

Oregon Statutes Relevant to Quiet Water Home Owners Association

1 PLANNED COMMUNITIES

2 (General Provisions)

3 **94.550 Definitions for ORS 94.550 to 94.783.** As used in ORS 94.550 to 94.783:

4 (1) "Assessment" means any charge imposed or levied by a homeowners association on or
5 against an owner or lot pursuant to the provisions of the declaration or the bylaws of the planned
6 community or provisions of ORS 94.550 to 94.783.

7 (2) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance,
8 mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than one
9 lot in a planned community, or an agreement affecting more than one lot by which the developer holds
10 such planned community under an option, contract to sell or trust agreement.

11 (3) "Class I planned community" means a planned community that:

12 (a) Contains at least 13 lots or in which the declarant has reserved the right to increase the
13 total number of lots beyond 12; and

14 (b) Has an estimated annual assessment, including an amount required for reserves under
15 ORS 94.595, exceeding \$10,000 for all lots or \$100 per lot, whichever is greater, based on:

16 (A) For a planned community created on or after January 1, 2002, the initial estimated
17 annual assessment, including a constructive assessment based on a subsidy of the association through a
18 contribution of funds, goods or services by the declarant; or

19 (B) For a planned community created before January 1, 2002, a reasonable estimate of
20 the cost of fulfilling existing obligations imposed by the declaration, bylaws or other governing
21 document as of January 1, 2002.

22 (4) "Class II planned community" means a planned community that:

23 (a) Is not a Class I planned community;

24 (b) Contains at least five lots; and

25 (c) Has an estimated annual assessment exceeding \$1,000 for all lots based on:

26 (A) For a planned community created on or after January 1, 2002, the initial estimated
27 annual assessment, including a constructive assessment based on a subsidy of the association through a
28 contribution of funds, goods or services by the declarant; or

29 (B) For a planned community created before January 1, 2002, a reasonable estimate of
30 the cost of fulfilling existing obligations imposed by the declaration, bylaws or other governing
31 document as of January 1, 2002.

32 (5) "Class III planned community" means a planned community that is not a Class I or II planned
33 community.

34 (6) "Common expenses" means expenditures made by or financial liabilities incurred by the
35 homeowners association and includes any allocations to the reserve account under ORS 94.595.

36 (7) "Common property" means any real property or interest in real property within a planned
37 community which is owned, held or leased by the homeowners association or owned as tenants in
38 common by the lot owners, or designated in the declaration or the plat for transfer to the association.

39 (8) "Condominium" means property submitted to the provisions of ORS chapter 100.

40 (9) "Declarant" means any person who creates a planned community under ORS 94.550 to
41 94.785.

42 (10) "Declarant control" means any special declarant right relating to administrative control of a
43 homeowners association, including but not limited to:

44 (a) The right of the declarant or person designated by the declarant to appoint or remove an
45 officer or a member of the board of directors;

1 (b) Any weighted vote or special voting right granted to a declarant or to units owned by the
2 declarant so that the declarant will hold a majority of the voting rights in the association by virtue of
3 such weighted vote or special voting right; and

4 (c) The right of the declarant to exercise powers and responsibilities otherwise assigned by
5 the declaration or bylaws or by the provisions of ORS 94.550 to 94.783 to the association, officers of the
6 association or board of directors of the association.

7 (11) "Declaration" means the instrument described in ORS 94.580 which establishes a planned
8 community, and any amendments to the instrument.

9 (12) "Electric vehicle charging station" or "charging station" means a facility designed to deliver
10 electrical current for the purpose of charging one or more electric motor vehicles.

11 (13) "Governing document" means an instrument or plat relating to common ownership or
12 common maintenance of a portion of a planned community and that is binding upon lots within the
13 planned community.

14 (14) "Homeowners association" or "association" means the organization of owners of lots in a
15 planned community, created under ORS 94.625, required by a governing document or formed under
16 ORS 94.572.

17 (15) "Majority" or "majority of votes" or "majority of owners" means more than 50 percent of
18 the votes in the planned community.

19 (16) "Mortgagee" means any person who is:

20 (a) A mortgagee under a mortgage;

21 (b) A beneficiary under a trust deed; or

22 (c) The vendor under a land sale contract.

23 (17) "Owner" means the owner of any lot in a planned community, unless otherwise specified,
24 but does not include a person holding only a security interest in a lot.

25 (18) "Percent of owners" or "percentage of owners" means the owners representing the specified
26 voting rights as determined under ORS 94.658.

27 (19)(a) "Planned community" means any subdivision under ORS 92.010 to 92.192 that results in
28 a pattern of ownership of real property and all the buildings, improvements and rights located on or
29 belonging to the real property, in which the owners collectively are responsible for the maintenance,
30 operation, insurance or other expenses relating to any property within the planned community, including
31 common property, if any, or for the exterior maintenance of any property that is individually owned.

32 (b) "Planned community" does not mean:

33 (A) A condominium under ORS chapter 100;

34 (B) A planned community that is exclusively commercial or industrial; or

35 (C) A timeshare plan under ORS 94.803 to 94.945.

36 (20) "Purchaser" means any person other than a declarant who, by means of a voluntary transfer,
37 acquires a legal or equitable interest in a lot, other than as security for an obligation.

38 (21) "Purchaser for resale" means any person who purchases from the declarant more than two
39 lots for the purpose of resale whether or not the purchaser for resale makes improvements to the lots
40 before reselling them.

41 (22) "Special declarant rights" means any rights, in addition to the rights of the declarant as a lot
42 owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to 94.783,
43 including but not limited to:

44 (a) Constructing or completing construction of improvements in the planned community
45 which are described in the declaration;

46 (b) Expanding the planned community or withdrawing property from the planned community
47 under ORS 94.580 (3) and (4);

48 (c) Converting lots into common property;

49 (d) Making the planned community subject to a master association under ORS 94.695; or

1 (e) Exercising any right of declarant control reserved under ORS 94.600.

2 (23) "Successor declarant" means the transferee of any special declarant right.

3 (24) "Turn over" means the act of turning over administrative responsibility pursuant to ORS
4 94.609 and 94.616.

5 (25) "Unit" means a building or portion of a building located upon a lot in a planned community
6 and designated for separate occupancy or ownership, but does not include any building or portion of a
7 building located on common property.

8 (26) "Votes" means the votes allocated to lots in the declaration under ORS 94.580 (2).

9
10 **94.560 Legislative findings.** The Legislative Assembly finds that:

11 (1) In the State of Oregon there are hundreds of homeowners associations to which the Oregon
12 Condominium Law (ORS chapter 100) does not apply.

13 (2) These homeowners associations have established a pattern of ownership in which ownership
14 of a single unit makes the owner automatically a member of a homeowners association with
15 responsibilities for management and maintenance.

16 (3) Many of these homeowners associations as associations and their members as individuals
17 have experienced problems from the lack of statutory provisions. These problems which have arisen are
18 usually the result of inexperience with this kind of ownership. This inexperience often leads to
19 difficulties for the association when it assumes responsibility for the administration of the planned
20 development because usually neither the developer who drafted the documents nor the local jurisdiction
21 which may have reviewed them has realized the long term management implications of the restrictions
22 imposed by the documents. The most serious and frequent error is imposing excessive voting
23 requirements for any changes in the documents, a basic error that makes it and other errors unnecessarily
24 difficult, if not impossible, to correct. Of almost equal importance is the lack of disclosure of significant
25 differences this pattern of ownership imposes on the homeowner and the restrictions on choice that must
26 be accepted.

27 (4) Oregon land conservation policies and the increasing cost of land will result in rapid growth
28 of this kind of homeownership pattern.

29 (5) It is a matter of statewide concern that the Legislative Assembly address problems associated
30 with homeowners associations in order to make this kind of homeownership pattern an acceptable
31 choice and in order to assure proper maintenance of the projects so that the investment of the owners and
32 the appearance of Oregon communities are protected.

33 (6) It is essential that the Legislative Assembly establish basic statutory requirements for
34 disclosure to first and subsequent buyers, for the organization of the homeowners association, and for a
35 process by which administrative responsibility for the planned community is transferred from the
36 developer to the association of individual owners.

37 (7) ORS 94.550 to 94.783 are intended to make developers, their legal counsel and homeowners
38 in Oregon homeowners associations the beneficiaries of experience accumulated under Oregon's
39 condominium law and gathered from members of existing Oregon homeowners associations and
40 associations in parts of the country where the record of experience is longer than that in Oregon.

41
42 **(Creation of Planned Community)**

43 **94.565 Planned community to be created under ORS 94.550 to 94.783; exception; conveyance**
44 **of lot or unit prohibited until declaration recorded.**

45 (1) Except as provided in ORS 94.570, a person may not create a planned community in this state
46 except as provided in ORS 94.550 to 94.783.

47 (2) A person may not convey any lot or unit in a planned community until the planned community is
48 created by the recording of the declaration for the planned community with the county recording officer
49 of each county in which the planned community is located.

1 **94.570 Applicability of ORS 94.550 to 94.783.**

2 (1) ORS 94.550 to 94.783 apply to a planned community created before January 1, 2002, under ORS
3 94.550 to 94.783 and to a Class I planned community created on or after January 1, 2002.

4 (2) ORS 94.550 to 94.783, except for ORS 94.595 and 94.604, apply to a Class II planned
5 community created on or after January 1, 2002.

6 (3) Notwithstanding any other provision of ORS 94.550 to 94.783, ORS 94.550 to 94.783 apply to a
7 Class III planned community or a planned community that is exclusively commercial or industrial and
8 that is created on or after January 1, 2002, if the declaration of the planned community so provides.

9 (4) Nothing in ORS 94.550 to 94.783 prohibits the establishment of a condominium subject to ORS
10 chapter 100 or a timeshare plan subject to ORS 94.803 to 94.945 within a planned community.

11
12 **94.572 Applicability of certain provisions of ORS 94.550 to 94.783 to Class I or Class II**
13 **planned communities.**

14 (1) (a) A Class I or Class II planned community created before January 1, 2002, that was not created
15 under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 (5) to (9),
16 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652,
17 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695,
18 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and
19 94.780 to the extent that those statutes are consistent with any governing documents. If the governing
20 documents do not provide for the formation of an association, the requirements of this subsection are not
21 effective until the formation of an association in accordance with paragraph (b) of this subsection. If a
22 provision of the governing documents is inconsistent with this subsection, the owners may amend the
23 governing documents using the procedures in this subsection:

24 (A) In accordance with the procedures for the adoption of amendments in the governing
25 documents and subject to any limitations in the governing documents, the owners may amend the
26 inconsistent provisions of the governing documents to conform to the extent feasible with this section
27 and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640,
28 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665,
29 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728,
30 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780. Nothing in this paragraph requires the owners to
31 amend a declaration or bylaws to include the information required by ORS 94.580 or 94.635.

32 (B) If there are no procedures for amendment in the governing documents:

33 (i) For an amendment to a recorded governing document other than bylaws, the owners
34 may amend the inconsistent provisions of the document to conform to this section and ORS 94.550,
35 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642,
36 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675,
37 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762,
38 94.770, 94.775, 94.777 and 94.780 by a vote of at least 75 percent of the owners in the planned
39 community.

40 (ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions
41 of the bylaws to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626,
42 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657,
43 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709,
44 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 by a vote of
45 at least a majority of the owners in the planned community.

46 (iii) An amendment may be adopted at a meeting held in accordance with the governing
47 documents or by another procedure permitted by the governing documents following the procedures
48 prescribed in ORS 94.647, 94.650 or 94.660.

1 (iv) An amendment to a recorded declaration shall be executed, certified and recorded as
2 provided in ORS 94.590 (2) and (3) and shall be subject to ORS 94.590 (5). An amendment to the
3 bylaws and any other governing document shall be executed and certified as provided in ORS 94.590 (3)
4 and shall be recorded in the office of the recording officer of every county in which the planned
5 community is located if the bylaws or other governing document to which the amendment relates were
6 recorded.

7 (C) An amendment adopted pursuant to this paragraph shall include:

8 (i) A reference to the recording index numbers and date of recording of the declaration or
9 other governing document, if recorded, to which the amendment relates; and

10 (ii) A statement that the amendment is adopted pursuant to the applicable subparagraph
11 of this paragraph.

12 (b) (A) If the governing documents do not provide for the formation of an association of owners,
13 at least 10 percent of the owners in the planned community or any governing entity may initiate the
14 formation of an association as provided in this paragraph. The owners or the governing entity initiating
15 the association formation shall call an organizational meeting for the purpose of voting whether to form
16 an association described in ORS 94.625. The notice of the meeting shall:

17 (i) Name the initiating owners or governing entity;

18 (ii) State that the organizational meeting is for the purpose of voting whether to form an
19 association in accordance with the proposed articles of incorporation;

20 (iii) State that if the owners vote to form an association, the owners may elect the initial
21 board of directors provided for in the articles of incorporation and may adopt the initial bylaws;

22 (iv) State that to form an association requires an affirmative vote of at least a majority of
23 the owners in the planned community, or, if a larger percentage is specified in the applicable governing
24 document, the larger percentage;

25 (v) State that to adopt articles of incorporation, to elect the initial board of directors
26 pursuant to the articles of incorporation or to adopt the initial bylaws requires an affirmative vote of at
27 least a majority of the owners present;

28 (vi) State that if the initial board of directors is not elected, an interim board of directors
29 shall be elected pursuant to bylaws adopted as provided in subparagraph (C) of this paragraph;

30 (vii) State that a copy of the proposed articles of incorporation and bylaws will be
31 available at least five business days before the meeting and state the method of requesting a copy; and

32 (viii) Be delivered in accordance with the declaration and bylaws. If there is no governing
33 document or the document does not include applicable provisions, the owners or governing entity shall
34 follow the procedures prescribed in ORS 94.650 (4).

35 (B) At least five business days before the organizational meeting, the initiating owners or
36 governing entity shall cause articles of incorporation and bylaws to be drafted. The bylaws shall include,
37 to the extent applicable, the information required by ORS 94.635.

38 (C) At the organizational meeting:

39 (i) Representatives of the initiating owners or governing entity shall, to the extent not
40 inconsistent with the governing documents, conduct the meeting according to Robert's Rules of Order as
41 provided in ORS 94.657.

42 (ii) The initiating owners or governing entity shall make available copies of the proposed
43 articles of incorporation and the proposed bylaws.

44 (iii) The affirmative vote of at least a majority of the owners of a planned community, or,
45 if a larger percentage is specified in the applicable governing document, the larger percentage, is
46 required to form an association under this paragraph.

47 (iv) If the owners vote to form an association, the owners shall adopt articles of
48 incorporation and may elect the initial board of directors as provided in the articles of incorporation,
49 adopt bylaws and conduct any other authorized business by an affirmative vote of at least a majority of

1 the owners present. If the owners do not elect the initial board of directors, owners shall elect an interim
2 board of directors by an affirmative vote of at least a majority of the owners present to serve until the
3 initial board of directors is elected.

4 (v) An owner may vote by proxy, or by written ballot, if approved, in the discretion of a
5 majority of the initiating owners or governing entity.

6 (D) Not later than 10 business days after the organizational meeting, the board of directors
7 shall:

8 (i) Cause the articles of incorporation to be filed with the Secretary of State under ORS
9 chapter 65;

10 (ii) Cause the notice of planned community described in subsection (4) of this section to
11 be prepared, executed and recorded in accordance with subsection (4) of this section;

12 (iii) Provide a copy of the notice of planned community to each owner, together with a
13 copy of the adopted articles of incorporation and bylaws, if any, or a statement of the procedure and
14 method for adoption of bylaws described in subparagraph (C) of this paragraph. The copies and any
15 statement shall be delivered to each lot, mailed to the mailing address of each lot or mailed to the
16 mailing addresses designated by the owners in writing; and

17 (iv) Cause a statement of association information to be prepared, executed and recorded
18 in accordance with ORS 94.667.

19 (E) If the owners vote to form an association, all costs incurred under this paragraph,
20 including but not limited to the preparation and filing of the articles of incorporation, drafting of bylaws,
21 preparation of notice of meeting and the drafting, delivery and recording of all notices and statements
22 shall be a common expense of the owners and shall be allocated as provided in the appropriate
23 governing document or any amendment thereto.

24 (2) (a) The owners of lots in a Class I or Class II planned community that are subject to the
25 provisions of ORS chapter 94 specified in subsection (1) of this section may elect to be subject to any
26 other provisions of ORS 94.550 to 94.783 upon compliance with the procedures prescribed in subsection
27 (1) of this section.

28 (b) If the owners of lots in a Class I or Class II planned community elect to be subject to
29 additional provisions of ORS 94.550 to 94.783, unless the notice of planned community otherwise
30 required or permitted under subsection (4) of this section includes a statement of the election pursuant to
31 this paragraph, the board of directors of the association shall cause the notice of planned community
32 described in subsection (4) of this section to be prepared, executed and recorded in accordance with
33 subsection (4) of this section.

34 (3) (a) The owners of lots in a Class III planned community created before January 1, 2002, may
35 elect to be subject to provisions of ORS 94.550 to 94.783 upon compliance with the applicable
36 procedures in subsection (1) of this section.

37 (b) If the owners of lots in a Class III planned community elect to be subject to provisions of
38 ORS 94.550 to 94.783, the board of directors of the association shall cause the notice of planned
39 community described in subsection (4) of this section to be prepared, executed and recorded in
40 accordance with subsection (4) of this section.

41 (4) The notice of planned community required or permitted by this section shall be:

42 (a) Titled "Notice of Planned Community under ORS 94.572";

43 (b) Executed by the president and secretary of the association; and

44 (c) Recorded in the office of the recording officer of every county in which the property is
45 located.

46 (5) The notice of planned community shall include:

47 (a) The name of the planned community and association as identified in the recorded declaration,
48 conditions, covenants and restrictions or other governing document and, if different, the current name of
49 the association;

1 (b) A list of the properties, described as required for recordation in ORS 93.600, within the
2 jurisdiction of the association;

3 (c) Information identifying the recorded declaration, conditions, covenants and restrictions or
4 other governing documents and a reference to the recording index numbers and date of recording of the
5 governing documents;

6 (d) A statement that the property described in accordance with paragraph (b) of this subsection is
7 subject to specific provisions of the Oregon Planned Community Act;

8 (e) A reference to the specific provisions of the Oregon Planned Community Act that apply to
9 the subject property and a reference to the subsection of this section under which the application is
10 made; and

11 (f) If an association is formed under subsection (1)(b)(A) of this section, a statement to that
12 effect.

13 (6) An amended statement shall include a reference to the recording index numbers and the date of
14 recording of prior statements.

15 (7) The county clerk may charge a fee for recording a statement under this section according to the
16 provisions of ORS 205.320 (4).

17 (8) The board of directors of an association not otherwise required to cause a notice of planned
18 community described in subsection (4) of this section to be prepared and recorded under this section
19 may cause a notice of planned community to be prepared, executed and recorded as provided in
20 subsection (4) of this section.

21 (9) Title to a unit, lot or common property in a Class I or Class II planned community created before
22 January 1, 2002, may not be rendered unmarketable or otherwise affected by a failure of the planned
23 community to be in compliance with a requirement of this section.

24 (10) As used in this section:

25 (a) "Governing entity" means an incorporated or unincorporated association, committee, person
26 or any other entity that has authority, under a governing document, to maintain commonly maintained
27 property, impose assessments on lots or to act on behalf of lot owners within the planned community on
28 matters of common concern.

29 (b) "Recorded declaration" means an instrument recorded with the county recording officer of
30 the county in which the planned community is located that contains conditions, covenants and
31 restrictions binding lots in the planned community or imposes servitudes upon the real property.

32
33 **94.575 Applicability of subdivision law.** ORS 92.010 to 92.170 apply to a planned community
34 established under ORS 94.550 to 94.783.

35
36 **94.580 Declaration; recordation; contents.**

37 (1) A declarant shall record, in accordance with ORS 94.565, the declaration for a planned
38 community in the office of the recording officer of each county in which the planned community is
39 located.

40 (2) The declaration shall include:

41 (a) The name and classification of the planned community;

42 (b) The name of the association and the type of entity formed in accordance with ORS 94.625;

43 (c) A statement that the planned community is subject to ORS 94.550 to 94.783;

44 (d) A statement that the bylaws adopted under ORS 94.625 must be recorded;

45 (e) A legal description, as required under ORS 93.600, of the real property included in the
46 planned community;

47 (f) A legal description, as required under ORS 93.600, of any real property included in the
48 planned community which is or must become a common property;

1 (g) A description of any special declarant rights other than the rights described under subsections
2 (3) and (4) of this section;

3 (h) A statement of the number of votes allocated to each lot in accordance with ORS 94.658;

4 (i) A method of determining the liability of each lot for common expenses and the right of each
5 lot to any common profits of the association;

6 (j) A statement of when the lots, including lots owned by the declarant, become subject to
7 assessment;

8 (k) If a Class I planned community, provisions for establishing a reserve account and for the
9 preparation, review and update of the reserve study and the maintenance plan as required by ORS
10 94.595;

11 (l) Any restrictions on the alienation of lots. Any such restriction created by any document other
12 than the declaration may be incorporated by reference to the official records of the county where the
13 property is located;

14 (m) A statement of the use, residential or otherwise, for which each lot is intended;

15 (n) A statement as to whether or not the association pursuant to ORS 94.665 may sell, convey or
16 subject to a security interest any portion of the common property and any limitation on such authority;

17 (o) A statement of any restriction on the use, maintenance or occupancy of lots or units;

18 (p) The method of amending the declaration and a statement of the percentage of votes required
19 to approve an amendment of the declaration in accordance with ORS 94.590;

20 (q) A description of any contemplated improvements which the declarant agrees to build, or a
21 statement that the declarant does not agree to build any improvement or does not choose to limit
22 declarant's rights to add improvements not described in the declaration;

23 (r) A statement of any period of declarant control or other special declarant rights reserved by the
24 declarant under ORS 94.600;

25 (s) A statement of the time at which the deed to the common property is to be delivered, whether
26 by date or upon the occurrence of a stipulated event; and

27 (t) Any provisions restricting a right of the association with respect to the common property, or
28 an individual lot owner with respect to the lot or improvements on the lot, including but not limited to:

29 (A) A right to divide the lot or to combine it with other lots;

30 (B) A right to repair or restore improvements on the lot at the owner's discretion in the event
31 of damage or destruction;

32 (C) The requirement for architectural controls, including but not limited to fencing,
33 landscaping or choice of exterior colors and materials of structures to be placed on the common property
34 or on a lot; and

35 (D) The requirement of review of any plans of any structure to be placed on the common
36 property or a lot.

37 (3) If the declarant reserves the right to expand the planned community by annexing lots or common
38 property or by creating additional lots or common property by developing existing property in the
39 planned community, the declaration shall contain, in addition to the provisions required under
40 subsections (1) and (2) of this section, a general description of the plan of development including:

41 (a) The procedure by which the planned community will be expanded;

42 (b) The maximum number of lots and units to be included in the planned community or a
43 statement that there is no limitation on the number of lots or units which the declarant may create or
44 annex to the planned community;

45 (c) A general description of the nature and proposed use of any common property which the
46 declarant agrees to create or annex to the planned community or a statement that there is no limitation on
47 the right of the declarant to create or annex common property;

48 (d) The method of allocation of votes if additional lots are to be created or annexed to the
49 planned community; and

1 (e) The formula to be used for reallocating the common expenses if additional lots are to be
2 created or annexed to the planned community, and the manner of reapportioning the common expenses
3 if lots are created or annexed during the fiscal year.

4 (4) If the declarant may withdraw property from the planned community, the declaration shall
5 include in addition to the provisions required under subsections (1), (2) and (3) of this section:

6 (a) The procedure by which property will be withdrawn;

7 (b) A general description of the property which may be withdrawn from the planned community;

8 (c) The method of allocation of votes if lots are withdrawn from the planned community;

9 (d) The formula to be used for reallocating the common expenses if the property to be withdrawn
10 has been assessed for common expenses prior to withdrawal; and

11 (e) The date after which the right to withdraw property from the planned community shall expire
12 or a statement that such a right shall not expire.

13
14 **94.585 Authority to amend declaration and initial bylaws to comply with federal or state laws.** A
15 declarant may amend the declaration or initial bylaws in order to comply with requirements of the
16 Federal Housing Administration, the United States Department of Veterans Affairs, Rural Development
17 or the Farm Service Agency of the United States Department of Agriculture, the Federal National
18 Mortgage Association, the Government National Mortgage Association, the Federal Home Loan
19 Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the
20 State of Oregon or any corporation wholly owned, directly or indirectly, by the United States or the
21 State of Oregon that insures, guarantees or provides financing for a planned community or lots in a
22 planned community. However, if the need to amend the declaration or the initial bylaws occurs after the
23 turnover to the homeowners association has occurred, the amendment must be approved by the
24 association in accordance with the approval provisions of the declaration or bylaws.

25
26 **94.590 Amendment of declaration by owners.**

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

29 (b) An amendment under this section may not:

30 (A) Limit or diminish any right of a declarant reserved under ORS 94.580 (3) or (4) or any
31 other special declarant right without the consent of the declarant. A declarant may waive the declarant's
32 right of consent.

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

38 (c) Any changes to the plat, including required approvals or consents of owners or others, are
39 governed by the applicable provisions of ORS 92.010 to 92.192.

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

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

46 (3) Notwithstanding a provision in a declaration that requires amendments to be executed and
47 acknowledged by all owners approving the amendment, amendments to a declaration under this section
48 shall be executed and certified on behalf of the association by the president and secretary as being

1 adopted in accordance with the declaration and the provisions of this section and acknowledged in the
2 manner provided for acknowledgment of deeds.

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

9 (5) During any period of declarant control, voting on an amendment under subsection (1) of this
10 section shall be without regard to any weighted vote or special voting right reserved by the declarant
11 except as otherwise provided under ORS 94.585. Nothing in this subsection is intended to prohibit a
12 declarant from reserving the right to require the declarant's consent to an amendment during the period
13 reserved in the declaration for declarant control.

14 (6) The board of directors, upon the adoption of a resolution, may cause a restated declaration to be
15 prepared and recorded to codify individual amendments that have been adopted in accordance with this
16 section or ORS 94.585 without the further approval of owners. A declaration restated under this
17 subsection must:

18 (a) Include all previously adopted amendments in effect and may not include any other changes
19 except to correct scriveners' errors or to conform format and style;

20 (b) Include a statement that the board of directors has adopted a resolution in accordance with
21 this subsection and is causing the declaration to be restated and recorded under this subsection;

22 (c) Include a reference to the recording index numbers and date of recording of the initial
23 declaration and all previously recorded amendments in effect being codified;

24 (d) Include a certification by the president and secretary of the association that the restated
25 declaration includes all previously adopted amendments in effect and no other changes except, if
26 applicable, to correct scriveners' errors or to conform format and style; and

27 (e) Be executed and acknowledged by the president and secretary of the association and recorded
28 in the deed records of each county in which the planned community is located.

29
30 **94.595 Reserve account for maintaining, repairing and replacing common property; reserve**
31 **study; maintenance plan.**

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

33 (a) Conduct an initial reserve study as described in subsection (3) of this section;

34 (b) Prepare an initial maintenance plan as described in subsection (4) of this section; and

35 (c) Establish a reserve account as provided in subsection (2) of this section.

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

42 (A) That can reasonably be funded from the general budget or other funds or accounts of the
43 association; or

44 (B) For which one or more, but less than all, owners are responsible for maintenance and
45 replacement under the provisions of the declaration or bylaws.

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

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

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

2 (B) Other reliable information.

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

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

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

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

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

14 (b) The reserve study shall:

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

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

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

20 (4) (a) The board of directors shall prepare a maintenance plan for the maintenance, repair and
21 replacement of all property for which the association has maintenance, repair or replacement
22 responsibility under the declaration or bylaws or ORS 94.550 to 94.783. The maintenance plan shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (7) The reserve account is subject to the requirements and restrictions of ORS 94.670 and any
5 additional restrictions or requirements imposed by the declaration, bylaws or rules of the homeowners
6 association.

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

11 (b) Following the turnover meeting described in ORS 94.609, on an annual basis, the board of
12 directors, with the approval of all owners, may elect not to fund the reserve account for the following
13 year.

14 (9) Assessments paid into the reserve account are the property of the association and are not
15 refundable to sellers or owners of lots.

16
17 **(Declarant Control; Turnover of Administrative Control)**

18 **94.600 Declarant control of association.**

19 (1) Subject to ORS 94.604 to 94.621, a declaration may reserve special declarant rights including,
20 without limitation, the right to a period of declarant control that may be of limited or unlimited duration.
21 A formal or written proxy or power of attorney is not required from an owner to vest the declarant with
22 such authority.

23 (2) A declarant may voluntarily relinquish any rights reserved in the declaration under subsection (1)
24 of this section.

25 (3) Upon the expiration of any period of declarant control reserved in the declaration under
26 subsection (1) of this section, the rights automatically shall pass to the lot owners, including the
27 declarant if the declarant owns a lot in the planned community.

28 (4) A declarant may not amend a declaration to increase the scope of special declarant rights
29 reserved in the declaration after the sale of the first lot in the planned community unless owners
30 representing 75 percent of the total vote, other than the declarant, agree to the amendment.

31
32 **94.604 Transitional advisory committee.**

33 (1) As provided in this section, the declarant or the owners of a planned community that contains at
34 least 20 lots in either the initial development or with the annexation of additional property shall form a
35 transitional advisory committee to provide for the transition from administrative responsibility by the
36 declarant of the planned community under ORS 94.600 to administrative responsibility by the
37 association. The declarant shall call a meeting of owners for the purpose of selecting a transitional
38 advisory committee not later than the 60th day after the date the declarant conveys 50 percent or more of
39 the lots then existing in the planned community to owners other than a successor declarant.

40 (2) The transitional advisory committee shall consist of three or more members. The owners, other
41 than the declarant, shall select two or more members. The declarant may select no more than one
42 member. The committee shall have reasonable access to all information and documents which the
43 declarant is required to turn over to the association under ORS 94.616.

44 (3) An owner may call a meeting of owners to select the transitional advisory committee if the
45 declarant fails to do so under subsection (1) of this section.

46 (4) Notwithstanding subsection (1) of this section, if the owners do not select members for the
47 transitional advisory committee under subsection (2) of this section, the declarant shall have no further
48 obligation to form the committee.

1 (5) The requirement for a transitional advisory committee shall not apply once the turnover meeting
2 called under ORS 94.609 has been held.
3

4 **94.609 Notice of meeting to turn over administrative responsibility.**

5 (1) At the time specified in the declaration, but not later than 90 days after expiration of any period
6 of declarant control reserved under ORS 94.600, or 90 days after conveying 10 lots in the planned
7 community if there is not a period of declarant control, the declarant shall call a meeting for the purpose
8 of turning over administrative responsibility for the planned community to the homeowners association.

9 (2) The declarant shall give notice of the meeting to each owner as provided in the bylaws.

10 (3) If the declarant does not call a meeting under this section within the required time, the
11 transitional advisory committee formed under ORS 94.604 or any owner may call a meeting and give
12 notice as required in this section.
13

14 **94.616 Turnover meeting; transfer of administration; receivership.**

15 (1) At the meeting called under ORS 94.609, the declarant shall turn over to the homeowners
16 association the responsibility for the administration of the planned community, and the association shall
17 accept the administrative responsibility from the declarant.

18 (2) If a quorum of the owners is present, the owners shall elect not fewer than the number of
19 directors sufficient to constitute a quorum of the board of directors in accordance with the declaration or
20 bylaws of the association.

21 (3) At the meeting called under ORS 94.609, the declarant shall deliver to the association:

22 (a) The original or a photocopy of the recorded declaration and copies of the bylaws and the
23 articles of incorporation, if any, of the planned community and any supplements and amendments to the
24 articles or bylaws;

25 (b) A deed to the common property in the planned community, unless otherwise provided in the
26 declaration;

27 (c) The minute books, including all minutes, and other books and records of the association and
28 the board of directors;

29 (d) All rules and regulations adopted by the declarant;

30 (e) Resignations of officers and members of the board of directors who are required to resign
31 because of the expiration of any period of declarant control reserved pursuant to ORS 94.600;

32 (f) A financial statement. The financial statement:

33 (A) Must consist of a balance sheet and an income and expense statement for the preceding
34 12-month period or the period following the recording of the declaration, whichever period is shorter;
35 and

36 (B) Must be reviewed, in accordance with the Statements on Standards for Accounting and
37 Review Services issued by the American Institute of Certified Public Accountants, by an independent
38 certified public accountant licensed in the State of Oregon if the annual assessments of an association
39 exceed \$75,000;

40 (g) All funds of the association and control of the funds, including all bank records;

41 (h) All tangible personal property that is property of the association, and an inventory of the
42 property;

43 (i) Records of all property tax payments for the common property to be administered by the
44 association;

45 (j) Copies of any income tax returns filed by the declarant in the name of the association, and
46 supporting records for the returns;

47 (k) All bank signature cards;

48 (l) The reserve account established in the name of the association under ORS 94.595;

1 (m) The reserve study and the maintenance plan required under ORS 94.595, including all
2 updates and other sources of information that serve as a basis for calculating reserves in accordance with
3 ORS 94.595;

4 (n) An operating budget for the portion of the planned community turned over to association
5 administration and a budget for replacement and maintenance of the common property;

6 (o) A copy of the following, if available:

7 (A) The as-built architectural, structural, engineering, mechanical, electrical and plumbing
8 plans;

9 (B) The original specifications, indicating all subsequent material changes;

10 (C) The plans for underground site service, site grading, drainage and landscaping together
11 with cable television drawings;

12 (D) Any other plans and information relevant to future repair or maintenance of the property;
13 and

14 (E) A list of the general contractor and the electrical, heating and plumbing subcontractors
15 responsible for construction or installation of common property;

16 (p) Insurance policies;

17 (q) Copies of any occupancy permits issued for the planned community;

18 (r) Any other permits issued by governmental bodies applicable to the planned community in
19 force or issued within one year before the date on which the owners assume administrative
20 responsibility;

21 (s) A list of any written warranties on the common property that are in effect and the names of
22 the contractor, subcontractor or supplier who made the installation for which the warranty is in effect;

23 (t) A roster of owners and their addresses and telephone numbers, if known, as shown on the
24 records of the declarant;

25 (u) Leases of the common property and any other leases to which the association is a party;

26 (v) Employment or service contracts in which the association is one of the contracting parties or
27 service contracts in which the association or the owners have an obligation or responsibility, directly or
28 indirectly, to pay some or all of the fee or charge of the person performing the service; and

29 (w) Any other contracts to which the homeowners association is a party.

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

34 (5) If the declarant has complied with this section and unless the declarant has sufficient voting
35 rights as a lot owner to control the association, the declarant is not responsible for the failure of the
36 owners to elect the number of directors sufficient to constitute a quorum of the board of directors and
37 assume control of the association in accordance with subsection (1) of this section. The declarant is
38 relieved from further responsibility for the administration of the association, except as a lot owner.

39 (6) If the owners present do not constitute a quorum or the owners fail to elect the number of
40 directors sufficient to constitute a quorum of the board of directors at the turnover meeting held in
41 accordance with this section:

42 (a) At any time before the election of the number of directors sufficient to constitute a quorum,
43 an owner or first mortgagee may call a special meeting for the purpose of election of directors and shall
44 give notice of the meeting in accordance with the notice requirements in the bylaws for special
45 meetings. The owners and first mortgagees present at the special meeting shall select a person to preside
46 over the meeting.

47 (b) An owner or first mortgagee may request a court to appoint a receiver as provided in ORS
48 94.642.

49

1 **94.621 Rights of declarant following turnover meeting.** If a declarant has not completed
2 development of lots or common property in a planned community at the time of the meeting called
3 under ORS 94.609, the declarant may continue to hold the special declarant rights, other than a right of
4 declarant control, reserved under the declaration.
5

6 **94.622 Obligations and liabilities arising from transfer of special declarant rights.**

7 (1) As used in this section, “affiliate” means any person who controls a transferor or successor
8 declarant, is controlled by a transferor or successor declarant or is under common control with a
9 transferor or successor declarant.

10 (2) A person controls or is controlled by a transferor or successor declarant if the person:

11 (a) Is a general partner, officer, director or employee;

12 (b) Directly or indirectly, or acting in concert with one or more other persons or through one or
13 more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20
14 percent of the voting interests of the transferor or successor declarant;

15 (c) Controls in any manner the election of a majority of the members of the board of directors; or

16 (d) Has contributed more than 20 percent of the capital of the transferor or successor declarant.

17 (3) Upon the transfer of any special declarant right, the liabilities and obligations of a transferor are
18 as follows:

19 (a) A transferor is not relieved of any obligation or liability arising before the transfer. Lack of
20 privity does not deprive any owner of standing to bring an action to enforce any obligation of the
21 transferor.

22 (b) If a transferor retains any special declarant right, or if a successor declarant is an affiliate of
23 the transferor, the transferor is subject to liability for all obligations and liabilities imposed on a
24 declarant by the provisions of ORS 94.550 to 94.783 or by the declaration or bylaws arising after the
25 transfer and is jointly and severally liable with the successor declarant for the liabilities and obligations
26 of the successor declarant that relate to the special declarant rights.

27 (c) A transferor who does not retain special declarant rights does not have an obligation or
28 liability for an act or omission or for a breach of a contractual obligation arising from the exercise of a
29 special declarant right by a successor declarant who is not an affiliate of the transferor.

30 (4) Upon transfer of any special declarant right, the liabilities and obligations of a successor
31 declarant are as follows:

32 (a) A successor declarant who is an affiliate of the transferor is subject to all obligations and
33 liabilities imposed on a declarant by the provisions of this chapter or by the declaration or bylaws.

34 (b) A successor declarant who is not an affiliate of the transferor is not liable for any
35 misrepresentations or warranties made or required to be made by the declarant or previous successor
36 declarant or for any breach of fiduciary obligation by such person. Such a successor declarant, however,
37 shall comply with any provisions of the declaration and bylaws that pertain to such successor declarant’s
38 ownership of the lot or lots and the exercise of any special declarant right.
39

40 **94.623 Acquisition of special declarant rights by successor declarant; exceptions.**

41 (1) Except as otherwise provided in subsections (2) and (3) of this section, a developer, vendor under
42 a land sale contract, mortgagee of a mortgage or beneficiary of a trust deed affecting the declarant’s
43 interest in the property shall acquire all special declarant rights of the transferor upon transfer by the
44 declarant or prior successor declarant of all of such transferor’s interest in a planned community, unless:

45 (a) The conveyance evidences an intent not to transfer any special declarant rights;

46 (b) An instrument executed by the transferor and the transferee evidences an intent not to transfer
47 any special declarant rights and is recorded in the office of the recording officer of every county in
48 which the property is located; or

1 (c) The transferee executes an instrument disclaiming any right to exercise any special declarant
2 rights and such instrument is recorded in the office of the recording officer of every county in which the
3 property is located.

4 (2) A transferee under subsection (1) of this section shall acquire less than all special declarant rights
5 if:

6 (a) The conveyance from the transferor or an instrument executed by the transferor and the
7 transferee evidences an intent to transfer less than all special declarant rights and states the specific
8 rights being transferred, and such instrument is recorded in the office of the recording officer of every
9 county in which the property is located; or

10 (b) The transferee executes an instrument disclaiming specific special declarant rights and the
11 instrument is recorded in the office of the recording officer of every county in which the property is
12 located.

13 (3) When a transferee acquires all of the declarant's interest in the planned community in which the
14 declarant has reserved the right to expand the planned community under ORS 94.580, the transferee
15 shall not acquire the right to annex property unless the transferee simultaneously acquires from the
16 declarant property adjacent to the planned community, or unless the conveyance evidences an intent to
17 transfer such right to the transferee.

18 (4) A declarant or a successor declarant may transfer all or less than all of the transferor's special
19 declarant rights to a transferee, whether or not any interest in real property is conveyed, by an instrument
20 executed by the declarant or successor declarant and the transferee evidencing an intent to transfer all or
21 specific special declarant rights, which instrument shall be recorded in the office of the recording officer
22 of every county in which the property is located. If the transfer is not subject to subsection (1) of this
23 section, it shall also bear the written consent of any holder of a blanket encumbrance on the planned
24 community.

25 (5) An instrument disclaiming or transferring special declarant rights shall be properly
26 acknowledged as provided by law.

27
28 **(Homeowners Association; Management of Planned Community)**

29 **94.625 Formation of homeowners association; adoption of initial bylaws; amendment of**
30 **bylaws.**

31 (1) Except as provided in subsection (2) of this section, not later than the date on which the first lot
32 in the planned community is conveyed, the declarant shall:

33 (a) Organize the homeowners association as a nonprofit corporation under ORS chapter 65;

34 (b) Adopt, on behalf of the association, the initial bylaws required under ORS 94.635 to
35 govern the administration of the planned community; and

36 (c) Record the bylaws in the office of the recording officer of each county in which the
37 planned community is located.

38 (2) If the plat contains a conveyance of any property to the homeowners association, the
39 declarant shall organize the homeowners association as a nonprofit corporation under ORS chapter 65
40 before the plat is recorded.

41 (3) (a) The board of directors of an association of a planned community created under ORS
42 94.550 to 94.783 before January 1, 2002, or a planned community described in ORS 94.572 shall cause
43 the bylaws of the association and amendments to the bylaws in effect but not codified in the bylaws to
44 be certified as provided in this subsection and recorded in the office of the recording officer of each
45 county in which the planned community is located within 180 days of receipt of a written request from
46 an owner that the bylaws be recorded.

47 (b) The president and secretary of the association shall certify and acknowledge, in the manner
48 provided for acknowledgment of deeds, that:

49 (A) The bylaws are the duly adopted bylaws of the association; and

1 (B) Each amendment to the bylaws was duly adopted in accordance with the bylaws of the
2 association.

3 (c) The 180-day period specified in paragraph (a) of this subsection may be extended as
4 necessary if the board of directors is unable to record the bylaws for justifiable reasons.

5 (d) Failure to record the bylaws or amendments to the bylaws in accordance with this subsection
6 does not render the bylaws or amendments to the bylaws ineffective.

7 (e) After the bylaws are recorded under this section, all amendments to the bylaws adopted
8 thereafter must be recorded as provided in this section.

9 (4) Unless otherwise provided in the bylaws, amendments to the bylaws may be proposed by a
10 majority of the board of directors or by at least 30 percent of the owners of the planned community.

11 (5) Subject to subsection (6) of this section, an amendment is not effective unless the amendment is:

12 (a) Approved, unless otherwise provided in the bylaws, by a majority of the votes in a planned
13 community present, in person or by proxy, at a duly constituted meeting, by written ballot in lieu of a
14 meeting under ORS 94.647 or other procedure permitted under the declaration or bylaws;

15 (b) Certified by the president and secretary of the association as having been adopted in
16 accordance with the bylaws and this section and acknowledged in the manner provided for
17 acknowledgment of deeds if the amendment is required to be recorded under paragraph (c) of this
18 subsection; and

19 (c) Recorded in the office of the recording officer if the bylaws to which the amendment relates
20 were recorded.

21 (6) If a provision required to be in the declaration under ORS 94.580 is included in the bylaws, the
22 voting requirements for amending the declaration shall also govern the amendment of the provision in
23 the bylaws.

24 (7) Notwithstanding a provision in the bylaws, including bylaws adopted prior to July 14, 2003, that
25 requires an amendment to be executed, or executed and acknowledged, by all owners approving the
26 amendment, amendments to the bylaws under this section become effective after approval by the owners
27 if executed and certified on behalf of the association by the president and secretary in accordance with
28 subsection (5)(b) of this section.

29 (8) An amendment to the bylaws is conclusively presumed to have been regularly adopted in
30 compliance with all applicable procedures relating to the amendment unless an action is brought within
31 one year after the effective date of the amendment or the face of the amendment indicates that the
32 amendment received the approval of fewer votes than required for approval. Nothing in this subsection
33 prevents the further amendment of an amended bylaw.

34 (9) Failure to comply with subsection (1) of this section does not invalidate a conveyance from the
35 declarant to an owner.

36 (10) The board of directors, by resolution and without the further approval of the owners, may cause
37 restated bylaws to be prepared and recorded to codify individual amendments that have been adopted in
38 accordance with subsection (5) of this section. Bylaws restated under this subsection must:

39 (a) Include all previously adopted amendments that are in effect and may not include any other
40 changes except to correct scriveners' errors or to conform format and style;

41 (b) Include a statement that the board of directors has adopted a resolution in accordance with
42 this subsection and is causing the bylaws to be restated and recorded under this subsection;

43 (c) Include a reference to the recording index numbers and date of recording of the initial
44 bylaws, if recorded, and all previously recorded amendments that are in effect and are being codified;

45 (d) Include a certification by the president and secretary of the association that the restated
46 bylaws include all previously adopted amendments that are in effect and no other changes except, if
47 applicable, to correct scriveners' errors or to conform form and style; and

48 (e) Be executed and acknowledged by the president and secretary of the association and recorded
49 in the deed records of each county in which the planned community is located.

1 **94.626 Corporate dissolution of association.**

2 (1) If a homeowners association is at any time dissolved, whether inadvertently or deliberately:

3 (a) The association automatically continues as an unincorporated association under the same
4 name.

5 (b) The unincorporated association:

6 (A) Has all the property, powers and obligations of the incorporated association existing
7 immediately prior to dissolution;

8 (B) Shall be governed by the bylaws and, to the extent applicable, the articles of
9 incorporation of the incorporated association; and

10 (C) Shall be served by the members of the board of directors and the officers who served
11 immediately prior to dissolution.

12 (2) A separate association is not created when an association is reinstated after administrative
13 dissolution under ORS 65.654 or again incorporated following dissolution. The association
14 automatically continues without any further action by incorporators, directors or officers that may
15 otherwise be required under ORS chapter 65.

16 (3) (a) The association described in subsection (2) of this section has all the property, powers and
17 obligations of the unincorporated association that existed immediately prior to incorporation or
18 reinstatement.

19 (b) The bylaws in effect immediately prior to incorporation or reinstatement constitute the
20 bylaws of the incorporated association.

21 (c) The members of the board of directors and the officers continue to serve as directors and
22 officers.

23 (4) The provisions of this section apply notwithstanding any provision of a governing document of a
24 planned community that appears to be contrary.

25
26 **94.630 Powers of association.**

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

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

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

32 (c) Hire and terminate managing agents and other employees, agents and independent
33 contractors;

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

35 (e) Subject to subsection (4) of this section, initiate or intervene in litigation or administrative
36 proceedings in its own name and without joining the individual owners in the following:

37 (A) Matters relating to the collection of assessments and the enforcement of governing
38 documents;

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

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

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

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

46 (ii) Common property;

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

1 (i) Resulting from a nuisance or a defect in or damage to common property or
2 individually owned real property, the expenses for which, including maintenance, repair or replacement,
3 insurance or other expenses, the association is responsible; or
4 (ii) Required to facilitate repair to any common property; and
5 (F) Any other matter to which the association has standing under law or pursuant to the
6 declaration or bylaws;
7 (f) Make contracts and incur liabilities;
8 (g) Regulate the use, maintenance, repair, replacement and modification of common property;
9 (h) Cause additional improvements to be made as a part of the common property;
10 (i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or
11 personal property, except that common property may be conveyed or subjected to a security interest only
12 pursuant to ORS 94.665;
13 (j) Grant easements, leases, licenses and concessions through or over the common property as
14 provided in ORS 94.665;
15 (k) Modify, close, remove, eliminate or discontinue the use of common property, including any
16 improvement or landscaping, regardless of whether the common property is mentioned in the
17 declaration, provided that:
18 (A) Nothing in this paragraph is intended to limit the authority of the association to seek
19 approval of the modification, closure, removal, elimination or discontinuance by the owners; and
20 (B) Modification, closure, removal, elimination or discontinuance other than on a temporary
21 basis of any swimming pool, spa or recreation or community building must be approved by at least a
22 majority of owners voting on the matter at a meeting or by written ballot held in accordance with the
23 declaration, bylaws or ORS 94.647;
24 (l) Impose and receive any payments, fees or charges for the use, rental or operation of the
25 common property and services provided to owners;
26 (m) Adopt rules regarding the termination of utility services paid for out of assessments of the
27 association and access to and use of recreational and service facilities available to owners. The rules
28 must provide for written notice and an opportunity to be heard before the association may terminate the
29 rights of any owners to receive the benefits or services until the correction of any violation covered by
30 the rule has occurred;
31 (n) Impose charges for late payment of assessments and attorney fees related to the collection of
32 assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines for
33 violations of the declaration, bylaws, rules and regulations of the association, provided that the charge
34 imposed or the fine levied by the association is based:
35 (A) On a schedule contained in the declaration or bylaws, or an amendment to either that is
36 delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses
37 designated in writing by the owners; or
38 (B) On a resolution of the association or its board of directors that is delivered to each lot,
39 mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing by the
40 owners;
41 (o) Impose reasonable charges for the preparation and recordation of amendments to the
42 declaration;
43 (p) Provide for the indemnification of its officers and the board of directors and maintain liability
44 insurance for directors and officers;
45 (q) Assign its right to future income, including the right to receive common expense
46 assessments; and
47 (r) Exercise any other powers necessary and proper for the administration and operation of the
48 association.

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

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

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

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

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

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

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

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

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

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

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

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

46
47 **94.635 Association bylaws.** The bylaws of an association adopted under ORS 94.625, or amended
48 or adopted under ORS 94.630, shall provide for the following:

- 1 (1) The organization of the association of owners in accordance with ORS 94.625 and 94.630,
2 including when the initial meeting shall be held and the method of calling that meeting.
- 3 (2) If a Class I planned community, the formation of a transitional advisory committee in accordance
4 with ORS 94.604.
- 5 (3) The turnover meeting required under ORS 94.609, including the time by which the meeting shall
6 be called, the method of calling the meeting, the right of an owner under ORS 94.609 (3) to call the
7 meeting and a statement of the purpose of the meeting.
- 8 (4) (a) The method of calling the annual meeting and all other meetings of the owners in accordance
9 with ORS 94.650; and
- 10 (b) The percentage of votes that constitutes a quorum in accordance with ORS 94.655.
- 11 (5) (a) The election of a board of directors and the number of persons constituting the board;
12 (b) The powers and duties of the board;
13 (c) Any compensation of the directors; and
14 (d) The method of removing directors from office in accordance with ORS 94.640 (6).
- 15 (6) The terms of office of directors.
- 16 (7) The method of calling meetings of the board of directors in accordance with ORS 94.640 (10)
17 and a statement that all meetings of the board of directors shall be open to owners.
- 18 (8) The offices of president, secretary and treasurer and any other offices of the association, and the
19 method of selecting and removing officers and filling vacancies in the offices.
- 20 (9) The preparation and adoption of a budget in accordance with ORS 94.645.
- 21 (10)(a) The program for maintenance, upkeep, repair and replacement of the common property;
22 (b) The method of payment for the expense of the program and other expenses of the planned
23 community; and
24 (c) The method of approving payment vouchers.
- 25 (11) The employment of personnel necessary for the administration of the planned community and
26 maintenance, upkeep and repair of the common property.
- 27 (12) The manner of collecting assessments from the owners.
- 28 (13) Insurance coverage in accordance with ORS 94.675 and 94.685.
- 29 (14) The preparation and distribution of the annual financial statement required under ORS 94.670.
- 30 (15) The method of adopting administrative rules and regulations governing the details for the
31 operation of the planned community and use of the common property.
- 32 (16) The method of amending the bylaws in accordance with ORS 94.630. The bylaws may require
33 no greater than an affirmative majority of votes to amend any provision of the bylaws.
- 34 (17) If additional property is proposed to be annexed pursuant to ORS 94.580 (3), the method of
35 apportioning common expenses if new lots are added during the fiscal year.
- 36 (18) Any other details regarding the planned community that the declarant or the association
37 consider desirable. However, if a provision required to be in the declaration under ORS 94.580 is
38 included in the bylaws, the voting requirements for amending the declaration shall govern the
39 amendment of that provision of the bylaws.

40 41 **94.639 Criteria for board of directors membership.**

- 42 (1) Each member of the board of directors must be an individual and, except as provided in
43 subsections (2) and (3) of this section, an owner or co-owner of a lot in the planned community.
- 44 (2) A director appointed by a declarant under ORS 94.600 need not be an owner or co-owner of a lot
45 in the planned community.
- 46 (3) (a) Except as otherwise provided in the bylaws, prior to election to the board of directors, an
47 individual described in this subsection shall, upon request of the board, provide the board with
48 documentation satisfactory to the board that the individual is qualified to represent the entity or is a
49 trustee or is serving in a fiduciary capacity for the owner of a lot.

1 (b) If a corporation, limited liability company or partnership owns a lot in the planned
2 community or owns an interest in an entity that owns a lot in the planned community, an officer,
3 employee or agent of a corporation, a member, manager, employee or agent of a limited liability
4 company, or a partner, employee or agent of a partnership may serve on the board of directors.

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

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

10 (4) The position of an individual serving on the board of directors under subsection (3) of this
11 section automatically becomes vacant if the individual no longer meets the requirements of subsection
12 (3) of this section.

13
14 **94.640 Association board of directors; powers and duties; removal of director; meetings;**
15 **executive sessions.**

16 (1) The board of directors of an association may act on behalf of the association except as limited by
17 the declaration and the bylaws. In the performance of their duties, officers and members of the board of
18 directors are governed by this section and the applicable provisions of ORS 65.357, 65.361, 65.367,
19 65.369 and 65.377, whether or not the association is incorporated under ORS chapter 65.

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

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

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

26 (5) The board of directors of the association may record a statement of association information as
27 provided in ORS 94.667.

28 (6) (a) Unless otherwise provided in the declaration or bylaws, at a meeting of the owners at which a
29 quorum is present, the owners may remove a director from the board of directors, other than directors
30 appointed by the declarant or individuals who are ex officio directors, with or without cause, by a
31 majority vote of owners who are present and entitled to vote.

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

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

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

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

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

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

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

48 (A) Consult with legal counsel.

49 (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 (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.

94.641 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.

94.642 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

1 mortgagee may request the circuit court of the county in which the planned community is located to
2 appoint a receiver under ORCP 80 to manage the affairs of the association.

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

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

9 (a) A description of the intended action.

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

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

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

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

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

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

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

26 (7) Notwithstanding subsections (2) and (3) of this section, in the case of an emergency, the court
27 may waive the notice requirements of subsections (2) and (3) of this section.

28 **94.645 Adoption of annual budget.**

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

30 (2) The budget shall include moneys to be allocated to the reserve account under ORS 94.595.

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

33 (4) If the board fails to adopt a budget, the last adopted annual budget shall continue in effect.

34 **94.647 Use of written ballot for approving or rejecting matters subject to meeting of 35 association members; procedures; exceptions.**

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

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

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

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

45 (d) A special meeting of the association called at the request of owners under ORS 94.650 (2).

46 (2) (a) A written ballot shall set forth each proposed action and provide an opportunity to vote for or
47 against each proposed action.
48
49

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

6 (A) A secrecy envelope;

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

8 (C) Instructions for marking and returning the ballot.

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

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

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

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

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

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

17 (d) The requirements of paragraph (b)(A) and (B) of this subsection do not apply to a written
18 ballot of an owner if the consent or approval of that owner is required by the declaration or bylaws or
19 ORS 94.550 to 94.783.

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

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

26 (b) If approval of a proposed action otherwise would require a meeting at which a specified
27 percentage of owners must authorize the action, the proposal shall be deemed to be approved when the
28 percentage of total votes cast in favor of the proposal equals or exceeds the required percentage. The
29 proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval
30 impossible or when both the date for return of ballots has passed and the required percentage has not
31 been met.

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

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

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

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

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

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

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

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

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

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

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

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

13 (8) Notwithstanding subsection (7) of this section, written ballots that are returned in secrecy
14 envelopes may not be examined or counted before the date certain specified in the solicitation or any
15 extension under subsection (5)(c) of this section.

16
17 **94.650 Meetings of lot owners; notice.**

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

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

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

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

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

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

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

39 (6) Mortgagees may designate a representative to attend a meeting called under this section.
40

41 **94.652 Electronic notice to owner or director.**

42 (1) Subject to subsection (2) of this section and notwithstanding any requirement under the
43 declaration or bylaws or ORS 94.550 to 94.783, in the discretion of the board of directors of the
44 homeowners association, any notice, information or other written material required to be given to an
45 owner or director under the declaration or bylaws or ORS 94.550 to 94.783, may be given by electronic
46 mail, facsimile or other form of electronic communication.

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

49 (a) Failure to pay an assessment;

1 (b) Foreclosure of an association lien under ORS 94.709; or

2 (c) An action the association may take against an owner.

3 (3) An owner or director may decline to receive notice by electronic mail, facsimile or other form of
4 electronic communication and may direct the board of directors to provide notice in the manner required
5 under the declaration or bylaws or ORS 94.550 to 94.783.

6
7 **94.655 Quorum for association meetings.**

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

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

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

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

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

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

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

22 (b) The meeting notice specifies:

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

25 (B) The reduced quorum requirement.

26 (5) For the purpose of establishing a quorum under this section, an individual who holds a proxy and
27 an absentee ballot, if absentee ballots are permitted, counts as a present owner.

28
29 **94.657 Rules of order.**

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

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

37 (3) A decision of the association and the board of directors is deemed valid without regard to
38 procedural errors related to the rules of order one year after the decision is made unless the error appears
39 on the face of a written instrument memorializing the decision.

40
41 **94.658 Voting or granting consent.**

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

44 (2) Unless the declaration or bylaws provide otherwise:

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

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

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

7 (B) A valid court order may establish the right of co-owners' authority to vote.
8

9 **94.660 Method of voting or consenting.**

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

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

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

14 (c) Unless the declaration or bylaws or ORS 94.550 to 94.783 provide otherwise, pursuant to a
15 proxy in accordance with subsection (2) of this section.

16 (d) By written ballot in lieu of a meeting under ORS 94.647.

17 (e) By any other method specified by the declaration or bylaws or ORS 94.550 to 94.783.

18 (2) (a) A proxy:

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

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

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

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

23 (c) An owner may not revoke a proxy given pursuant to this section except by actual notice of
24 revocation to the person presiding over a meeting of the association or to the board of directors if a vote
25 is being conducted by written ballot in lieu of a meeting pursuant to ORS 94.647.

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

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

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

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

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

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

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

40 (A) Returned the absentee ballot; and

41 (B) Canceled the absentee ballot, if cancellation is permitted in the instructions given under
42 paragraph (b) of this subsection.
43

44 **94.661 Electronic ballot.**

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

46 (a) Electronic mail;

47 (b) Facsimile transmission;

48 (c) Posting on a website; or

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

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

4 (3) An electronic ballot shall comply with the requirements of this section and the declaration or
5 bylaws or ORS 94.550 to 94.783.

6 (4) An electronic ballot may be accompanied by or contained in an electronic notice in accordance
7 with ORS 94.652.

8 (5) If an electronic ballot is posted on a website, a notice of the posting shall be sent to each owner
9 and shall contain instructions on obtaining access to the posting on the website.

10 (6) A vote made by electronic ballot is effective when it is electronically transmitted to an address,
11 location or system designated by the board of directors for that purpose.

12 (7) Unless otherwise provided in the declaration or bylaws or rules adopted by the board of directors,
13 a vote by electronic ballot may not be revoked.

14 (8) The board of directors may not elect to use electronic ballots unless there are procedures to
15 ensure:

16 (a) Compliance with ORS 94.647 if the vote conducted by written ballot under ORS 94.647 uses
17 the procedures specified in ORS 94.647 (2)(b); and

18 (b) That the electronic ballot is secret, if the declaration or bylaws or rules adopted by the board
19 require that electronic ballots be secret.

20
21 **94.662 Notice to lot owners of intent of association to commence judicial or administrative**
22 **proceeding; contents of notice; right of lot owner to opt out.**

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

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

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

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

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

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

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

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

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

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

42 (D) Does not interfere with the association's right to make repairs to common areas.

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

48
49 **94.665 Authority of association to sell, transfer, convey or encumber common property.**

1 (1) Except as otherwise provided in the declaration, a homeowners association may sell, transfer,
2 convey or subject to a security interest any portion of the common property if 80 percent or more of the
3 votes in the homeowners association, including 80 percent of the votes of lots not owned by a declarant
4 at the time of the vote, are cast in favor of the action.

5 (2) A sale, transfer, conveyance or encumbrance by a security interest of the common property or
6 any portion of the common property made pursuant to a right reserved in the declaration under this
7 section may provide that the common property be released from any restriction imposed on the common
8 property by the declaration or other governing document if the request for approval of the action also
9 includes approval of the release. However, a sale, transfer or encumbrance may not deprive any lot of its
10 right of access to or support for the lot without the consent of the owner of the lot.

11 (3) Subject to subsections (4) and (5) of this section, unless expressly limited or prohibited by the
12 declaration, the homeowners association may execute, acknowledge and deliver leases, easements,
13 rights of way, licenses and other similar interests affecting common property and consent to vacation of
14 roadways within and adjacent to common property.

15 (4) (a) Except as otherwise provided in the declaration and paragraph (b) of this subsection, the
16 granting of a lease, easement, right of way, license or other similar interest pursuant to subsection (3) of
17 this section shall be first approved by at least 75 percent of owners present at a meeting of the
18 association or with the consent of at least 75 percent of all owners solicited by any means the board of
19 directors determines is reasonable. If a meeting is held to conduct the vote, the meeting notice must
20 include a statement that approval of the grant will be an item of business in the agenda of the meeting.

21 (b) (A) The granting of a lease, easement, right of way, license or other similar interest affecting
22 common property for a term of two years or less requires the approval of a majority of the board of
23 directors.

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

29 (5) Unless the declaration otherwise provides, the consent to vacation of roadways within and
30 adjacent to common property must be approved first by at least a majority of owners present and voting
31 at a meeting of the association or with the consent of at least a majority of all owners solicited by any
32 means the board of directors determines is reasonable. If a meeting is held to conduct the vote, the
33 meeting notice must include a statement that the roadway vacation will be an item of business in the
34 agenda of the meeting.

35 (6) An instrument that sells, transfers, conveys or encumbers common property pursuant to
36 subsection (1) of this section or grants an interest or consent pursuant to subsection (3) of this section
37 shall:

38 (a) State that the action of the homeowners association was approved in accordance with this
39 section; and

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

42 (7) The association shall treat proceeds of any sale, transfer or conveyance under subsection (1) of
43 this section, any grant under subsection (4) of this section or any consent to vacation under subsection
44 (5) of this section as an asset of the association.

45
46 **94.667 Recording association information with county clerk.**

47 (1) As used in this section, "association" means an association formed under ORS 94.625, 94.846 or
48 100.405, or any other association in which a person holds membership by virtue of owning or possessing
49 a real estate interest subject to assessment and lien authority pursuant to a recorded instrument.

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

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

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

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

9 (B) Notice of a transfer of property;

10 (c) A list of the properties, as described for recordation in ORS 93.600, subject to assessment by
11 the association;

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

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

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

17 (4) The county clerk may charge a fee for recording a statement under this section according to the
18 provisions of ORS 205.320 (4).

19
20 **94.670 Association duty to keep documents and records; deposit of assessments; payment of**
21 **association expenses; review of financial statement by certified public accountant; examination of**
22 **records by owner.**

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

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

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

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

36 (b) Subject to any limitations imposed by the declaration or bylaws, funds of the association
37 maintained in accounts established under this subsection may be used to purchase obligations of the
38 United States government.

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

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

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

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

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

46 (5) Subject to ORS 94.671, the association of a planned community that has annual assessments
47 exceeding \$75,000 shall cause the financial statement required under subsection (4) of this section to be
48 reviewed within 180 days after the end of the fiscal year by an independent certified public accountant

1 licensed in the State of Oregon in accordance with the Statements on Standards for Accounting and
2 Review Services issued by the American Institute of Certified Public Accountants.

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

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

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

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

16 (i) Regular and special assessments;

17 (ii) Fines and other charges;

18 (iii) Accrued interest; and

19 (iv) Late payment charges.

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

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

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

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

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

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

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

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

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

40 (E) Documents, correspondence or management or board reports compiled for or on behalf of
41 the association or the board of directors by its agents or committees for consideration by the board of
42 directors in executive session held in accordance with ORS 94.640 (8).

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

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

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

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

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

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

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

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

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

9 (12) The board of directors, by resolution, may adopt reasonable rules governing the frequency,
10 time, location, notice and manner of examination and duplication of association records and the
11 imposition of a reasonable fee for furnishing copies of any documents, information or records described
12 in this section. The fee may include reasonable personnel costs for furnishing the documents,
13 information or records.

14
15 **94.671 Application of ORS 94.670 (5).** The requirements of ORS 94.670 (5) first apply:

16 (1) Commencing with the fiscal year following the turnover meeting required by ORS 94.616 for the
17 association of a planned community created under ORS 94.550 to 94.783 prior to January 1, 2004, if the
18 turnover meeting has not yet occurred on January 1, 2004.

19 (2) Commencing with the fiscal year beginning in calendar year 2004 for the association of a
20 planned community created under ORS 94.550 to 94.783 if the turnover meeting required by ORS
21 94.616 has occurred on or before January 1, 2004.

22 (3) Commencing with the fiscal year following the turnover meeting required by ORS 94.616 for the
23 association of a planned community created under ORS 94.550 to 94.783 on or after January 1, 2004.

24 (4) Commencing with the fiscal year following the year in which owners assume responsibility for
25 administration of a planned community described in ORS 94.572 if the owners have not assumed
26 responsibility for administration of the planned community on January 1, 2004.

27 (5) Commencing with the fiscal year beginning in calendar year 2004 for the association of a
28 planned community described in ORS 94.572 if the owners have assumed responsibility for
29 administration of the planned community on or before January 1, 2004.

30
31 **94.673 When compliance with specified provisions of ORS 94.640 and 94.670 required.**

32 (1) The homeowners association of a subdivision that received preliminary plat approval before July
33 1, 1982, shall comply with the provisions of ORS 94.640 (1), (3), (4) and (8) to (11) and 94.670 if:

34 (a) An owner submits a written request to the homeowners association to comply with the
35 provisions;

36 (b) The subdivision otherwise conforms to the description of a planned community under ORS
37 94.550; and

38 (c) The subdivision is not otherwise exempted under ORS 94.570.

39 (2) A homeowners association board of directors is not subject to ORS 94.780 unless the association
40 fails to comply with subsection (1) of this section after receiving a written request from an owner.

41
42 **94.675 Insurance for common property.**

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

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

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

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

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

6 (4) Notwithstanding a provision in the declaration or bylaws that imposes a maximum deductible
7 amount in an association insurance policy, if the board of directors determines that it is in the best
8 interest of the association and owners as provided in subsection (5) of this section, the board may adopt
9 a resolution authorizing the association to obtain and maintain an insurance policy with a deductible
10 amount exceeding the specified maximum, but not in excess of the greater of:

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

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

15 (6) Not later than 10 days after adoption of a resolution under subsection (4) of this section, the
16 board of directors shall ensure that a copy of the resolution and a notice described in ORS 94.676 are:

- 17 (a) Delivered to each owner; or
- 18 (b) Mailed to the mailing address of each owner or to the mailing address designated in writing
19 by the owner.

20 21 **94.676 Insurance deductible for certain planned communities.**

22 (1) If the declaration or bylaws of a planned community created under ORS 94.550 to 94.783 before
23 September 27, 2007, or a planned community subject to ORS 94.572 do not assign the responsibility for
24 payment of the amount of the deductible in an association insurance policy, the board of directors of the
25 homeowners association may adopt a resolution that assigns the responsibility for payment of the
26 amount of the deductible. The resolution must include, but need not be limited to:

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

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

- 36 (a) An insurance policy that insures the owner's lot for not less than the amount of the deductible
37 in the association's insurance policy for which the owner may be responsible and that insures the
38 owner's personal property for any loss or damage; and
- 39 (b) Comprehensive liability insurance that includes, but is not limited to, coverage for negligent
40 acts of owners and tenants, guests of owners and tenants and occupants of other lots for damage to the
41 common property, to other lots and to the personal property of other persons that is located on other lots
42 or the common property.

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

- 45 (a) Prescribes a procedure for processing insurance claims. The procedure may require that all
46 claims against the association's insurance policy be processed through and coordinated by the board of
47 directors or the managing agent, if authorized by the board.
- 48 (b) Assigns the responsibility for payment of charges for handling claims, including any charges
49 by a managing agent.

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

4 (a) Delivered to each lot; or

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

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

8 (a) Advise each owner to contact an insurance agent to determine the effect of the resolution on
9 the owner's individual insurance coverage; and

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

12 (6) Failure to provide a copy of a resolution or a notice required under this section does not affect the
13 responsibility of an owner to comply with a resolution adopted under this section.

14
15 **94.677 Election to have ORS 94.645, 94.655 and 94.675 apply.** Unless contrary to the covenants,
16 conditions or restrictions of a recorded declaration or other similar instrument, or the bylaws of the
17 association adopted in accordance with documents governing the association, the homeowners
18 association board of directors of a subdivision described in ORS 94.673 (1) may elect to be governed by
19 ORS 94.645, 94.655 and 94.675, without further action by the association.

20
21 **94.680 Blanket all-risk insurance.**

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

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

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

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

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

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

33 (B) Insurance proceeds exceed or fall short of the costs of repair or reconstruction.

34
35 **94.685 Specification of insurance for individual lots.**

36 (1) Unless provided in the declaration, the bylaws shall specify:

37 (a) The insurance an owner must obtain, if any;

38 (b) The insurance, if any, an individual owner is precluded from obtaining;

39 (c) The responsibility for payment of the amount of the deductible in an association insurance
40 policy; and

41 (d) Whether or not the insurance coverage obtained and maintained by the board of directors
42 may be brought into contribution with insurance bought by owners or their mortgagees.

43 (2) The declaration or bylaws may provide that the responsibility for payment of the amount of the
44 deductible may be prescribed by resolution adopted by the board of directors.

45
46 **94.690 Terms of insurance under ORS 94.680.** The board of directors of a homeowners
47 association shall obtain, if reasonably available, terms in insurance policies under ORS 94.680 which
48 provide a waiver of subrogation by the insurer as to any claims against the board of directors of the
49 association, any owner or any guest of an owner.

1 **94.695 Authority to delegate association powers to master association.** A declaration for a
2 planned community may delegate any of the powers of the homeowners association under ORS 94.630
3 to a master association or provide that the master association may exercise any such power.
4

5 **94.700 Duration and termination of initial management agreements and service and**
6 **employment contracts; exceptions.**

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

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

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

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

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

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

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

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

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

23 (B) Biofuels or hydrogen derived from renewable resources.

24 (3) Any contract or agreement subject to subsection (1) of this section and entered into after July 1,
25 1982, may terminate without penalty to the declarant, the association or the board of directors elected
26 under ORS 94.616 if the board of directors gives not less than 30 days written notice of termination to
27 the other party not later than 60 days after the meeting called under ORS 94.609.
28

29 **(Assessments and Liens Against Lots; Easements)**

30 **94.704 Assessment and payment of common expenses.**

31 (1) Subject to subsection (2) of this section, the declarant of a planned community shall pay all
32 common expenses of the planned community until the individual lots subject to assessment are assessed
33 for common expenses as specified in the declaration pursuant to ORS 94.580 (2).

34 (2) If the declaration expressly authorizes deferment, the declarant may defer payment of accrued
35 assessments for reserves required under ORS 94.595 for a lot subject to assessment until the date the lot
36 is conveyed. However, the declarant may not defer payment of accrued assessments for reserves:

37 (a) Beyond the date of the turnover meeting provided for in the bylaws in accordance with ORS
38 94.635 (3); or

39 (b) If a turnover meeting is not held, the date the owners assume administrative control of the
40 association.

41 (3) Failure of the declarant to deposit the balance due within 30 days after the due date constitutes a
42 violation of ORS 94.777.

43 (4) The books and records of the association shall reflect the amount the declarant owes for all
44 reserve account assessments.

45 (5) (a) Except for assessments under subsections (6), (7) and (8) of this section, the board of
46 directors shall assess all common expenses against all the lots that are subject to assessment according to
47 the allocations stated in the declaration.

48 (b) Any assessment or any installment of the assessment past due shall bear interest at the rate
49 established by resolution of the board of directors.

1 (c) Nothing in this section prohibits the board from making compromises on overdue
2 assessments if the compromise benefits the association.

3 (6) Unless otherwise provided in the declaration or bylaws, any common expense or any part of a
4 common expense benefiting fewer than all of the lots may be assessed exclusively against the lots or
5 units benefited.

6 (7) Unless otherwise provided in the declaration or bylaws, assessments to pay a judgment against
7 the association may be made only against the lots in proportion to their common expense liabilities.

8 (8) If the board of directors determines that any loss or cost incurred by the homeowners association
9 is the fault of one or more owners, the homeowners association may assess the loss or cost exclusively
10 against the lots of the responsible owners.

11 (9) If the homeowners association reallocates common expense liabilities, any common expense
12 assessment and any installment of the assessment not yet due shall be recalculated according to the
13 reallocated common expense liabilities.

14 (10)(a) A lot owner may not claim exemption from liability for contribution toward the common
15 expenses by waiving the use or enjoyment of any of the common property or by abandoning the owner's
16 lot.

17 (b) An owner may not claim to offset an assessment for failure of the association to perform the
18 association's obligations.

19 (11)(a) During any period of declarant control, any special assessment for capital improvements or
20 additions must be approved by not less than 50 percent of the voting rights, or such greater percentage as
21 may be specified in the declaration, without regard to any weighted right or special voting right in favor
22 of the declarant.

23 (b) Nothing in this subsection is intended to prohibit a declarant from reserving a special
24 declarant right to approve any such assessment.

25
26 **94.709 Liens against lots; priority; duration; record notice of claim of unpaid assessment;
27 foreclosure procedure.**

28 (1) Whenever a homeowners association levies any assessment against a lot, the association shall
29 have a lien upon the individual lot for any unpaid assessments. The lien includes interest, late charges,
30 attorney fees, costs or other amounts imposed under the declaration or bylaws or other recorded
31 governing document. The lien is prior to a homestead exemption and all other liens or encumbrances
32 upon the lot except:

33 (a) Tax and assessment liens; and

34 (b) A first mortgage or trust deed of record.

35 (2) Recording of the declaration constitutes record notice and perfection of the lien for assessments.
36 No further recording of a claim of lien for assessments or notice of a claim of lien under this section is
37 required to perfect the association's lien. The association shall record a notice of claim of lien for
38 assessments under this section in the deed records of the county in which a lot is located before any suit
39 to foreclose may proceed under subsection (4) of this section. The notice shall contain:

40 (a) A true statement of the amount due for the unpaid assessments after deducting all just credits
41 and offsets;

42 (b) The name of the owner of the lot, or reputed owner, if known;

43 (c) The name of the association;

44 (d) The description of the lot as provided in ORS 93.600; and

45 (e) A statement that if the owner of the lot thereafter fails to pay any assessments when due, as
46 long as the original or any subsequent unpaid assessment remains unpaid, the unpaid amount of
47 assessments automatically continue to accumulate with interest without the necessity of further
48 recording.

1 (3) The notice shall be verified by the oath of some person having knowledge of the facts and shall
2 be recorded by the county recording officer. The record shall be indexed as other liens are required by
3 law to be indexed.

4 (4) (a) The proceedings to foreclose liens created by this section shall conform as nearly as possible
5 to the proceedings to foreclose liens created by ORS 87.010 except, notwithstanding ORS 87.055, a lien
6 may be continued in force for a period of time not to exceed six years from the date the assessment is
7 due. For the purpose of determining the date the assessment is due in those cases when subsequent
8 unpaid assessments have accumulated under a notice recorded as provided in subsection (2) of this
9 section, the assessment and claim regarding each unpaid assessment shall be deemed to have been levied
10 at the time the unpaid assessment became due.

11 (b) The lien may be enforced by the board of directors acting on behalf of the association.

12 (c) An action to recover a money judgment for unpaid assessments may be maintained without
13 foreclosing or waiving the lien securing the claim for unpaid assessments.

14 (5) Unless the declaration or bylaws provide otherwise, fees, late charges, fines and interest imposed
15 pursuant to ORS 94.630 (1)(L), (n) and (o) are enforceable as assessments under this section.

16 (6) This section does not prohibit an association from pursuing an action to recover sums for which
17 subsection (1) of this section creates a lien or from taking a deed in lieu of foreclosure in satisfaction of
18 the lien.

19 (7) An action to recover a money judgment for unpaid assessments may be maintained without
20 foreclosing or waiving the lien for unpaid assessments. However, recovery on the action operates to
21 satisfy the lien, or the portion thereof, for which recovery is made.

22
23 **94.712 Lot owner personally liable for assessment; joint liability of grantor and grantee**
24 **following conveyance; limitation.**

25 (1) An owner shall be personally liable for all assessments imposed on the owner or assessed against
26 the owner's lot by the homeowners association.

27 (2) (a) Subject to paragraph (b) of this subsection, in a voluntary conveyance of a lot, the grantee
28 shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the
29 lot to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the
30 grantor the amounts paid by the grantee therefor.

31 (b) Upon request of an owner or owner's agent, for the benefit of a prospective purchaser, the
32 board of directors shall make and deliver a written statement of the unpaid assessments against the
33 prospective grantor or the lot effective through a date specified in the statement, and the grantee in that
34 case shall not be liable for any unpaid assessments against the grantor not included in the written
35 statement.

36 (3) An escrow agent or a title insurance company providing escrow services or issuing title insurance
37 in conjunction with the conveyance:

38 (a) May rely on a written statement of unpaid assessments delivered pursuant to this section; and

39 (b) Is not liable for a failure to pay the association at closing any amount in excess of the amount
40 set forth in the written statement.

41
42 **94.716 Lien against two or more lots; release.** If a lien against two or more lots of the planned
43 community becomes due, whether the lien is perfected before or after establishment of the planned
44 community, the owner of an affected lot may pay the lienholder the portion of the lien attributable to the
45 lot. Upon receipt of payment, the lienholder promptly shall deliver to the owner a release of the lien as
46 to that lot. The amount of the payment shall be proportionate to the ratio which that owner's common
47 expense liability bears to the common expense liabilities of all owners whose lots are subject to the lien.
48 After payment, the association may not assess or have a lien against that owner's lot for any portion of
49 the common expense liability representing the lien. This section applies to all liens except a mortgage.

1 **94.719 Lien foreclosure; other legal action by declarant, association or owner; attorney fees.** In
2 any suit or action brought by a homeowners association to foreclose its lien or to collect delinquent
3 assessments or in any suit or action brought by the declarant, the association or any owner or class of
4 owners to enforce compliance with the terms and provisions of ORS 94.550 to 94.783 or the declaration
5 or bylaws, including all amendments and supplements thereto or any rules or regulations adopted by the
6 association, the prevailing party shall be entitled to recover reasonable attorney fees therein and in any
7 appeal therefrom.
8

9 **94.723 Common expenses; liability of first mortgagee.** If a first mortgagee acquires a lot in a
10 planned community by foreclosure or deed in lieu of foreclosure, the mortgagee and subsequent
11 purchaser shall not be liable for any of the common expenses chargeable to the lot which became due
12 before the mortgagee or purchaser acquired title to the lot. The unpaid expenses shall become a common
13 expense of all lot owners including the mortgagee or purchaser.
14

15 **94.728 Taxation of lots and common property.**

16 (1) Each lot in a planned community constitutes for all purposes a separate parcel of real estate and
17 shall be separately taxed and assessed.

18 (2) No separate tax or assessment may be levied against any common property which a declarant has
19 reserved no right to develop into additional lots.

20 (3) The declarant alone is liable for payment of taxes or assessments on any portion of the common
21 property of a planned community in which the declarant has reserved the right to develop the property
22 into additional lots, until the right terminates or expires, or is exercised, abandoned or relinquished.

23 (4) If the right described under subsection (3) of this section terminates or expires or is abandoned or
24 relinquished before July 1 of any year, no tax or assessment shall be imposed against the portion of the
25 common property so affected for the next tax year beginning on July 1.
26

27 **94.733 Easements held by owner of lot and by declarant; homeowners association access to**
28 **lots.**

29 (1) Subject to ORS 94.665, each owner of a lot has an easement through the common property:

30 (a) For access to the owner's lot; and

31 (b) For use of the common property consistent with the declaration and the bylaws.

32 (2) Except as provided in the declaration, a declarant has an easement through the common property
33 as may be necessary for discharging the declarant's obligations or exercising any special declarant right.

34 (3) If an encroachment results from construction, reconstruction, repair, shifting, settlement or
35 movement of any portion of the planned community, an easement for the encroachment exists to the
36 extent that any lot or common property encroaches on any other lot or common property. An easement
37 continues for maintaining the encroachment so long as the encroachment exists. Nothing in this section
38 relieves an owner of liability in case of the owner's willful misconduct or relieves a declarant or any
39 other person of liability for failure to adhere to the plat of the planned community.

40 (4) (a) Upon request given to the owner and any occupant, any person authorized by a homeowners
41 association may enter a lot:

42 (A) To perform necessary maintenance, repair or replacement of any property for which the
43 association has maintenance, repair or replacement responsibility under the declaration or bylaws or
44 ORS 94.550 to 94.783; or

45 (B) To make emergency repairs to a lot that are necessary for the public safety or to prevent
46 damage to common property or to another lot.

47 (b) Requests for entry under this subsection must be made in advance and for a reasonable time,
48 except in the case of an emergency, when the right of entry is immediate. An emergency entry does not
49 constitute a trespass or otherwise create a right of action in the owner of the lot.

1 **(Miscellaneous)**

2 **94.760 Promotional material showing possible improvements.** If a declarant makes no
3 commitment in the declaration to build an improvement or specifically states in the declaration that the
4 declarant makes no commitment either to build or not to build the improvement, no person may display
5 or deliver promotional material to prospective purchasers which describes or portrays the improvement
6 unless the description or portrayal is conspicuously labeled "POSSIBLE Improvement."
7

8 **94.762 Electric vehicle charging stations.**

9 (1) Notwithstanding contrary provisions of a declaration or bylaws of a planned community:

10 (a) An owner may submit an application to install an electric vehicle charging station for the
11 personal, noncommercial use of the owner, in compliance with the requirements of this section, in a
12 parking space, on a lot or in any other area subject to the exclusive use of the owner.

13 (b) A homeowners association may not prohibit installation or use of a charging station installed
14 and used in compliance with the requirements of this section.

15 (2) When the owner complies or agrees to comply with the requirements of this section, a
16 homeowners association, or a declarant in lieu of the association, shall approve a completed application
17 within 60 days after the owner submits the application unless the delay in approving the application is
18 based on a reasonable request for additional information.

19 (3) A homeowners association:

20 (a) May require an owner to submit an application before installing a charging station.

21 (b) May require the charging station to meet the architectural standards of the planned
22 community.

23 (c) May impose reasonable charges to recover costs of the review and permitting of a charging
24 station.

25 (d) May impose reasonable restrictions on the installation and use of the charging station that do
26 not significantly increase the cost of the charging station or significantly decrease the efficiency or
27 performance of the charging station.

28 (4) Notwithstanding ORS 479.540, the charging station must be installed by a person that holds a
29 license, as defined in ORS 479.530, to act as a journeyman electrician.

30 (5) The owner is responsible for:

31 (a) All costs associated with installation and use of the charging station, including:

32 (A) The cost of electricity associated with the charging station; and

33 (B) The cost of damage to common property and to areas subject to the exclusive use of other
34 owners that results from the installation, use, maintenance, repair, removal or replacement of the
35 charging station.

36 (b) Disclosure to a prospective buyer of the lot of the existence of the charging station and the
37 related responsibilities of the owner under this section.

38 (6) If the homeowners association reasonably determines that the cumulative use of electricity in the
39 planned community attributable to the installation and use of charging stations requires the installation
40 of additional infrastructure improvements to provide the planned community with a sufficient supply of
41 electricity, the association may assess the cost of the additional improvements against the lot of each
42 owner that has, or will, install a charging station.

43 (7) (a) A pedestal, or similar, charging station that is hard-wired into the electrical system must be a
44 certified electrical product, as defined in ORS 479.530.

45 (b) If a charging station, other than one described in paragraph (a) of this subsection, is not a
46 certified electrical product, the owner shall:

47 (A) Maintain a homeowner liability insurance policy in an amount not less than \$1 million
48 that includes coverage of the charging station; and

1 (B) Name the homeowners association as a named additional insured under the policy with a
2 right to notice of cancellation of the policy.

3 (8) In any action between an owner and a homeowners association to enforce compliance with this
4 section, the prevailing party is entitled to an award of attorney fees and costs.
5

6 **94.764 Changes or actions that require approval or consent of mortgagee.**

7 (1) Notwithstanding a contrary provision of a declaration or bylaws of a homeowners association,
8 when a change to the declaration, bylaws or other governing document or another action to be taken by
9 the board of directors, association or owners requires approval or consent of a mortgagee, if the
10 mortgagee receives a request to approve or consent to the change or action, the mortgagee is deemed to
11 have approved or consented to the request unless the mortgagee delivers or posts a negative response to
12 the requesting party within 60 days after receipt of the request.

13 (2) The request must:

14 (a) Be in writing.

15 (b) Name the mortgagor.

16 (c) Identify the property securing the mortgage by legal description as required for recordation in
17 ORS 93.600 or by address.

18 (d) Identify the mortgage by loan number or reference to the county recording office and date of
19 recording and recording index numbers of the mortgage.

20 (e) Be delivered to the mortgagee by certified or registered mail, return receipt requested.
21

22 **94.770 Application of rule against perpetuities; conflict between declaration and bylaws; effect**
23 **on title of declaration's noncompliance with Oregon Planned Community Act; conflict between**
24 **Oregon Planned Community Act and ORS chapter 65.**

25 (1) The rule against perpetuities may not be applied to defeat any provision of the declaration, or any
26 bylaws or rules adopted under ORS 94.630.

27 (2) In the event of a conflict between the declaration and the bylaws of a planned community or
28 between the declaration and the articles of incorporation, the declaration shall prevail except to the
29 extent the declaration is inconsistent with ORS 94.550 to 94.783.

30 (3) Title to a unit, lot and common property shall not be rendered unmarketable or otherwise affected
31 by reason of a failure of the declarant or the declaration to comply with ORS 94.550 to 94.783.

32 (4) If the provisions of ORS 94.550 to 94.783 and the provisions of ORS chapter 65 apply to an
33 association and the provisions conflict, the provisions of ORS 94.550 to 94.783 control.
34

35 **94.775 Judicial partition prohibited.**

36 (1) Unless the declaration expressly allows the division of lots in a planned community, judicial
37 partition by division of a lot in a planned community is not allowed under ORS 105.205. The lot may be
38 partitioned by sale and division of the proceeds under ORS 105.245.

39 (2) The restriction specified in subsection (1) of this section does not apply if the homeowners
40 association has removed the property from the provisions of the declaration.
41

42 **94.777 Compliance with bylaws and other restrictions required; effect of noncompliance.** Each
43 owner and the declarant shall comply with the bylaws, and with the administrative rules and regulations
44 adopted pursuant thereto, and with the covenants, conditions and restrictions in the declaration or in the
45 deed to the lot. Failure to comply therewith shall be grounds for an action maintainable by the
46 homeowners association or by an aggrieved owner.
47
48
49

1 **94.780 Remedies.**

2 (1) Failure of the declarant, association, any association member or any other person subject to ORS
3 94.550 to 94.783 to comply with applicable sections of ORS 94.550 to 94.785 shall be cause for suit or
4 action to remedy the violation or to recover actual damages. The prevailing party is entitled to
5 reasonable attorney fees and court costs.

6 (2) Failure of an association to accept administrative responsibility under ORS 94.616 shall be a
7 defense for the declarant against an action brought under this section.

8 (3) A suit or action arising under this section must be commenced within one year after the
9 discovery or identification of the alleged violation.

10
11 **94.783 When certain administrative provisions apply.** If a subdivision received preliminary plat
12 approval before July 1, 1982, but the subdivision plat or the plat of the first phase is not filed under ORS
13 92.120 before January 1, 1984, the provisions of ORS 94.595, 94.604, 94.609, 94.616, 94.700, 94.760
14 and 94.780 shall apply to the planned community.

15
16 **94.785 Short title.** ORS 94.550 to 94.783 may be cited as the Oregon Planned Community Act.

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