

**A-Engrossed
Senate Bill 672**

Ordered by the Senate June 6
Including Senate Amendments dated June 6

Sponsored by Senator METSGER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Allows boards of directors of homeowner associations and condominium unit owner associations to provide electronic notices and ballots under specified circumstances.

Provides that if vacancy on board of directors of homeowner association or condominium unit owner association constitutes quorum insufficiency, owners may request that court appoint receiver to manage affairs of association.

Allows boards of directors of homeowner associations and condominium unit owner associations to adopt resolutions relating to insurance policies and owner responsibility to obtain insurance.

Provides that condominium declarations and bylaws may be amended by declarant in order to comply with federal or state agencies that insure, guarantee or provide financing for condominium or units in condominium.

[Requires that prospective purchaser of lot in planned community be provided disclosure statement containing specified information. Provides that contract of managing agent of planned community may not exceed two years.]

Requires [15] five days' notice of meeting of board of directors of planned community. Requires that board of directors of planned community provide summary of budget 30 days before adopting budget. [Changes certain provisions relating to liens for assessments.]

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to properties governed by declarations; creating new provisions; amending ORS 94.585,
3 94.640, 94.645, 94.675, 94.680, 94.685, 94.709, 100.415 and 100.435; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

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.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

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

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

5 (a) Is electronically transmitted to an address, location or system designated by the
6 owner or director for that purpose; or

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

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

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

14 (9) If the board of directors elects to give notices electronically, the board shall adopt
15 rules to implement this section.

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

17 (a) Electronic mail;

18 (b) Facsimile transmission; or

19 (c) Posting on a website.

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

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

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

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

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

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

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

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

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

41 (b) If a vote conducted by written ballot under ORS 94.647 utilizes the procedure specified
42 in ORS 94.647 (2)(b), compliance with ORS 94.647; and

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

45 **SECTION 4.** (1) If the board of directors of a homeowners association offers electronic

1 notices and balloting under sections 2 and 3 of this 2005 Act, and an owner or director wishes
2 to use those electronic methods, the owner or director must consent to receive both elec-
3 tronic notices and electronic ballots. The owner or director may not elect to receive only
4 electronic notices or only electronic ballots.

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

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

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

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

20 **SECTION 5.** (1) Subject to subsection (2) of this section, if a homeowners association fails
21 to fill vacancies on the board of directors sufficient to constitute a quorum in accordance
22 with the bylaws, an owner or a first mortgagee may request the circuit court of the county
23 in which the planned community is located to appoint a receiver under ORCP 80 to manage
24 the affairs of the association.

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

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

31 (a) A description of the intended action.

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

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

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

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

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

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

45 (6) If the owners fail to elect the number of directors sufficient to constitute a quorum

1 of the board of directors at the turnover meeting, in addition to the notice requirements
2 specified in subsections (2) and (3) of this section, an owner shall give the notice to all other
3 owners in the manner prescribed in the bylaws.

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

6 **SECTION 6.** (1) If the declaration or bylaws of a planned community created under ORS
7 94.550 to 94.783 before the effective date of this 2005 Act or a planned community subject to
8 ORS 94.572 do not assign the responsibility for payment of the amount of the deductible in
9 an association insurance policy, the board of directors may adopt a resolution that assigns
10 the responsibility for payment of the amount of the deductible. The resolution must include,
11 but need not be limited to:

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

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

14 (B) All owners;

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

16 (c) A requirement that an owner obtain and maintain insurance as described in sub-
17 section (2) of this section; and

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

20 (2) An owner shall obtain and maintain:

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

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

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

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

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

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

38 (a) Delivered to each lot; or

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

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

42 (a) Advise each owner to contact an insurance agent to determine the effect of the re-
43 solution on the owner's individual insurance coverage; and

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

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

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

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

- 7 (a) Electronic mail;
- 8 (b) Facsimile transmission; or
- 9 (c) Posting on a website.

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

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

16 (4) Electronic notice under this section may be given only to unit owners or directors
17 who have consented to receive electronic notice. The consent of a unit owner or director
18 shall comply with section 10 of this 2005 Act.

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

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

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

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

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

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

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

34 **SECTION 9.** (1) As used in this section, “electronic ballot” means a ballot given by:

- 35 (a) Electronic mail;
- 36 (b) Facsimile transmission; or
- 37 (c) Posting on a website.

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

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

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

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

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

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

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

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

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

14 (b) If a vote conducted by written ballot under ORS 100.425 utilizes the procedure speci-
15 fied in ORS 100.425 (2)(b), compliance with ORS 100.425; and

16 (c) That the electronic ballot of unit owners is secret if the declaration, bylaws or rules
17 of the board of directors requires the electronic ballot to be secret.

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

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

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

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

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

38 **SECTION 11.** (1) Subject to subsection (2) of this section, if an association of unit owners
39 fails to fill vacancies on the board of directors sufficient to constitute a quorum in accord-
40 ance with the bylaws, a unit owner or a first mortgagee of a unit may request the circuit
41 court of the county in which the condominium is located to appoint a receiver under ORCP
42 80 to manage the affairs of the association.

43 (2) At least 45 days before a unit owner or first mortgagee requests the circuit court to
44 appoint a receiver under subsection (1) of this section, the unit owner or first mortgagee
45 shall mail, by certified or registered mail, a notice to the association and shall post a copy

1 of the notice at a conspicuous place or places on the property or provide notice by a method
2 otherwise reasonably calculated to inform unit owners of the proposed action.

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

4 (a) A description of the intended action.

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

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

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

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

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

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

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

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

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

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

35 **SECTION 13.** ORS 94.585 is amended to read:

36 94.585. (1) A declarant may amend the declaration or initial bylaws in order to comply with
37 requirements of the Federal Housing Administration, the United States Department of Veterans Af-
38 fairs, the [*Farmer's Home Administration of the United States*] **federal Rural Housing Service**, the
39 Federal National Mortgage Association, the Government National Mortgage Association, the Fed-
40 eral Home [*Mortgage*] Loan **Mortgage** Corporation, any department, bureau, board, commission or
41 agency of the United States or the State of Oregon or any corporation wholly owned, directly or
42 indirectly, by the United States or the State of Oregon [*which*] **that** insures, guarantees or provides
43 financing for a planned community or lots in a planned community. [*However,*]

44 (2) If the need to amend the declaration or the initial bylaws occurs after the turnover to the
45 homeowners association has occurred, the amendment must be approved by the association in ac-

1 cordance with the approval provisions of the declaration or bylaws.

2 **SECTION 14.** ORS 94.675 is amended to read:

3 94.675. (1) The board of directors of an association shall obtain **and maintain:**

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

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

10 (2) Premiums for insurance obtained under this section shall be a common expense of the asso-
11 ciation.

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

16 (4) **Notwithstanding a provision in the declaration or bylaws of a planned community that**
17 **imposes a maximum deductible amount in an association insurance policy, if the board of**
18 **directors determines that it is in the best interest of the association and owners as provided**
19 **in subsection (5) of this section, the board may adopt a resolution authorizing the association**
20 **to obtain and maintain an insurance policy with a deductible amount exceeding the specified**
21 **maximum, but not in excess of \$10,000.**

22 (5) **In making the determination under subsection (4) of this section, the board of direc-**
23 **tors shall consider such factors as the availability and cost of insurance and loss experience**
24 **of the association.**

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

27 (a) **Delivered to each owner; or**

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

30 **SECTION 15.** ORS 100.435 is amended to read:

31 100.435. (1) If the bylaws provide that the association of unit owners has the sole authority to
32 decide whether to repair or reconstruct a unit that has suffered damage or that a unit must be re-
33 paired or reconstructed, the board of directors shall obtain and maintain at all times and shall pay
34 for out of the common expense funds, the following insurance covering both the common elements
35 and individual units:

36 (a) Property insurance including, but not limited to, fire, extended coverage, vandalism and ma-
37 licious mischief; and

38 (b) Insurance covering the legal liability of the association of unit owners, the unit owners in-
39 dividually and the manager including, but not limited to, the board of directors, the public and the
40 unit owners and their invitees or tenants, incident to ownership, supervision, control or use of the
41 property. There may be excluded from the policy required under this paragraph, coverage of a unit
42 owner, other than coverage as a member of the association of unit owners or board of directors, for
43 liability arising out of acts or omissions of that unit owner and liability incident to the ownership
44 or use of the part of the property as to which that unit owner has the exclusive use or occupancy.
45 Liability insurance required under this paragraph shall be issued on a comprehensive liability basis

1 and shall provide a cross liability indorsement providing that the rights of a named insured under
2 the policy *[shall]* **does** not prejudice any action against another named insured.

3 (2) If the bylaws require the individual unit owners to obtain insurance for their units, the by-
4 laws also shall contain a provision requiring the board of directors to obtain the following insurance
5 covering the common elements:

6 (a) Property insurance including, but not limited to, fire, extended coverage, vandalism and ma-
7 licious mischief; and

8 (b) Insurance covering the legal liability of the association of unit owners and the manager in-
9 cluding, but not limited to, the board of directors, *[to]* the public *[or]* **and** the unit owners and their
10 invitees or tenants, incident to supervision, control or use of the property.

11 (3) The board of directors shall obtain, if reasonably available, terms in insurance policies under
12 this section that provide a waiver of subrogation by the insurer as to any claims against the board
13 of directors of the association~~, any owner or any guest of an owner~~.

14 (4) **Notwithstanding a provision in the declaration or bylaws of a condominium, including**
15 **a condominium created before the effective date of this 2005 Act, that imposes a maximum**
16 **deductible amount of \$10,000 or less in an association insurance policy, if the board of di-**
17 **rectors determines that it is in the best interest of the association of unit owners and of the**
18 **unit owners, as provided in subsection (5) of this section, the board may adopt a resolution**
19 **authorizing the association to obtain and maintain an insurance policy with a deductible**
20 **amount exceeding the specified maximum, but not in excess of \$10,000.**

21 (5) **In making the determination under subsection (4) of this section, the board of direc-**
22 **tors shall consider such factors as the availability and cost of insurance and loss experience**
23 **of the association.**

24 (6) **If the declaration or bylaws of a condominium created before the effective date of this**
25 **2005 Act do not assign the responsibility for payment of the amount of the deductible in an**
26 **association insurance policy, the board of directors may adopt a resolution that assigns the**
27 **responsibility for payment of the amount of the deductible. The resolution must include, but**
28 **need not be limited to:**

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

30 (A) **A unit owner or the unit owners affected by a loss; or**

31 (B) **All unit owners;**

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

33 (c) **A requirement that a unit owner obtain and maintain insurance as described in sub-**
34 **section (7) of this section; and**

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

37 (7) **A unit owner shall obtain and maintain:**

38 (a) **An insurance policy that insures the owner's unit and appurtenant limited common**
39 **elements for not less than the amount of the deductible in the association's insurance policy**
40 **for which the unit owner may be responsible and that insures the unit owner's personal**
41 **property for any loss or damage; and**

42 (b) **Comprehensive liability insurance that includes, but is not limited to, coverage for**
43 **negligent acts of unit owners and tenants, and guests of unit owners and tenants, for damage**
44 **to the general and limited common elements, to other units and to the personal property of**
45 **other persons that is located in other units and the common elements.**

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

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

6 (b) Assigns the responsibility for payment of charges for handling claims, including any
7 charges by a managing agent. A managing agent may not authorize payment of its own
8 charges.

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

12 (a) Delivered to each unit; or

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

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

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

18 (b) Be in a form and style reasonably calculated to inform the unit owner of the impor-
19 tance of the notice.

20 (11) Failure to provide a copy of a resolution or a notice required under this section does
21 not affect the responsibility of a unit owner to comply with a resolution adopted under this
22 section.

23 **SECTION 16.** ORS 100.415 is amended to read:

24 100.415. The bylaws shall include a reference to the declaration to which the bylaws relate and
25 shall provide for:

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

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

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

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

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

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

38 (b) The terms of office of directors;

39 (c) The powers and duties of the board;

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

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

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

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

1 (7) The election of a chairperson, a secretary, a treasurer and any other officers of the associ-
2 ation.

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

4 (9)(a) The maintenance, repair and replacement of the common elements and association prop-
5 erty;

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

8 (c) The method of approving payment vouchers.

9 (10) The employment of personnel necessary for the maintenance and repair of the common el-
10 ements.

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

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

14 (13) The preparation and distribution of the annual financial statement in accordance with ORS
15 100.480.

16 (14) The reserve account and the preparation, review and update of the reserve study required
17 under ORS 100.175.

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

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

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

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

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

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

33 (21) In the event additional units are proposed to be annexed or created pursuant to ORS
34 100.125 or 100.150, the method of apportioning common expenses in the event new units are added
35 during the course of the fiscal year.

36 **SECTION 17.** ORS 94.680 is amended to read:

37 94.680. (1) If a declaration [*provides*] **or bylaws provide** that the homeowners association has
38 the sole authority to decide whether to repair or reconstruct a unit that has suffered damage or
39 whether a unit must be repaired or reconstructed, the board of directors shall obtain blanket all-risk
40 insurance for the full replacement cost of all structures in the planned community. Cost of the
41 coverage shall be a common expense to the association.

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

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

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

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

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

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

4 **SECTION 18.** ORS 94.685 is amended to read:

5 94.685. Unless provided in the declaration, the bylaws shall specify:

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

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

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

10 *[(3)]* (4) Whether or not the insurance coverage obtained and maintained by the board of direc-
11 tors may be brought into contribution with insurance bought by owners or their mortgagees.

12 **SECTION 19.** ORS 94.640 is amended to read:

13 94.640. (1) The board of directors of an association may act on behalf of the association except
14 as limited by the declaration and the bylaws. In the performance of their duties, officers and mem-
15 bers of the board of directors are governed by this section and the applicable provisions of ORS
16 65.357, 65.361, 65.367, 65.369 and 65.377, whether or not the association is incorporated under ORS
17 chapter 65.

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

20 (3) At least annually, the board of directors of an association shall review the insurance cover-
21 age of the association.

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

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

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

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

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

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

35 (A) Consultation with legal counsel concerning the rights and duties of the association regarding
36 existing or potential litigation, or criminal matters;

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

38 (C) Negotiation of contracts with third parties; and

39 (D) Collection of unpaid assessments.

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

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

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

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

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

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

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

19 (9) The board of directors, in the name of the association, shall maintain a current mailing ad-
20 dress of the association.

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

23 (11) As used in this section, "meeting" means a convening of a quorum of members of the board
24 of directors where matters relating to association business are discussed, except a convening of a
25 quorum of members of the board of directors for the purpose of participating in litigation, mediation
26 or arbitration proceedings.

27 **SECTION 20.** ORS 94.645 is amended to read:

28 94.645. (1) Unless otherwise provided in the bylaws, the board of directors at least annually
29 shall adopt a budget for the planned community. [*Within 30 days after*] **At least 10 days before**
30 adopting the annual budget for the planned community, the board of directors shall provide a sum-
31 mary of the **proposed** budget to all owners.

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

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

35 **SECTION 21.** ORS 94.709 is amended to read:

36 94.709. (1) Whenever a homeowners association levies any assessment against a lot, the associ-
37 ation shall have a lien upon the individual lot for any unpaid assessments. The lien includes interest,
38 late charges, attorney fees, costs or other amounts imposed under the declaration or bylaws or other
39 recorded governing document. The lien is prior to a homestead exemption and all other liens or
40 encumbrances upon the lot except:

41 (a) Tax and assessment liens; and

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

43 (2) Recording of the declaration constitutes record notice and perfection of the lien for assess-
44 ments. No further recording of a claim of lien for assessments or notice of a claim of lien under this
45 section is required to perfect the association's lien. The association shall record a notice of claim

1 of lien for assessments under this section in the deed records of the county in which a lot is located
2 before any suit to foreclose may proceed under subsection (4) of this section. The notice shall con-
3 tain:

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

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

7 (c) The name of the association;

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

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

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

16 (4)(a) The proceedings to foreclose liens created by this section shall conform as nearly as pos-
17 sible to the proceedings to foreclose liens [*created by ORS 87.010 except, notwithstanding ORS*
18 *87.055, a lien may be continued in force for a period of time not to exceed six years from the date the*
19 *assessment is due. For the purpose of determining the date the assessment is due in those cases when*
20 *subsequent unpaid assessments have accumulated under a notice recorded as provided in subsection (2)*
21 *of this section, the assessment and claim regarding each unpaid assessment shall be deemed to have*
22 *been levied at the time the unpaid assessment became due] **under ORS chapter 88.***

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

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

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

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

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

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

37
