

GENERAL SUBJECT SUMMARY*
Enrolled House Bill 2665
(Chapter 409, Oregon Laws 2007)
AMENDMENTS TO
OREGON PLANNED COMMUNITY ACT ("PCA")
& OREGON CONDOMINIUM ACT ("OCA")
Effective Date: September 27, 2007

ASSOCIATION OPERATION AND ADMINISTRATION

I.

ASSOCIATION MEETINGS; VOTING & ELECTRONIC COMMUNICATION

A. FAILURE TO ELECT QUORUM OF DIRECTORS

- ▶ Establishes procedure for appointment of receiver if owners fail to elect quorum of directors.
New: ORS 94.642 (Sec. 2) / ORS 100.418 (Sec. 19)

B. QUORUM REQUIREMENTS; LACK OF OWNER PARTICIPATION AT MEETINGS

- ▶ Provides that absentee ballots are counted for the purposes of establishing a quorum.
- ▶ Provides quorum requirements may be reduced for subsequent meeting when quorum not present (but not below 20 % of owners), unless otherwise provided in declaration or bylaws.
ORS 94.655 (Sec. 11) / ORS 100.408 (Sec. 26)

C. TURNOVER MEETING

- ▶ Specifies that quorum of owners is required.
- ▶ Adds maintenance plan required under ORS 94.595/ORS 100.175 to list of documents declarant must deliver to the association at the turnover meeting.
- ▶ Prescribes procedure if owners fail to elect number of directors sufficient to constitute a quorum of directors.
ORS 94.616 (Sec. 8) / ORS 100.210 (Sec. 24)

D. CALLING OF SPECIAL MEETINGS

- ▶ Clarifies that meeting is called by officers of the association at the written request of owners.
- ▶ Permits owner to call meeting if officers fail to call meeting within 30 days of written request.
ORS 94.650 (Sec. 10) / ORS 100.407 (Sec. 25)

E. METHODS OF VOTING

- ▶ Restructures and clarifies methods of voting.
- ▶ Prescribes requirements and procedures for use of absentee ballots.
- ▶ Permits use of absentee ballots only at discretion of board, unless declaration or bylaws otherwise provide.
- ▶ Prohibits board from requiring specific proxy form.
- ▶ Provides a copy of a proxy provided by facsimile or electronic means of communication satisfactory to board is valid.
ORS 94.660 (Sec. 13) / ORS 100.427 (Sec. 28)

F. VOTE BY WRITTEN BALLOT

- ▶ Expands exceptions.
- ▶ Provides secret ballot procedure does not apply when consents of specific owners are required.
- ▶ Permits specified date certain for return of ballots to be extended.
- ▶ Clarifies procedure when vote by secrecy procedure.
- ▶ Restructures section and conforms style.

ORS 94.647 (Sec. 9) / ORS 100.425 (Sec. 27)

G. VOTING RIGHTS OF FIDUCIARIES

- ▶ Clarifies that fiduciary's right to vote includes right to grant approval or consent with respect to the unit or lot owned or held in fiduciary capacity.

ORS 94.658 (Sec. 12) / ORS 100.525 (Sec. 32)

H. ELECTRONIC COMMUNICATIONS

Electronic Notice:

- ▶ In the discretion of the board of directors, permits any notice, information or written material required to be given an owner or director under the declaration, bylaws or PCA/OCA to be given by electronic communication, notwithstanding any requirement under the declaration, bylaws or PCA/OCA.
- ▶ Specifies exceptions.
- ▶ Provides owner or director may decline to receive notice or information electronically.

New: ORS 94.652 (Sec. 4) / ORS 100.423 (Sec. 20)

Electronic Voting:

- ▶ Defines electronic ballot.
- ▶ Unless declaration or bylaws prohibit or provide other methods of electronic ballot, permits, in the discretion of the board, vote, approval or consent of an owner to be given by electronic ballot.
- ▶ Prescribes procedures.
- ▶ Imposes requirements and limitations.

New: ORS 94.661 (Sec. 5) / ORS 100.428 (Sec. 21)

II. INSURANCE

A. DEDUCTIBLES (Responsibility for Payment When Governing Documents Silent)

- ▶ Provides if declaration or bylaws of an existing planned community or condominium do not assign responsibility for payment of the amount of the deductible in association insurance policy, the board of directors may adopt a resolution that assigns responsibility for payment of deductible amount.
- ▶ Specifies that certain provisions may be included in the resolution, including that an owner must obtain an insurance policy that insures the owner's lot or unit for not less than the amount of the deductible in the association's insurance policy and comprehensive liability insurance.

New: ORS 94.676 (Sec. 3) / ORS 100.435 (Sec. 31)

B. DEDUCTIBLES (Permits Maximum Deductible Stated in Governing Document to be Exceeded)

- ▶ Provides if the board of directors of the association of a planned community or condominium determines that it is in the best interest of the association and owners as provided in the section, the board may adopt a resolution authorizing the association to obtain an insurance policy with a deductible amount exceeding the specified maximum in the declaration or bylaws, but the deductible amount may not be in excess of the greater of \$10,000 or an amount acceptable to Fannie Mae.
- ▶ *ORS 94.675 (Sec. 14) / ORS 100.435 (Sec. 31)*

C. PROCEDURE FOR PROCESSING CLAIMS

- ▶ Provides unless otherwise provided in the declaration or bylaws, the board of directors may adopt a resolution that prescribes a procedure for processing claims, including responsibility for payment of charges for handling claims.

- ▶ Specifies certain provisions that may be in the resolution.

New: ORS 94.676 (Sec. 3) / 100.435 (Sec. 31)

D. NOTICE OF ADOPTION OF RESOLUTIONS

- ▶ Requires board of directors to ensure that a copy of a resolution adopted under new sections and the described notice be given owners.

- ▶ Prescribes procedure and effect of failure to comply with requirements.

New: ORS 94.676 (Sec. 3) / ORS 100.435 (Sec. 31)

E. INSURANCE PROVISIONS REQUIRED TO BE IN BYLAWS

- ▶ Requires bylaws of planned communities and condominiums recorded on and after September 27, 2007 to specify the responsibility for payment of the amount of the deductible in an association insurance policy.

- ▶ Permits declaration or bylaws to provide that responsibility for payment of the amount of deductible may be prescribed by resolution adopted by the board of directors.

ORS 94.685 (Sec. 16) / ORS 100.415 (Sec. 30)

III.

MISCELLANEOUS

A. BUDGET

- ▶ Deletes language inconsistent with other provisions of section requiring adoption of budget.
- ▶ Clarifies that the budget must include moneys allocated to the reserve account under ORS 94.595/ORS 100.175.

ORS 94.645 (Sec. 8a) / ORS 100.412 (Sec. 26a)

B. RESERVES; RESERVE STUDY & MAINTENANCE PLAN

- ▶ Revises reserve account requirements.

- ▶ Revises reserve study and maintenance plan requirements.

- ▶ Excludes condominiums consisting of one or two units (excluding units used for parking, storage or other uses ancillary to a unit) from reserve study and maintenance plan requirements. Exclusion applies to existing condominiums and to condominiums created on or after September 27, 2007, after the sale of the first unit to a person other than a successor declarant. However, exclusion does not apply to condominiums created on or after September 27, 2007 if the condominium is a flexible or staged condominium that might consist of more than two units.

ORS 94.595 (Sec. 7) / ORS 100.175 (Sec.23)

- ▶ Requires declaration/bylaws to provide for the preparation, review and update of the maintenance plan as required under ORS 94.595/ORS 100.175.

ORS 94.94.580 (Sec. 6a) / ORS 100.415 (Sec. 30)

C. BOARD OF DIRECTOR MEETINGS

- ▶ Provides director who is present at meeting at which action on association matter is taken is presumed to have assented to the action taken.
- ▶ Specifies exceptions.
- ▶ Requires meeting minutes to record vote or abstention of each director.
- ▶ Prohibits directors from voting by proxy or secret ballot except for election of officers which may be by secret ballot.

New: ORS 94.641 (Sec. 6) / ORS 100.419 (Sec. 22)

D. ATTORNEY FEES

- ▶ Precludes declaration or bylaws from limiting recovery of attorney fees by prevailing party in suit or action under section.
- ▶ Reconciles ORS 94.719 & 94.780.

ORS 94.719 (Sec. 17) / ORS 100.470 (Sec. 29)

E. APPLICATION & CONFORMING AMENDMENTS

- ▶ Makes sections added to PCA applicable to existing planned communities regulated under ORS 94.572.

ORS 94.572: Sec. 33

- ▶ Conforms statutory references.

ORS 100.410: Sec. 34

ORS 100.640: Sec.35

ORS 100.655: Sec. 36

***THIS IS A GENERAL SUMMARY TO ASSIST WHEN REVIEWING THE ENTIRE BILL.**

**FOR A COPY OF HB 2665 & OTHER INFORMATION REGARDING
2007 HOA LEGISLATION GO TO:**

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Direct Link to ORS Chapters 94 and 100:

<http://www.leg.state.or.us/ors/home>