

PLANNED COMMUNITIES

(General Provisions)

94.550 Definitions for ORS 94.550 to 94.783

94.560 Legislative findings

(Creation of Planned Community)

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

94.570 Applicability of ORS 94.550 to 94.783

94.572 Applicability of certain provisions of ORS 94.550 to 94.783 to Class I or Class II planned communities

94.575 Applicability of subdivision law

94.580 Declaration; recordation; contents

94.585 Authority to amend declaration and initial bylaws to comply with federal or state laws

94.590 Amendment of declaration by owners

94.595 Reserve account for maintaining, repairing and replacing common property; reserve study; maintenance plan

(Declarant Control; Turnover of Administrative Control)

94.600 Declarant control of association

94.604 Transitional advisory committee

94.609 Notice of meeting to turn over administrative responsibility

94.616 Turnover meeting; transfer of administration; receivership

94.621 Rights of declarant following turnover meeting

94.622 Obligations and liabilities arising from transfer of special declarant rights

94.623 Acquisition of special declarant rights by successor declarant; exceptions

(Homeowners Association; Management of Planned Community)

- 94.625 Formation of homeowners association; adoption of initial bylaws; amendment of bylaws
- 94.626 Corporate dissolution of association
- 94.630 Powers of association
- 94.635 Association bylaws
- 94.639 Criteria for board of directors membership
- 94.640 Association board of directors; powers and duties; removal of member; meetings; executive sessions
- 94.641 Assent of director to board action
- 94.642 Receivership for failure of homeowners association to fill vacancies on board of directors
- 94.645 Adoption of annual budget
- 94.647 Use of written ballot for approving or rejecting matters subject to meeting of association members; procedures; exceptions
- 94.650 Meetings of lot owners; notice
- 94.652 Electronic notice to owner or director
- 94.655 Quorum for association meetings
- 94.657 Rules of order
- 94.658 Voting or granting consent
- 94.660 Method of voting or consenting
- 94.661 Electronic ballot
- 94.662 Notice to lot owners of intent of association to commence judicial or administrative proceeding; contents of notice; right of lot owner to opt out
- 94.665 Authority of association to sell, transfer, convey or encumber common property

- 94.667 Recording association information with county clerk
- 94.670 Association duty to keep documents and records; deposit of assessments; payment of association expenses; review of financial statement by certified public accountant; examination of records by owner
- 94.673 When compliance with specified provisions of ORS 94.640 and 94.670 required
- 94.675 Insurance for common property
- 94.676 Insurance deductible for certain planned communities
- 94.677 Election to have ORS 94.645, 94.655 and 94.675 apply
- 94.680 Blanket all-risk insurance
- 94.685 Specification of insurance for individual lots
- 94.690 Terms of insurance under ORS 94.680
- 94.695 Authority to delegate association powers to master association
- 94.700 Duration and termination of initial management agreements and service and employment contracts; exceptions

(Assessments and Liens Against Lots; Easements)

- 94.704 Assessment and payment of common expenses
- 94.709 Liens against lots; priority; duration; record notice of claim of unpaid assessment; foreclosure procedure
- 94.712 Lot owner personally liable for assessment; joint liability of grantor and grantee following conveyance; limitation
- 94.716 Lien against two or more lots; release
- 94.719 Lien foreclosure; other legal action by declarant, association or owner; attorney fees
- 94.723 Common expenses; liability of first mortgagee
- 94.728 Taxation of lots and common property

94.733 Easements held by owner of lot and by declarant; homeowners association access to lots

(Miscellaneous)

94.760 Promotional material showing possible improvements

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

94.775 Judicial partition prohibited

94.777 Compliance with bylaws and other restrictions required; effect of noncompliance

94.780 Remedies

94.783 When certain administrative provisions apply

94.785 Short title

(General Provisions)

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

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

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

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

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

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

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

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

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

(a) Is not a Class I planned community;

(b) Contains at least five lots; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) “Homeowners association” or “association” means the organization of owners of lots in a planned community, created under ORS 94.625, required by a governing document or formed under ORS 94.572.

(14) “Majority” or “majority of votes” or “majority of owners” means more than 50 percent of the votes in the planned community.

(15) “Mortgagee” means any person who is:

(a) A mortgagee under a mortgage;

(b) A beneficiary under a trust deed; or

(c) The vendor under a land sale contract.

(16) “Owner” means the owner of any lot in a planned community, unless otherwise specified, but does not include a person holding only a security interest in a lot.

(17) “Percent of owners” or “percentage of owners” means the owners representing the specified voting rights as determined under ORS 94.658.

(18)(a) “Planned community” means any subdivision under ORS 92.010 to 92.192 that results in a pattern of ownership of real property and all the buildings, improvements and rights located on or belonging to the real property, in which the owners collectively are responsible for the maintenance, operation, insurance or other expenses relating to

any property within the planned community, including common property, if any, or for the exterior maintenance of any property that is individually owned.

(b) “Planned community” does not mean:

(A) A condominium under ORS chapter 100;

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

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

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

(20) “Purchaser for resale” means any person who purchases from the declarant more than two lots for the purpose of resale whether or not the purchaser for resale makes improvements to the lots before reselling them.

(21) “Special declarant rights” means any rights, in addition to the rights of the declarant as a lot owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to 94.783, including but not limited to:

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

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

(c) Converting lots into common property;

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

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

(22) “Successor declarant” means the transferee of any special declarant right.

(23) “Turn over” means the act of turning over administrative responsibility pursuant to ORS 94.609 and 94.616.

(24) “Unit” means a building or portion of a building located upon a lot in a planned community and designated for separate occupancy or ownership, but does not include any building or portion of a building located on common property.

(25) "Votes" means the votes allocated to lots in the declaration under ORS 94.580
(2). [1981 c.782 §3; 1999 c.677 §1; 2001 c.756 §5; 2003 c.569 §3; 2007 c.410 §1]

94.560 Legislative findings. The Legislative Assembly finds that:

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

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

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

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

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

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

(7) ORS 94.550 to 94.783 are intended to make developers, their legal counsel and homeowners in Oregon homeowners associations the beneficiaries of experience accumulated under Oregon's condominium law and gathered from members of existing Oregon homeowners associations and associations in parts of the country where the record of experience is longer than that in Oregon. [1981 c.782 §3a]

(Creation of Planned Community)

94.565 Planned community to be created under ORS 94.550 to 94.783; exception; conveyance of lot or unit prohibited until declaration recorded. (1) Except as provided in ORS 94.570, a person may not create a planned community in this state except as provided in ORS 94.550 to 94.783.

(2) A person may not convey any lot or unit in a planned community until the planned community is created by the recording of the declaration for the planned community with the county recording officer of each county in which the planned community is located. [1981 c.782 §5; 1999 c.677 §2; 2001 c.756 §6]

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

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

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

(4) Nothing in ORS 94.550 to 94.783 prohibits the establishment of a condominium subject to ORS chapter 100 or a timeshare plan subject to ORS 94.803 to 94.945 within a planned community. [1981 c.782 §6; 1983 c.530 §52; 1985 c.76 §3; 1999 c.677 §3; 2001 c.756 §7; 2003 c.569 §4]

94.572 Applicability of certain provisions of ORS 94.550 to 94.783 to Class I or Class II planned communities. (1)(a) A Class I or Class II planned community created before January 1, 2002, that was not created under ORS 94.550 to 94.783 is subject to this section 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, 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, 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, 94.733, 94.770, 94.775, 94.777 and 94.780 to the extent that those statutes are consistent with any governing documents. If the governing documents do not provide for the formation of an association, the

requirements of this subsection are not effective until the formation of an association in accordance with paragraph (b) of this subsection. If a provision of the governing documents is inconsistent with this subsection, the owners may amend the governing documents using the procedures in this subsection:

(A) In accordance with the procedures for the adoption of amendments in the governing documents and subject to any limitations in the governing documents, the owners may amend the inconsistent provisions of the governing documents to conform to the extent feasible with this section 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, 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, 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, 94.733, 94.770, 94.775, 94.777 and 94.780. Nothing in this paragraph requires the owners to amend a declaration or bylaws to include the information required by ORS 94.580 or 94.635.

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

(i) For an amendment to a recorded governing document other than bylaws, the owners may amend the inconsistent provisions of the document to conform to this section 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, 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, 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, 94.733, 94.770, 94.775, 94.777 and 94.780 by a vote of at least 75 percent of the owners in the planned community.

(ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the bylaws to conform to this section 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, 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, 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, 94.733, 94.770, 94.775, 94.777 and 94.780 by a vote of at least a majority of the owners in the planned community.

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

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

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

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

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

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

(i) Name the initiating owners or governing entity;

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

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

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

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

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

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

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

(B) At least five business days before the organizational meeting, the initiating owners or governing entity shall cause articles of incorporation and bylaws to be drafted.

The bylaws shall include, to the extent applicable, the information required by ORS 94.635.

(C) At the organizational meeting:

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

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

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

(iv) If the owners vote to form an association, the owners shall adopt articles of incorporation and may elect the initial board of directors as provided in the articles of incorporation, adopt bylaws and conduct any other authorized business by an affirmative vote of at least a majority of the owners present. If the owners do not elect the initial board of directors, owners shall elect an interim board of directors by an affirmative vote of at least a majority of the owners present to serve until the initial board of directors is elected.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The notice of planned community shall include:

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

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

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

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

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

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

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

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

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

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

(10) As used in this section:

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

(b) "Recorded declaration" means an instrument recorded with the county recording officer of the county in which the planned community is located that contains conditions, covenants and restrictions binding lots in the planned community or imposes servitudes upon the real property. [2001 c.756 §3; 2003 c.569 §5; 2005 c.543 §3; 2007 c.409 §33; 2009 c.641 §3a]

94.575 Applicability of subdivision law. ORS 92.010 to 92.170 apply to a planned community established under ORS 94.550 to 94.783. [1981 c.782 §4]

94.580 Declaration; recordation; contents. (1) A declarant shall record, in accordance with ORS 94.565, the declaration for a planned community in the office of the recording officer of each county in which the planned community is located.

(2) The declaration shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The date after which the right to withdraw property from the planned community shall expire or a statement that such a right shall not expire. [1981 c.782 §12; 1999 c.677 §4; 2001 c.756 §8; 2003 c.569 §6; 2007 c.409 §6a]

94.585 Authority to amend declaration and initial bylaws to comply with federal or state laws. A declarant may amend the declaration or initial bylaws in order to comply with requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, Rural Development or the Farm Service Agency of the United States Department of Agriculture, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of

Oregon or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. However, if the need to amend the declaration or the initial bylaws occurs after the turnover to the homeowners association has occurred, the amendment must be approved by the association in accordance with the approval provisions of the declaration or bylaws. [1981 c.782 §19; 1991 c.67 §18; 1999 c.677 §6; 2007 c.71 §26]

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

(b) An amendment under this section may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Be executed and acknowledged by the president and secretary of the association and recorded in the deed records of each county in which the planned community is located. [1981 c.782 §21; 1999 c.677 §5; 2001 c.756 §9; 2003 c.569 §7; 2007 c.410 §22]

94.595 Reserve account for maintaining, repairing and replacing common property; reserve study; maintenance plan. (1) The declarant, on behalf of a homeowners association, shall:

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

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

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

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

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

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

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

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

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

(B) Other reliable information.

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

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

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

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

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

(b) The reserve study shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Declarant Control; Turnover of Administrative Control)

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

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

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

(4) A declarant may not amend a declaration to increase the scope of special declarant rights reserved in the declaration after the sale of the first lot in the planned community unless owners representing 75 percent of the total vote, other than the declarant, agree to the amendment. [1981 c.782 §11; 1999 c.677 §8]

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

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

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

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

(5) The requirement for a transitional advisory committee shall not apply once the turnover meeting called under ORS 94.609 has been held. [1981 c.782 §64; 1999 c.677 §9; 2003 c.569 §9]

94.605 [Amended by 1965 c.619 §31; repealed by 1971 c.478 §1]

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

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

(3) If the declarant does not call a meeting under this section within the required time, the transitional advisory committee formed under ORS 94.604 or any owner may call a meeting and give notice as required in this section. [1981 c.782 §65; 1999 c.677 §10]

94.610 [Amended by 1965 c.619 §32; repealed by 1971 c.478 §1]

94.615 [Repealed by 1971 c.478 §1]

94.616 Turnover meeting; transfer of administration; receivership. (1) At the meeting called under ORS 94.609, the declarant shall turn over to the homeowners association the responsibility for the administration of the planned community, and the association shall accept the administrative responsibility from the declarant.

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

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

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

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

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

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

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

(f) A financial statement. The financial statement:

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

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

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

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

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

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

(k) All bank signature cards;

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

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

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

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

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

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

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

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

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

(p) Insurance policies;

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

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

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

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

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

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

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

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

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

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

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

(b) An owner or first mortgagee may request a court to appoint a receiver as provided in ORS 94.642. [1981 c.782 §67; 1983 c.206 §3; 1999 c.677 §11; 2001 c.756 §11; 2003 c.803 §19; 2007 c.409 §8]

94.620 [Repealed by 1971 c.478 §1]

94.621 Rights of declarant following turnover meeting. If a declarant has not completed development of lots or common property in a planned community at the time of the meeting called under ORS 94.609, the declarant may continue to hold the special declarant rights, other than a right of declarant control, reserved under the declaration. [1981 c.782 §68; 1999 c.677 §12]

94.622 Obligations and liabilities arising from transfer of special declarant rights. (1) As used in this section, “affiliate” means any person who controls a transferor or successor declarant, is controlled by a transferor or successor declarant or is under common control with a transferor or successor declarant.

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

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

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

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

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

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

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

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

(c) A transferor who retains no special declarant right has no obligation or liability for any act or omission or any breach of a contractual obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

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

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

(b) A successor declarant who is not an affiliate of the transferor shall not be liable for any misrepresentations or warranties made or required to be made by the declarant or previous successor declarant or for any breach of fiduciary obligation by such person. Such a successor declarant, however, shall comply with any provisions of the declaration and bylaws which pertain to such successor declarant's ownership of the lot or lots and the exercise of any special declarant right. [1999 c.677 §34]

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

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

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

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

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

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

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

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

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

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

(5) An instrument disclaiming or transferring special declarant rights shall be properly acknowledged as provided by law. [1999 c.677 §35]

(Homeowners Association; Management of Planned Community)

94.625 Formation of homeowners association; adoption of initial bylaws; amendment of bylaws. (1) Except as provided in subsection (2) of this section, not later than the date on which the first lot in the planned community is conveyed, the declarant shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Be executed and acknowledged by the president and secretary of the association and recorded in the deed records of each county in which the planned community is located. [1981 c.782 §35; 2001 c.756 §12; 2003 c.569 §10; 2007 c.410 §2; 2009 c.641 §5]

94.626 Corporate dissolution of association. (1) If a homeowners association is at any time dissolved, whether inadvertently or deliberately:

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

(b) The unincorporated association:

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

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

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

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

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

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

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

(4) The provisions of this section apply notwithstanding any provision of a governing document of a planned community that appears to be contrary. [2009 c.641 §3]

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

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

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

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

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

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

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

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

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

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

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

(ii) Common property;

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

(i) Resulting from a nuisance or a defect in or damage to common property or individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

(ii) Required to facilitate repair to any common property; and

(F) Any other matter to which the association has standing under law or pursuant to the declaration or bylaws;

(f) Make contracts and incur liabilities;

(g) Regulate the use, maintenance, repair, replacement and modification of common property;

(h) Cause additional improvements to be made as a part of the common property;

(i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common property may be conveyed or subjected to a security interest only pursuant to ORS 94.665;

(j) Grant easements, leases, licenses and concessions through or over the common property as provided in ORS 94.665;

(k) Modify, close, remove, eliminate or discontinue the use of common property, including any improvement or landscaping, regardless of whether the common property is mentioned in the declaration, provided that:

(A) Nothing in this paragraph is intended to limit the authority of the association to seek approval of the modification, closure, removal, elimination or discontinuance by the owners; and

(B) Modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreation or community building must be approved by at least a majority of owners voting on the matter at a meeting or by written ballot held in accordance with the declaration, bylaws or ORS 94.647;

(L) Impose and receive any payments, fees or charges for the use, rental or operation of the common property and services provided to owners;

(m) Adopt rules regarding the termination of utility services paid for out of assessments of the association and access to and use of recreational and service facilities available to owners. The rules must provide for written notice and an opportunity to be heard before the association may terminate the rights of any owners to receive the benefits or services until the correction of any violation covered by the rule has occurred;

(n) Impose charges for late payment of assessments and attorney fees related to the collection of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules and regulations of the association, provided that the charge imposed or the fine levied by the association is based:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The requirements of this subsection do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines. [1981 c.782 §36; 1999 c.677 §13; 2001 c.756 §13; 2003 c.569 §11; 2007 c.410 §2a; 2009 c.641 §6]

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

(1) The organization of the association of owners in accordance with ORS 94.625 and 94.630, including when the initial meeting shall be held and the method of calling that meeting.

(2) If a Class I planned community, the formation of a transitional advisory committee in accordance with ORS 94.604.

(3) The turnover meeting required under ORS 94.609, including the time by which the meeting shall be called, the method of calling the meeting, the right of an owner under ORS 94.609 (3) to call the meeting and a statement of the purpose of the meeting.

(4)(a) The method of calling the annual meeting and all other meetings of the owners in accordance with ORS 94.650; and

(b) The percentage of votes that constitutes a quorum in accordance with ORS 94.655.

(5)(a) The election of a board of directors and the number of persons constituting the board;

(b) The powers and duties of the board;

(c) Any compensation of the directors; and

(d) The method of removing directors from office in accordance with ORS 94.640 (6).

(6) The terms of office of directors.

(7) The method of calling meetings of the board of directors in accordance with ORS 94.640 (8) and a statement that all meetings of the board of directors shall be open to owners.

(8) The offices of president, secretary and treasurer and any other offices of the association, and the method of selecting and removing officers and filling vacancies in the offices.

(9) The preparation and adoption of a budget in accordance with ORS 94.645.

(10)(a) The program for maintenance, upkeep, repair and replacement of the common property;

(b) The method of payment for the expense of the program and other expenses of the planned community; and

(c) The method of approving payment vouchers.

(11) The employment of personnel necessary for the administration of the planned community and maintenance, upkeep and repair of the common property.

(12) The manner of collecting assessments from the owners.

(13) Insurance coverage in accordance with ORS 94.675 and 94.685.

(14) The preparation and distribution of the annual financial statement required under ORS 94.670.

(15) The method of adopting administrative rules and regulations governing the details for the operation of the planned community and use of the common property.

(16) The method of amending the bylaws in accordance with ORS 94.630. The bylaws may require no greater than an affirmative majority of votes to amend any provision of the bylaws.

(17) If additional property is proposed to be annexed pursuant to ORS 94.580 (3), the method of apportioning common expenses if new lots are added during the fiscal year.

(18) Any other details regarding the planned community that the declarant or the association consider desirable. However, if a provision required to be in the declaration under ORS 94.580 is included in the bylaws, the voting requirements for amending the declaration shall govern the amendment of that provision of the bylaws. [1981 c.782 §37; 1999 c.677 §14; 2001 c.756 §14; 2009 c.641 §7]

94.639 Criteria for board of directors membership. (1) Each member of the board of directors must be an individual and, except as provided in subsections (2) and (3) of this section, an owner or co-owner of a lot in the planned community.

(2) A director appointed by a declarant under ORS 94.600 need not be an owner or co-owner of a lot in the planned community.

(3)(a) Except as otherwise provided in the bylaws, prior to election to the board of directors, an individual described in this subsection shall, upon request of the board, provide the board with documentation satisfactory to the board that the individual is qualified to represent the entity or is a trustee or is serving in a fiduciary capacity for the owner of a lot.

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

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

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

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

94.640 Association board of directors; powers and duties; removal of member; meetings; executive sessions. (1) The board of directors of an association may act on behalf of the association except as limited by the declaration and the bylaws. In the performance of their duties, officers and members of the board of directors are governed by this section and the applicable provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377, whether or not the association is incorporated under ORS chapter 65.

(2) Unless otherwise provided in the bylaws, the board of directors may fill vacancies in its membership for the unexpired portion of any term.

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

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

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

(6) Unless otherwise provided in the declaration or bylaws:

(a) The owners may remove any member of the board of directors, other than members appointed by the declarant or persons who are ex officio directors, with or without cause, by a majority vote of all owners present and entitled to vote at any meeting of the owners at which a quorum is present.

(b) Removal of a director is not effective unless the matter of removal is an item on the agenda and stated in the notice for the meeting required under ORS 94.650.

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

(A) Consult with legal counsel; and

(B) Consider the following:

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

(ii) Negotiation of contracts with third parties; and

(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.

(d) The meeting and notice requirements in this section may not be circumvented by chance or social meetings or by any other means.

(8) 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.

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

(10) 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.

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

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. [2007 c.409 §6]

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

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

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

(a) A description of the intended action.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A turnover meeting required under ORS 94.616.

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

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

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

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

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

(A) A secrecy envelope;

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

(C) Instructions for marking and returning the ballot.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5)(a) The association shall accept written ballots for counting during the period specified in the solicitation under subsection (4) of this section. Except as provided in

paragraph (b) of this subsection, the period shall end on the earliest of the following dates:

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

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

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

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

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

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

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

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

94.650 Meetings of lot owners; notice. (1) The homeowners association shall hold at least one meeting of the owners each calendar year.

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

less than 10 percent of the votes of the planned community for the purpose of calling a meeting.

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

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

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

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

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

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

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

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

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

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

94.655 Quorum for association meetings. (1) Unless the declaration or bylaws of a homeowners association specify a greater percentage, a quorum for any meeting of the association consists of the number of persons who are entitled to cast 20 percent of the votes and who are present in person, by proxy or by absentee ballot, if absentee ballots are permitted by the board of directors, at the beginning of the meeting.

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

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

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

(b) Twenty percent of the votes that may be cast by persons who are present in person, by proxy or by absentee ballot, if absentee ballots are permitted.

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

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

(b) The meeting notice specifies:

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

(B) The reduced quorum requirement. [1981 c.782 §41; 1999 c.677 §18; 2007 c.409 §11; 2009 c.641 §9]

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

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

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

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

(2) Unless the declaration or bylaws provide otherwise:

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

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

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

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

94.660 Method of voting or consenting. (1) The vote or consent of a lot may be cast or given:

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

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

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

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

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

(2)(a) A proxy:

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

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

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

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

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

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

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

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

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

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

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

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

(A) Returned the absentee ballot; and

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

94.661 Electronic ballot. (1) As used in this section, “electronic ballot” means a ballot given by:

- (a) Electronic mail;
- (b) Facsimile transmission;
- (c) Posting on a website; or
- (d) Other means of electronic communication acceptable to the board of directors.

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

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

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

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

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

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

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

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

(b) That the electronic ballot is secret, if the declaration or bylaws or rules adopted by the board require that electronic ballots be secret. [2007 c.409 §5]

94.662 Notice to lot owners of intent of association to commence judicial or administrative proceeding; contents of notice; right of lot owner to opt out. (1) At least 10 days prior to instituting any litigation or administrative proceeding to recover damages under ORS 94.630 (1)(e)(E), the homeowners association shall provide written notice to each affected owner of the association's intent to seek damages on behalf of the owner. The notice shall, at a minimum:

- (a) Be mailed to the mailing address of each lot or to the mailing address designated in writing to the association by the owner;
- (b) Inform each owner of the general nature of the litigation or proceeding;
- (c) Describe the specific nature of the damages to be sought on the owner's behalf;
- (d) Set forth the terms under which the association is willing to seek damages on the owner's behalf, including any mechanism proposed for the determination and distribution of any damages recovered;
- (e) Inform each owner of the owner's right not to have the damages sought on the owner's behalf and specify the procedure for exercising the right; and
- (f) Inform the owner that exercising the owner's right not to have damages sought on the owner's behalf:
 - (A) Relieves the association of its duty to reimburse or indemnify the owner for the damages;
 - (B) Does not relieve the owner from the owner's obligation to pay dues or assessments relating to the litigation or proceeding;
 - (C) Does not impair any easement owned or possessed by the association; and
 - (D) Does not interfere with the association's right to make repairs to common areas.

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

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

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

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

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

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

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

(5) Unless the declaration otherwise provides, the consent to vacation of roadways within and adjacent to common property must be approved first by at least a majority of owners present and voting at a meeting of the association or with the consent of at least a majority of all owners solicited by any means the board of directors determines is reasonable. If a meeting is held to conduct the vote, the meeting notice must include a

statement that the roadway vacation will be an item of business in the agenda of the meeting.

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

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

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

(7) The association shall treat proceeds of any sale, transfer or conveyance under subsection (1) of this section, any grant under subsection (4) of this section or any consent to vacation under subsection (5) of this section as an asset of the association. [1981 c.782 §47; 1987 c.447 §112; 1999 c.677 §20; 2009 c.641 §12]

94.667 Recording association information with county clerk. (1) As used in this section, “association” means an association formed under ORS 94.625, 94.846 or 100.405, or any other association in which a person holds membership by virtue of owning or possessing a real estate interest subject to assessment and lien authority pursuant to a recorded instrument.

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

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

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

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

(B) Notice of a transfer of property;

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

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

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

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

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

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

94.670 Association duty to keep documents and records; deposit of assessments; payment of association expenses; review of financial statement by certified public accountant; examination of records by owner. (1) A homeowners association shall retain within this state the documents, information and records delivered to the association under ORS 94.616 and all other records of the association for not less than the period specified for the record in ORS 65.771 or any other applicable law except that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Regular and special assessments;

(ii) Fines and other charges;

(iii) Accrued interest; and

(iv) Late payment charges.

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

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

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

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

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

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

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

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

(D) Disclosure of information in violation of law.

(E) Documents, correspondence or management or board reports compiled for or on behalf of the association or the board of directors by its agents or committees for consideration by the board of directors in executive session held in accordance with ORS 94.640 (7).

(F) Documents, correspondence or other matters considered by the board of directors in executive session held in accordance with ORS 94.640 (7).

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

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

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

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

(c) The current operating budget of the association.

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

(e) Architectural standards and guidelines, if any.

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

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

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

Sec. 24. The requirements of ORS 94.670 (5) first apply:

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

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

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

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

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

94.673 When compliance with specified provisions of ORS 94.640 and 94.670 required. (1) The homeowners association of a subdivision that received preliminary plat approval before July 1, 1982, shall comply with the provisions of ORS 94.640 (1), (3), (4), (7), (8) and (9) and 94.670 if:

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

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

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

(2) A homeowners association board of directors is not subject to ORS 94.780 unless the association fails to comply with subsection (1) of this section after receiving a written request from an owner. [1983 c.206 §6; 2001 c.756 §59]

94.675 Insurance for common property. (1) The board of directors of a homeowners association shall obtain and maintain:

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

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

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

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

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

(a) The maximum deductible acceptable to the Federal National Mortgage Association; or

(b) \$10,000.

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

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

(a) Delivered to each owner; or

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

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

(a) The circumstances under which the deductible will be charged against:

(A) An owner or the owners affected by a loss; or

(B) All owners;

(b) The allocation of the deductible charged under paragraph (a) of this subsection; and

(c) If an owner and the association have duplicate insurance coverage, the insurance policy that is primary, unless otherwise provided in the declaration or bylaws.

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

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

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

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

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

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

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

(a) Delivered to each lot; or

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

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

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

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

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

94.677 Election to have ORS 94.645, 94.655 and 94.675 apply. Unless contrary to the covenants, conditions or restrictions of a recorded declaration or other similar instrument, or the bylaws of the association adopted in accordance with documents governing the association, the homeowners association board of directors of a subdivision described in ORS 94.673 (1) may elect to be governed by ORS 94.645, 94.655 and 94.675, without further action by the association. [1983 c.206 §7]

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

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

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

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

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

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

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

94.685 Specification of insurance for individual lots. (1) Unless provided in the declaration, the bylaws shall specify:

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

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

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

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

(2) The declaration or bylaws may provide that the responsibility for payment of the amount of the deductible may be prescribed by resolution adopted by the board of directors. [1981 c.782 §54; 1999 c.677 §23; 2007 c.409 §16]

94.690 Terms of insurance under ORS 94.680. The board of directors of a homeowners association shall obtain, if reasonably available, terms in insurance policies under ORS 94.680 which provide a waiver of subrogation by the insurer as to any claims against the board of directors of the association, any owner or any guest of an owner. [1981 c.782 §56; 1999 c.677 §24]

94.695 Authority to delegate association powers to master association. A declaration for a planned community may delegate any of the powers of the homeowners association under ORS 94.630 to a master association or provide that the master association may exercise any such power. [1981 c.782 §62]

94.700 Duration and termination of initial management agreements and service and employment contracts; exceptions. (1) Except as provided in subsection (2) of this section, if entered into prior to the meeting called under ORS 94.609, no management agreement, service contract or employment contract which is directly made by or on behalf of the association, the board of directors or the owners as a group shall be in excess of three years.

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

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

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

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

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

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

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

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

(B) Biofuels or hydrogen derived from renewable resources.

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

(Assessments and Liens Against Lots; Easements)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Nothing in this subsection is intended to prohibit a declarant from reserving a special declarant right to approve any such assessment. [1981 c.782 §43; 1999 c.677 §25; 2001 c.756 §21; 2003 c.569 §16; 2009 c.641 §15]

94.705 [Repealed by 1971 c.478 §1]

94.709 Liens against lots; priority; duration; record notice of claim of unpaid assessment; foreclosure procedure. (1) Whenever a homeowners association levies any assessment against a lot, the association shall have a lien upon the individual lot for any unpaid assessments. The lien includes interest, late charges, attorney fees, costs or other amounts imposed under the declaration or bylaws or other recorded governing document.

The lien is prior to a homestead exemption and all other liens or encumbrances upon the lot except:

- (a) Tax and assessment liens; and
- (b) A first mortgage or trust deed of record.

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

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

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

(c) The name of the association;

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

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

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

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

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

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

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

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

(7) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien for unpaid assessments. However, recovery on the action operates to satisfy the lien, or the portion thereof, for which recovery is made. [1981 c.782 §44; 1999 c.677 §26; 2003 c.569 §17]

94.710 [Repealed by 1971 c.478 §1]

94.712 Lot owner personally liable for assessment; joint liability of grantor and grantee following conveyance; limitation. (1) An owner shall be personally liable for all assessments imposed on the owner or assessed against the owner's lot by the homeowners association.

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

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

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

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

(b) Is not liable for a failure to pay the association at closing any amount in excess of the amount set forth in the written statement. [1999 c.677 §32; 2003 c.569 §18]

94.715 [Repealed by 1971 c.478 §1]

94.716 Lien against two or more lots; release. If a lien against two or more lots of the planned community becomes due, whether the lien is perfected before or after establishment of the planned community, the owner of an affected lot may pay the lienholder the portion of the lien attributable to the lot. Upon receipt of payment, the lienholder promptly shall deliver to the owner a release of the lien as to that lot. The amount of the payment shall be proportionate to the ratio which that owner's common expense liability bears to the common expense liabilities of all owners whose lots are subject to the lien. After payment, the association may not assess or have a lien against that owner's lot for any portion of the common expense liability representing the lien. This section applies to all liens except a mortgage. [1981 c.782 §45]

94.719 Lien foreclosure; other legal action by declarant, association or owner; attorney fees. In any suit or action brought by a homeowners association to foreclose its lien or to collect delinquent assessments or in any suit or action brought by the declarant, the association or any owner or class of owners to enforce compliance with the terms and provisions of ORS 94.550 to 94.783 or the declaration or bylaws, including all amendments and supplements thereto or any rules or regulations adopted by the association, the prevailing party shall be entitled to recover reasonable attorney fees therein and in any appeal therefrom. [1999 c.677 §33; 2001 c.756 §23; 2007 c.409 §17]

94.720 [Repealed by 1971 c.478 §1]

94.723 Common expenses; liability of first mortgagee. If a first mortgagee acquires a lot in a planned community by foreclosure or deed in lieu of foreclosure, the mortgagee and subsequent purchaser shall not be liable for any of the common expenses chargeable to the lot which became due before the mortgagee or purchaser acquired title to the lot. The unpaid expenses shall become a common expense of all lot owners including the mortgagee or purchaser. [1981 c.782 §46; 1999 c.677 §27]

94.725 [Repealed by 1971 c.478 §1]

94.728 Taxation of lots and common property. (1) Each lot in a planned community constitutes for all purposes a separate parcel of real estate and shall be separately taxed and assessed.

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

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

(4) If the right described under subsection (3) of this section terminates or expires or is abandoned or relinquished before July 1 of any year, no tax or assessment shall be imposed against the portion of the common property so affected for the next tax year beginning on July 1. [1981 c.782 §34]

94.730 [Repealed by 1971 c.478 §1]

94.733 Easements held by owner of lot and by declarant; homeowners association access to lots. (1) Subject to ORS 94.665, each owner of a lot has an easement through the common property:

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

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

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

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

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

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

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

(b) Requests for entry under this subsection must be made in advance and for a reasonable time, except in the case of an emergency, when the right of entry is immediate. An emergency entry does not constitute a trespass or otherwise create a right of action in the owner of the lot. [1981 c.782 §33; 2009 c.641 §16]

94.740 [1981 c.782 §74; repealed by 1999 c.677 §72]

94.745 [1981 c.782 §78; repealed by 1999 c.677 §72]

94.750 [1981 c.782 §76; 1983 c.740 §8; repealed by 1999 c.677 §72]

94.755 [1981 c.782 §82; repealed by 1999 c.677 §72]

(Miscellaneous)

94.760 Promotional material showing possible improvements. If a declarant makes no commitment in the declaration to build an improvement or specifically states in the declaration that the declarant makes no commitment either to build or not to build the improvement, no person may display or deliver promotional material to prospective purchasers which describes or portrays the improvement unless the description or portrayal is conspicuously labeled “POSSIBLE Improvement.” [1981 c.782 §79]

94.765 [1981 c.782 §81; repealed by 1999 c.677 §72]

94.770 Application of rule against perpetuities; conflict between declaration and bylaws; effect on title of declaration's noncompliance with Oregon Planned Community Act; conflict between Oregon Planned Community Act and ORS chapter 65. (1) The rule against perpetuities may not be applied to defeat any provision of the declaration, or any bylaws or rules adopted under ORS 94.630.

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

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

(4) If the provisions of ORS 94.550 to 94.783 and the provisions of ORS chapter 65 apply to an association and the provisions conflict, the provisions of ORS 94.550 to 94.783 control. [1981 c.782 §86; 1999 c.677 §69; 2003 c.569 §19]

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

(2) The restriction specified in subsection (1) of this section does not apply if the homeowners association has removed the property from the provisions of the declaration. [1981 c.782 §87; 2003 c.569 §20]

94.777 Compliance with bylaws and other restrictions required; effect of noncompliance. Each owner and the declarant shall comply with the bylaws, and with the administrative rules and regulations adopted pursuant thereto, and with the covenants, conditions and restrictions in the declaration or in the deed to the lot. Failure to comply therewith shall be grounds for an action maintainable by the homeowners association or by an aggrieved owner. [1999 c.677 §36]

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

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

(3) A suit or action arising under this section must be commenced within one year after the discovery or identification of the alleged violation. [1981 c.782 §83; 1999 c.677 §67]

94.783 When certain administrative provisions apply. If a subdivision received preliminary plat approval before July 1, 1982, but the subdivision plat or the plat of the first phase is not filed under ORS 92.120 before January 1, 1984, the provisions of ORS 94.595, 94.604, 94.609, 94.616, 94.700, 94.760 and 94.780 shall apply to the planned community. [1983 c.206 §8; 1999 c.677 §68]

94.785 Short title. ORS 94.550 to 94.783 may be cited as the Oregon Planned Community Act. [1981 c.782 §1]