

SENATE AMENDMENTS TO SENATE BILL 672

By COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

June 6

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest of the line and line 3 and
2 insert “amending ORS 94.585, 94.640, 94.645, 94.675, 94.680, 94.685, 94.709, 100.415 and 100.435; and
3 declaring an emergency.”.

4 Delete lines 5 through 30 and delete pages 2 through 7 and insert:

5 **“SECTION 1. Sections 2, 3, 4, 5 and 6 of this 2005 Act are added to and made a part of**
6 **ORS 94.550 to 94.783.**

7 **“SECTION 2. (1) As used in this section, ‘electronic notice’ means a notice given by:**

8 **“(a) Electronic mail;**

9 **“(b) Facsimile transmission; or**

10 **“(c) Posting on a website.**

11 **“(2) Unless the declaration or bylaws prohibit or require electronic notice, the board of**
12 **directors of a homeowners association may, in its discretion, give electronic notice to con-**
13 **senting owners or directors for any notice required or permitted to be given under the dec-**
14 **laration or bylaws or ORS 94.550 to 94.783.**

15 **“(3) An electronic notice shall comply with the requirements of this section and the re-**
16 **quirements of the declaration and bylaws and ORS 94.550 to 94.783.**

17 **“(4) Electronic notice under this section may be given only to owners or directors who**
18 **have consented to receive electronic notice. The consent of an owner or director shall comply**
19 **with section 4 of this 2005 Act.**

20 **“(5) If an electronic notice to an owner or director under this section is posted on a**
21 **website, an electronic mail shall also be sent to the owner or director that contains in-**
22 **structions on obtaining access to the posting on the website.**

23 **“(6) Electronic notice under this section is effective when it:**

24 **“(a) Is electronically transmitted to an address, location or system designated by the**
25 **owner or director for that purpose; or**

26 **“(b) Has been posted on a website and a separate electronic mail has been delivered to**
27 **the owner or director that contains instructions on obtaining access to the posting on the**
28 **website.**

29 **“(7) Electronic notice to owners and directors may include material that the declaration**
30 **or bylaws or ORS 94.550 to 94.783 require or permit to accompany the electronic notice.**

31 **“(8) The board of directors shall designate, in rules to be adopted under subsection (9)**
32 **of this section, the message format of electronic notices.**

33 **“(9) If the board of directors elects to give notices electronically, the board shall adopt**
34 **rules to implement this section.**

35 **“SECTION 3. (1) As used in this section, ‘electronic ballot’ means a ballot given by:**

1 “(a) Electronic mail;

2 “(b) Facsimile transmission; or

3 “(c) Posting on a website.

4 “(2) Unless the declaration or bylaws prohibit or provide other methods for electronic
5 ballots, the board of directors of a homeowners association, in its discretion, may provide
6 that a vote, approval or consent of an owner or director may be given by an electronic ballot
7 if the owner or director consents under section 4 of this 2005 Act.

8 “(3) An electronic ballot shall comply with the requirements of this section and the re-
9 quirements of the declaration and bylaws and ORS 94.550 to 94.783.

10 “(4) An electronic ballot may be accompanied by or contained in an electronic notice sent
11 in accordance with section 2 of this 2005 Act.

12 “(5) If an electronic ballot is posted on a website, an electronic mail shall also be sent
13 to the owner or director that contains instructions on obtaining access to the posting on the
14 website.

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

17 “(7) Unless otherwise provided in the declaration, bylaws or rules adopted under sub-
18 section (9) of this section, a vote by an electronic ballot may be revoked.

19 “(8) The board of directors shall designate, in rules to be adopted under subsection (9)
20 of this section, the message format of electronic ballots.

21 “(9) If the board of directors elects to use electronic ballots, the board shall adopt rules
22 to implement this section. The rules adopted by the board under this subsection for elec-
23 tronic ballots shall include procedures to ensure:

24 “(a) The authentication of the owner or director voting by an electronic ballot;

25 “(b) If a vote conducted by written ballot under ORS 94.647 utilizes the procedure speci-
26 fied in ORS 94.647 (2)(b), compliance with ORS 94.647; and

27 “(c) That the electronic ballot of owners is secret if the declaration, bylaws or rules of
28 the board of directors requires the electronic ballot to be secret.

29 “SECTION 4. (1) If the board of directors of a homeowners association offers electronic
30 notices and balloting under sections 2 and 3 of this 2005 Act, and an owner or director wishes
31 to use those electronic methods, the owner or director must consent to receive both elec-
32 tronic notices and electronic ballots. The owner or director may not elect to receive only
33 electronic notices or only electronic ballots.

34 “(2) Consent to receive electronic notices and electronic ballots shall designate the ad-
35 dress, location or system to which the electronic notices and electronic ballots may be
36 transmitted. Unless otherwise provided in rules adopted under sections 2 and 3 of this 2005
37 Act, consent is a general consent to receive all notices and ballots electronically.

38 “(3) An owner or director who has consented to receive electronic notices and electronic
39 ballots under this section may revoke the consent by delivering a revocation to the associ-
40 ation in the form of an electronic mail or in accordance with rules adopted by the board of
41 directors.

42 “(4) The consent of any owner or director is revoked if the association is unable to
43 transmit two consecutive electronic notices or electronic ballots in accordance with the
44 consent, and the secretary of the association or other person responsible for sending elec-
45 tronic notices or electronic ballots has knowledge of the inability.

1 “(5) The inadvertent failure by the association to treat the inability to electronically
2 transit two consecutive electronic notices or electronic ballots as a revocation under sub-
3 section (4) of this section does not invalidate any meeting or other action.

4 “**SECTION 5.** (1) Subject to subsection (2) of this section, if a homeowners association
5 fails to fill vacancies on the board of directors sufficient to constitute a quorum in accord-
6 ance with the bylaws, an owner or a first mortgagee may request the circuit court of the
7 county in which the planned community is located to appoint a receiver under ORCP 80 to
8 manage the affairs of the association.

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

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

15 “(a) A description of the intended action.

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

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

19 “(d) A statement that if the association fails to fill vacancies on the board by the speci-
20 fied date, the owner may file the petition with the court under subsection (1) of this section.

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

23 “(4) If a receiver is appointed, the salary of the receiver, court costs, attorney fees and
24 all other expenses of the receivership shall be a common expense of the association, as de-
25 termined by the court.

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

29 “(6) If the owners fail to elect the number of directors sufficient to constitute a quorum
30 of the board of directors at the turnover meeting, in addition to the notice requirements
31 specified in subsections (2) and (3) of this section, an owner shall give the notice to all other
32 owners in the manner prescribed in the bylaws.

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

35 “**SECTION 6.** (1) If the declaration or bylaws of a planned community created under ORS
36 94.550 to 94.783 before the effective date of this 2005 Act or a planned community subject to
37 ORS 94.572 do not assign the responsibility for payment of the amount of the deductible in
38 an association insurance policy, the board of directors may adopt a resolution that assigns
39 the responsibility for payment of the amount of the deductible. The resolution must include,
40 but need not be limited to:

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

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

43 “(B) All owners;

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

45 “(c) A requirement that an owner obtain and maintain insurance as described in sub-

1 section (2) of this section; and

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

4 “(2) An owner shall obtain and maintain:

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

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

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

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

17 “(b) Assigns the responsibility for payment of charges for handling claims, including any
18 charges by a managing agent. A managing agent may not authorize payment of its own
19 charges.

20 “(4) The board of directors shall ensure that a copy of a resolution adopted under sub-
21 section (1) or (3) of this section and a notice described in subsection (5) of this section are:

22 “(a) Delivered to each lot; or

23 “(b) Mailed, not later than 10 days after adoption of the resolution, to the mailing address
24 of each owner or to the mailing address designated in writing by the owner.

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

26 “(a) Advise each owner to contact an insurance agent to determine the effect of the re-
27 solution on the owner’s individual insurance coverage; and

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

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

33 “**SECTION 7.** Sections 8, 9, 10, 11 and 12 of this 2005 Act are added to and made a part
34 of ORS chapter 100.

35 “**SECTION 8.** (1) As used in this section, ‘electronic notice’ means a notice given by:

36 “(a) Electronic mail;

37 “(b) Facsimile transmission; or

38 “(c) Posting on a website.

39 “(2) Unless the declaration or bylaws prohibit or require electronic notice, the board of
40 directors of an association of unit owners may, in its discretion, give electronic notice to
41 consenting unit owners or directors for any notice required or permitted to be given under
42 the declaration or bylaws or this chapter.

43 “(3) An electronic notice shall comply with the requirements of this section and the re-
44 quirements of the declaration and bylaws and this chapter.

45 “(4) Electronic notice under this section may be given only to unit owners or directors

1 who have consented to receive electronic notice. The consent of a unit owner or director
2 shall comply with section 10 of this 2005 Act.

3 “(5) If an electronic notice to a unit owner or director under this section is posted on a
4 website, an electronic mail shall also be sent to the unit owner or director that contains in-
5 structions on obtaining access to the posting on the website.

6 “(6) Electronic notice under this section is effective when it:

7 “(a) Is electronically transmitted to an address, location or system designated by the unit
8 owner or director for that purpose; or

9 “(b) Has been posted on a website and a separate electronic mail has been delivered to
10 the unit owner or director that contains instructions on obtaining access to the posting on
11 the website.

12 “(7) Electronic notice to unit owners and directors may include material that the decla-
13 ration or bylaws or this chapter requires or permits to accompany the electronic notice.

14 “(8) The board of directors shall designate, in rules to be adopted under subsection (9)
15 of this section, the message format of electronic notices.

16 “(9) If the board of directors elects to give notices electronically, the board of directors
17 shall adopt rules that implement this section.

18 “SECTION 9. (1) As used in this section, ‘electronic ballot’ means a ballot given by:

19 “(a) Electronic mail;

20 “(b) Facsimile transmission; or

21 “(c) Posting on a website.

22 “(2) Unless the declaration or bylaws prohibit or provide other methods for electronic
23 ballots, the board of directors of an association of unit owners, in its discretion, may provide
24 that a vote, approval or consent of a unit owner or director may be given by an electronic
25 ballot if the unit owner or director consents under section 10 of this 2005 Act.

26 “(3) An electronic ballot shall comply with the requirements of this section and the re-
27 quirements of the declaration and bylaws and this chapter.

28 “(4) An electronic ballot may be accompanied by or contained in an electronic notice sent
29 in accordance with section 8 of this 2005 Act.

30 “(5) If an electronic ballot is posted on a website, an electronic mail shall also be sent
31 to the unit owner or director that contains instructions on obtaining access to the posting
32 on the website.

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

35 “(7) Unless otherwise provided in the declaration, bylaws or rules adopted under sub-
36 section (9) of this section, a vote by an electronic ballot may be revoked.

37 “(8) The board of directors shall designate, in rules to be adopted under subsection (9)
38 of this section, the message format of electronic ballots.

39 “(9) If the board of directors elects to use electronic ballots, the board shall adopt rules
40 to implement this section. The rules adopted by the board under this subsection for elec-
41 tronic ballots shall include procedures to ensure:

42 “(a) The authentication of the unit owner or director voting by an electronic ballot;

43 “(b) If a vote conducted by written ballot under ORS 100.425 utilizes the procedure spec-
44 ified in ORS 100.425 (2)(b), compliance with ORS 100.425; and

45 “(c) That the electronic ballot of unit owners is secret if the declaration, bylaws or rules

1 of the board of directors requires the electronic ballot to be secret.

2 **“SECTION 10.** (1) If the board of directors of an association of unit owners offers elec-
3 tronic notices and balloting under sections 8 and 9 of this 2005 Act, and a unit owner or di-
4 rector wishes to use those electronic methods, the unit owner or director must consent to
5 receive both electronic notices and electronic ballots. The unit owner or director may not
6 elect to receive only electronic notices or only electronic ballots.

7 **“(2)** Consent to receive electronic notices and electronic ballots shall designate the ad-
8 dress, location or system to which the electronic notice and electronic ballot may be trans-
9 mitted. Unless otherwise provided in rules adopted under sections 8 and 9 of this 2005 Act,
10 consent is a general consent to receive all notices and ballots electronically.

11 **“(3)** A unit owner or director who has consented to receive electronic notices and elec-
12 tronic ballots under this section may revoke the consent by delivering a revocation to the
13 association in the form of an electronic mail or in accordance with rules adopted by the
14 board of directors.

15 **“(4)** The consent of any unit owner or director is revoked if the association is unable to
16 electronically transmit two consecutive electronic notices or ballots in accordance with the
17 consent, and the secretary of the association or other person responsible for sending elec-
18 tronic notices or electronic ballots has knowledge of the inability.

19 **“(5)** The inadvertent failure by the association to treat the inability to electronically
20 transit two consecutive electronic notices or electronic ballots as a revocation under sub-
21 section (4) of this section does not invalidate any meeting or other action.

22 **“SECTION 11.** (1) Subject to subsection (2) of this section, if an association of unit own-
23 ers fails to fill vacancies on the board of directors sufficient to constitute a quorum in ac-
24 cordance with the bylaws, a unit owner or a first mortgagee of a unit may request the circuit
25 court of the county in which the condominium is located to appoint a receiver under ORCP
26 80 to manage the affairs of the association.

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

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

33 **“(a)** A description of the intended action.

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

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

37 **“(d)** A statement that if the association fails to fill vacancies on the board by the speci-
38 fied date, the owner may file the petition with the court under subsection (1) of this section.

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

41 **“(4)** If a receiver is appointed, the salary of the receiver, court costs, attorney fees and
42 all other expenses of the receivership shall be a common expense of the association, as de-
43 termined by the court.

44 **“(5)** A receiver appointed under this section has all of the powers and duties of a duly
45 constituted board of directors and shall serve until a sufficient number of vacancies on the

1 board are filled to constitute a quorum.

2 “(6) If the unit owners fail to elect the number of directors sufficient to constitute a
3 quorum of the board of directors at the turnover meeting, in addition to the notice require-
4 ments specified in subsections (2) and (3) of this section, a unit owner shall give the notice
5 to all other unit owners in the manner prescribed in the bylaws.

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

8 “**SECTION 12.** (1) A declarant may amend the declaration or bylaws in order to comply
9 with requirements of the Federal Housing Administration, the United States Department of
10 Veterans Affairs, the federal Rural Housing Service, the Federal National Mortgage Associ-
11 ation, the Government National Mortgage Association, the Federal Home Loan Mortgage
12 Corporation, any department, bureau, board, commission or agency of the United States or
13 the State of Oregon or any corporation wholly owned, directly or indirectly, by the United
14 States or the State of Oregon that insures, guarantees or provides financing for a condo-
15 minium or units in a condominium.

16 “(2) If the need to amend the declaration or the bylaws occurs after turnover to the as-
17 sociation of unit owners has occurred, the amendment must be approved by the association
18 in accordance with the approval provisions of the declaration or bylaws and this chapter.

19 “**SECTION 13.** ORS 94.585 is amended to read:

20 “94.585. (1) A declarant may amend the declaration or initial bylaws in order to comply with
21 requirements of the Federal Housing Administration, the United States Department of Veterans Af-
22 fairs, the [*Farmer’s Home Administration of the United States*] **federal Rural Housing Service**, the
23 Federal National Mortgage Association, the Government National Mortgage Association, the Fed-
24 eral Home [*Mortgage*] Loan **Mortgage** Corporation, any department, bureau, board, commission or
25 agency of the United States or the State of Oregon or any corporation wholly owned, directly or
26 indirectly, by the United States or the State of Oregon [*which*] **that** insures, guarantees or provides
27 financing for a planned community or lots in a planned community. [*However,*]

28 “(2) If the need to amend the declaration or the initial bylaws occurs after the turnover to the
29 homeowners association has occurred, the amendment must be approved by the association in ac-
30 cordance with the approval provisions of the declaration or bylaws.

31 “**SECTION 14.** ORS 94.675 is amended to read:

32 “94.675. (1) The board of directors of an association shall obtain **and maintain**:

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

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

39 “(2) Premiums for insurance obtained under this section shall be a common expense of the as-
40 sociation.

41 “(3) [*The*] A policy may contain a [*reasonable deductible and the amount thereof*] **deductible in**
42 **the amount specified in the declaration or bylaws. The deductible amount** shall be added to the
43 face amount of the policy in determining whether the insurance equals at least the full replacement
44 cost.

45 “(4) **Notwithstanding a provision in the declaration or bylaws of a planned community**

1 that imposes a maximum deductible amount in an association insurance policy, if the board
2 of directors determines that it is in the best interest of the association and owners as pro-
3 vided in subsection (5) of this section, the board may adopt a resolution authorizing the as-
4 sociation to obtain and maintain an insurance policy with a deductible amount exceeding the
5 specified maximum, but not in excess of \$10,000.

6 “(5) In making the determination under subsection (4) of this section, the board of di-
7 rectors shall consider such factors as the availability and cost of insurance and loss experi-
8 ence of the association.

9 “(6) The board of directors shall ensure that a copy of a resolution adopted under sub-
10 section (4) of this section and a notice described in section 8 of this 2005 Act are:

11 “(a) Delivered to each owner; or

12 “(b) Mailed, not later than 10 days after adoption of the resolution, to the mailing address
13 of each owner or to the mailing address designated in writing by the owner.

14 “**SECTION 15.** ORS 100.435 is amended to read:

15 “100.435. (1) If the bylaws provide that the association of unit owners has the sole authority to
16 decide whether to repair or reconstruct a unit that has suffered damage or that a unit must be re-
17 paired or reconstructed, the board of directors shall obtain and maintain at all times and shall pay
18 for out of the common expense funds, the following insurance covering both the common elements
19 and individual units:

20 “(a) Property insurance including, but not limited to, fire, extended coverage, vandalism and
21 malicious mischief; and

22 “(b) Insurance covering the legal liability of the association of unit owners, the unit owners in-
23 dividually and the manager including, but not limited to, the board of directors, the public and the
24 unit owners and their invitees or tenants, incident to ownership, supervision, control or use of the
25 property. There may be excluded from the policy required under this paragraph, coverage of a unit
26 owner, other than coverage as a member of the association of unit owners or board of directors, for
27 liability arising out of acts or omissions of that unit owner and liability incident to the ownership
28 or use of the part of the property as to which that unit owner has the exclusive use or occupancy.
29 Liability insurance required under this paragraph shall be issued on a comprehensive liability basis
30 and shall provide a cross liability indorsement providing that the rights of a named insured under
31 the policy *[shall]* **does** not prejudice any action against another named insured.

32 “(2) If the bylaws require the individual unit owners to obtain insurance for their units, the
33 bylaws also shall contain a provision requiring the board of directors to obtain the following insur-
34 ance covering the common elements:

35 “(a) Property insurance including, but not limited to, fire, extended coverage, vandalism and
36 malicious mischief; and

37 “(b) Insurance covering the legal liability of the association of unit owners and the manager
38 including, but not limited to, the board of directors, *[to]* the public *[or]* **and** the unit owners and their
39 invitees or tenants, incident to supervision, control or use of the property.

40 “(3) The board of directors shall obtain, if reasonably available, terms in insurance policies un-
41 der this section that provide a waiver of subrogation by the insurer as to any claims against the
42 board of directors of the association, *any owner or any guest of an owner*.

43 “(4) **Notwithstanding a provision in the declaration or bylaws of a condominium, including**
44 **a condominium created before the effective date of this 2005 Act, that imposes a maximum**
45 **deductible amount of \$10,000 or less in an association insurance policy, if the board of di-**

1 rectors determines that it is in the best interest of the association of unit owners and of the
2 unit owners, as provided in subsection (5) of this section, the board may adopt a resolution
3 authorizing the association to obtain and maintain an insurance policy with a deductible
4 amount exceeding the specified maximum, but not in excess of \$10,000.

5 “(5) In making the determination under subsection (4) of this section, the board of di-
6 rectors shall consider such factors as the availability and cost of insurance and loss experi-
7 ence of the association.

8 “(6) If the declaration or bylaws of a condominium created before the effective date of
9 this 2005 Act do not assign the responsibility for payment of the amount of the deductible in
10 an association insurance policy, the board of directors may adopt a resolution that assigns
11 the responsibility for payment of the amount of the deductible. The resolution must include,
12 but need not be limited to:

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

14 “(A) A unit owner or the unit owners affected by a loss; or

15 “(B) All unit owners;

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

17 “(c) A requirement that a unit owner obtain and maintain insurance as described in
18 subsection (7) of this section; and

19 “(d) If a unit owner and the association have duplicate insurance coverage, the insurance
20 policy that is primary, unless otherwise provided in the declaration or bylaws.

21 “(7) A unit owner shall obtain and maintain:

22 “(a) An insurance policy that insures the owner’s unit and appurtenant limited common
23 elements for not less than the amount of the deductible in the association’s insurance policy
24 for which the unit owner may be responsible and that insures the unit owner’s personal
25 property for any loss or damage; and

26 “(b) Comprehensive liability insurance that includes, but is not limited to, coverage for
27 negligent acts of unit owners and tenants, and guests of unit owners and tenants, for damage
28 to the general and limited common elements, to other units and to the personal property of
29 other persons that is located in other units and the common elements.

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

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

35 “(b) Assigns the responsibility for payment of charges for handling claims, including any
36 charges by a managing agent. A managing agent may not authorize payment of its own
37 charges.

38 “(9) The board of directors shall ensure that a copy of a resolution adopted under sub-
39 sections (4), (6) and (8) of this section and a notice described in subsection (10) of this section
40 are:

41 “(a) Delivered to each unit; or

42 “(b) Mailed, not later than 10 days after adoption of the resolution, to the mailing address
43 of each unit owner or to the mailing address designated in writing by the unit owner.

44 “(10) The notice required under subsection (9) of this section shall:

45 “(a) Advise the unit owner to contact the unit owner’s insurance agent to determine the

1 **effect of the resolution on the unit owner's individual insurance coverage; and**

2 **“(b) Be in a form and style reasonably calculated to inform the unit owner of the im-**
3 **portance of the notice.**

4 **“(11) Failure to provide a copy of a resolution or a notice required under this section does**
5 **not affect the responsibility of a unit owner to comply with a resolution adopted under this**
6 **section.**

7 **“SECTION 16.** ORS 100.415 is amended to read:

8 “100.415. The bylaws shall include a reference to the declaration to which the bylaws relate and
9 shall provide for:

10 “(1) The organization of the association of unit owners in accordance with ORS 100.405, when
11 the initial meeting shall be held and the method of calling that meeting.

12 “(2) If required under ORS 100.205, the formation of a transitional committee in accordance with
13 such section.

14 “(3) The turnover meeting required under ORS 100.210, including when the meeting shall be
15 called, the method of calling the meeting, the right of a unit owner under ORS 100.210 (3) to call
16 the meeting and a statement of the purpose of the meeting.

17 “(4)(a) The method of calling the annual meeting and all other meetings of the unit owners in
18 accordance with ORS 100.407; and

19 “(b) The percentage of owners that constitutes a quorum.

20 “(5)(a) The election from among the unit owners of a board of directors and the number of per-
21 sons constituting the board;

22 “(b) The terms of office of directors;

23 “(c) The powers and duties of the board;

24 “(d) The compensation, if any, of the directors;

25 “(e) The method of removal from office of directors; and

26 “(f) The method of filling vacancies on the board.

27 “(6) The method of calling meetings of the board of directors in accordance with ORS 100.420
28 and a statement that all meetings of the board of directors of the association of unit owners shall
29 be open to unit owners.

30 “(7) The election of a chairperson, a secretary, a treasurer and any other officers of the asso-
31 ciation.

32 “(8) The preparation and adoption of a budget in accordance with ORS 100.412.

33 “(9)(a) The maintenance, repair and replacement of the common elements and association prop-
34 erty;

35 “(b) Payment for the expense of maintenance, repair and replacement of common elements and
36 association property and other expenses of the condominium in accordance with ORS 100.530; and

37 “(c) The method of approving payment vouchers.

38 “(10) The employment of personnel necessary for the maintenance and repair of the common
39 elements.

40 “(11) The manner of collecting assessments from the unit owners.

41 “(12) Insurance coverage in accordance with ORS 100.435 **and the responsibility for payment**
42 **of the amount of the deductible in an association insurance policy.**

43 “(13) The preparation and distribution of the annual financial statement in accordance with ORS
44 100.480.

45 “(14) The reserve account and the preparation, review and update of the reserve study required

1 under ORS 100.175.

2 “(15) The filing of an Annual Report and any amendment with the Real Estate Agency in ac-
3 cordance with ORS 100.250.

4 “(16) The method of adopting and of amending administrative rules and regulations governing
5 the details of the operation of the condominium and use of the common elements.

6 “(17) Restrictions on and requirements respecting the enjoyment and maintenance of the units
7 and the common elements as are designed to prevent unreasonable interference with the use of their
8 respective units and of the common elements by the several unit owners.

9 “(18) Any restrictions on use or occupancy of units. Any such restrictions created by documents
10 other than the bylaws may be incorporated by reference in the bylaws to the official records of the
11 county in which the property is located.

12 “(19) The method of amending the bylaws in accordance with ORS 100.410.

13 “(20) Any other details regarding the property that the declarant considers desirable. However,
14 if a provision required to be in the declaration under ORS 100.105 is included in the bylaws, the
15 voting requirements for amending the declaration shall also govern the amendment of the provision
16 in the bylaws.

17 “(21) In the event additional units are proposed to be annexed or created pursuant to ORS
18 100.125 or 100.150, the method of apportioning common expenses in the event new units are added
19 during the course of the fiscal year.

20 “**SECTION 17.** ORS 94.680 is amended to read:

21 “94.680. (1) If a declaration [*provides*] **or bylaws provide** that the homeowners association has
22 the sole authority to decide whether to repair or reconstruct a unit that has suffered damage or
23 whether a unit must be repaired or reconstructed, the board of directors shall obtain blanket all-risk
24 insurance for the full replacement cost of all structures in the planned community. Cost of the
25 coverage shall be a common expense to the association.

26 “(2) If the declaration [*contains*] **or bylaws contain** a provision described in subsection (1) of
27 this section, the declaration **or bylaws** also shall provide:

28 “(a) Requirements of or limitations on repairing or reconstructing damaged or destroyed prop-
29 erty;

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

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

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

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

34 “**SECTION 18.** ORS 94.685 is amended to read:

35 “94.685. Unless provided in the declaration, the bylaws shall specify:

36 “(1) The insurance an owner must obtain, if any;

37 “(2) The insurance, if any, an individual owner is precluded from obtaining; [*and*]

38 “**(3) The responsibility for payment of the amount of the deductible in an association in-**
39 **surance policy; and**

40 “[3] (4) Whether or not the insurance coverage obtained and maintained by the board of di-
41 rectors may be brought into contribution with insurance bought by owners or their mortgagees.

42 “**SECTION 19.** ORS 94.640 is amended to read:

43 “94.640. (1) The board of directors of an association may act on behalf of the association except
44 as limited by the declaration and the bylaws. In the performance of their duties, officers and mem-
45 bers of the board of directors are governed by this section and the applicable provisions of ORS

1 65.357, 65.361, 65.367, 65.369 and 65.377, whether or not the association is incorporated under ORS
2 chapter 65.

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

5 “(3) At least annually, the board of directors of an association shall review the insurance cov-
6 erage of the association.

7 “(4) The board of directors of the association annually shall cause to be filed the necessary in-
8 come tax returns for the association.

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

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

12 “(a) The owners may remove any member of the board of directors, other than members ap-
13 pointed by the declarant or persons who are ex officio directors, with or without cause, by a ma-
14 jority vote of all owners present and entitled to vote at any meeting of the owners at which a
15 quorum is present.

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

18 “(7)(a) All meetings of the board of directors of the association shall be open to owners, except
19 that at the discretion of the board the following matters may be considered in executive session:

20 “(A) Consultation with legal counsel concerning the rights and duties of the association re-
21 garding existing or potential litigation, or criminal matters;

22 “(B) Personnel matters, including salary negotiations and employee discipline;

23 “(C) Negotiation of contracts with third parties; and

24 “(D) Collection of unpaid assessments.

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

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

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

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

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

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

44 “(c) Only emergency meetings of the board of directors may be conducted by telephonic com-
45 munication or by the use of a means of communication that allows all members of the board of di-

1 rectors participating to hear each other simultaneously or otherwise to be able to communicate
2 during the meeting. A member of the board of directors participating in a meeting by this means is
3 deemed to be present in person at the meeting.

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

6 “(10) The board of directors shall cause the information required to enable the association to
7 comply with ORS 94.670 (7) to be maintained and kept current.

8 “(11) As used in this section, ‘meeting’ means a convening of a quorum of members of the board
9 of directors where matters relating to association business are discussed, except a convening of a
10 quorum of members of the board of directors for the purpose of participating in litigation, mediation
11 or arbitration proceedings.

12 “**SECTION 20.** ORS 94.645 is amended to read:

13 “94.645. (1) Unless otherwise provided in the bylaws, the board of directors at least annually
14 shall adopt a budget for the planned community. [*Within 30 days after*] **At least 10 days before**
15 adopting the annual budget for the planned community, the board of directors shall provide a sum-
16 mary of the **proposed** budget to all owners.

17 “**(2) The board of directors shall provide a summary of the adopted annual budget to all**
18 **owners within 30 days after adopting the annual budget.**

19 “**(3)** If the board fails to adopt a budget, the last adopted annual budget shall continue in effect.

20 “**SECTION 21.** ORS 94.709 is amended to read:

21 “94.709. (1) Whenever a homeowners association levies any assessment against a lot, the asso-
22 ciation shall have a lien upon the individual lot for any unpaid assessments. The lien includes in-
23 terest, late charges, attorney fees, costs or other amounts imposed under the declaration or bylaws
24 or other recorded governing document. The lien is prior to a homestead exemption and all other
25 liens or encumbrances upon the lot except:

26 “(a) Tax and assessment liens; and

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

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

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

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

37 “(c) The name of the association;

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

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

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

1 “(4)(a) The proceedings to foreclose liens created by this section shall conform as nearly as
2 possible to the proceedings to foreclose liens [*created by ORS 87.010 except, notwithstanding ORS*
3 *87.055, a lien may be continued in force for a period of time not to exceed six years from the date the*
4 *assessment is due. For the purpose of determining the date the assessment is due in those cases when*
5 *subsequent unpaid assessments have accumulated under a notice recorded as provided in subsection (2)*
6 *of this section, the assessment and claim regarding each unpaid assessment shall be deemed to have*
7 *been levied at the time the unpaid assessment became due]* **under ORS chapter 88.**

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

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

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

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

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

19 “**SECTION 22. This 2005 Act being necessary for the immediate preservation of the public**
20 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
21 **on its passage.”.**

22
