to comply with federal or state laws)**. Nothing in this subsection is intended to prohibit a declarant from reserving the right to require the declarants consent to an amendment during the period reserved in the declaration for declarant control.

(6) The board of directors, upon the adoption of a resolution, may cause a restated declaration to be prepared and recorded to codify individual amendments that have been adopted in accordance with this section or ORS **94.585 (Authority to amend declaration and initial bylaws to comply with federal or state laws)** without the further approval of owners. A declaration restated under this subsection must:

- (a) Include all previously adopted amendments in effect and may not include any other changes except to correct scrivener's errors or to conform format and style;
- (b) Include a statement that the board of directors has adopted a resolution in accordance with this subsection and is causing the declaration to be restated and recorded under this subsection;
- (c) Include a reference to the recording index numbers and date of recording of the initial declaration and all previously recorded amendments in effect being codified;
- (d) Include a certification by the president and secretary of the association that the restated declaration includes all previously adopted amendments in effect and no other changes except, if applicable, to correct scrivener's errors or to conform format and style; **and**
- (e) Be executed and acknowledged by the president and secretary of the association and recorded in the deed records of each county in which the planned community is located. [1981 c.782 §21; 1999 c.677 §5; 2001 c.756 §9; 2003 c.569 §7; 2007 c.410 §22]

§ 94.595¹

Reserve account for maintaining, repairing and replacing common property

- **reserve study**
- **maintenance plan**

(1) The declarant, on behalf of a homeowners association, shall:

- (a) Conduct an initial reserve study as described in subsection (3) of this section;
- (b) Prepare an initial maintenance plan as described in subsection (4) of this section; **and**
- (c) Establish a reserve account as provided in subsection (2) of this section.

(2)(a) A reserve account shall be established to fund major maintenance, repair or replacement of all items of common property which will normally require major maintenance, repair or replacement, in whole or in part, in more than one and less than 30 years, for exterior painting if the common property includes exterior painted surfaces, for other items, whether or not involving common property, if the association has responsibility to maintain the items and for other items required by the declaration or bylaws. The reserve account need not include reserves for those items:

- (A) That can reasonably be funded from the general budget or other funds or accounts of the association; **or**
- (B) For which one or more, but less than all, owners are responsible for maintenance and replacement under the provisions of the declaration or bylaws.

(b) The reserve account shall be established in the name of the homeowners association. The association is responsible for administering the account and for making periodic payments into the account.

(c) The reserve portion of the initial assessment determined by the declarant shall be based on:

(A) The reserve study described in subsection (3) of this section; **or**

(B) Other reliable information.

(d) A reserve account established under this section must be funded by assessments against the individual lots for which the reserves are established.

(e) Unless the declaration provides otherwise, the assessments under this subsection begin accruing for all lots from the date the first lot is conveyed.

(3)(a) The board of directors of the association annually shall conduct a reserve study or review and update an existing study to determine the reserve account requirements. Subject to subsection (8) of this section, after review of the reserve study or reserve study update, the board of directors may, without any action by owners:

(A) Adjust the amount of payments as indicated by the study or update; **and**

(B) Provide for other reserve items that the board of directors, in its discretion, may deem appropriate.

(b) The reserve study shall:

(A) Identify all items for which reserves are or will be established;

(B) Include the estimated remaining useful life of each item as of the date of the reserve study; **and**

(C) Include for each item, as applicable, an estimated cost of maintenance and repair and replacement at the end of the items useful life.

(4)(a) The board of directors shall prepare a maintenance plan for the maintenance, repair and replacement of all property for which the association has maintenance, repair or replacement responsibility under the declaration or bylaws or ORS [94.550\(Definitions for ORS 94.550 to 94.783\)](#) to [94.783 \(When certain administrative provisions apply\)](#). The maintenance plan shall:

(A) Describe the maintenance, repair and replacement to be conducted;

(B) Include a schedule for the maintenance, repair and replacement;

(C) Be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the association; **and**

(D)Address issues that include but are not limited to warranties and the useful life of the items for which the association has maintenance, repair and replacement responsibility.

(b)The board of directors shall review and update the maintenance plan described under this subsection as necessary.

(5)(a) If the declaration or bylaws require a reserve account, the reserve study requirements of subsection (3) of this section and the maintenance plan requirements of subsection (4) of this section first apply to the association of a subdivision that meets the definition of a planned community under ORS **94.550(Definitions for ORS 94.550 to 94.783)** and is recorded prior to October 23, 1999, when:

(A)The board of directors adopts a resolution in compliance with the bylaws that applies the requirements of subsections (3) and (4) of this section to the association;**or**

(B)A petition signed by a majority of owners is submitted to the board of directors mandating that the requirements of subsections (3) and (4) of this section apply to the association.

(b)A reserve study and maintenance plan shall be completed within one year of adoption of the resolution or submission of the petition to the board of directors.

(6)(a) Except as provided in paragraph (b) of this subsection, the reserve account may be used only for the purposes for which reserves have been established and is to be kept separate from other funds.

(b)After the individual lot owners have assumed responsibility for administration of the planned community under ORS **94.616(Turnover meeting)**, if the board of directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds:

(A)The board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses.

(B)Not later than the adoption of the budget for the following year, the board of directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

(7)The reserve account is subject to the requirements and restrictions of ORS **94.670 (Association duty to keep documents and records)** and any additional restrictions or requirements imposed by the declaration, bylaws or rules of the homeowners association.

(8)(a) Except as provided under paragraph (b) of this subsection, unless the board of directors under subsection (3) of this section determines that the reserve account will be adequately funded for the following year, the board of directors or the owners may not vote to eliminate funding a reserve account required under this section or under the declaration or bylaws.

(b) Following the turnover meeting described in ORS **94.609(Notice of meeting to turn over administrative responsibility)**, on an annual basis, the board of directors, with the approval of all owners, may elect not to fund the reserve account for the following year.

(9) Assessments paid into the reserve account are the property of the association and are not refundable to sellers or owners of lots. [1981 c.782 §15; 1999 c.677 §7; 2001 c.756 §10; 2003 c.569 §8; 2005 c.543 §1; 2007 c.409 §7; 2009 c.641 §4]

§ 65.771¹

Corporate records

(1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all corporate action taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members, in alphabetical order by class showing the number of votes each member is entitled to vote.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records for inspection:

(a) Articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Bylaws or restated bylaws and all amendments to them currently in effect;

(c) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members of any class or category of members;

(d) The minutes of all meetings of members and records of all actions approved by the members for the past three years;

- (e) Written communications required by this chapter and those regarding general membership matters made to members within the past three years;
- (f) A list of the names and business or home addresses of its current directors and officers;
- (g) The last three annual financial statements, if any. The statements may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, including a balance sheet and statement of operations, if any, for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis;
- (h) The last three accountants reports if annual financial statements are reported upon by a public accountant; **and**
- (i) The most recent annual report delivered to the Secretary of State under ORS [65.787](#) (**Annual report**). [1989 c.1010 §164]