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**OREGON PLANNED COMMUNITY ACT**

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

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

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

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

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

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

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

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

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

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

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

(ii) Common property;

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

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

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

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

(f) Make contracts and incur liabilities;

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

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

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

(j) Grant easements, leases, licenses and concessions through or over the common property;

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

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

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

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

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

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until the correction of any violation covered by the rule has occurred;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## OREGON CONDOMINIUM ACT

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**100.405 Association of unit owners; powers; granting of interest in common elements; dispute resolution.** (1)(a) An association of unit owners shall be organized to serve as a means through which the unit owners may take action with regard to the administration, management and operation of the condominium. The association of a condominium created on or after September 27, 2007, shall be organized as a corporation for profit or nonprofit corporation or, if the condominium consists of not more than four units, excluding units used for parking, storage or other use ancillary to a unit, as an unincorporated association. If the association is incorporated, the name of the association shall include the complete name of the condominium.

(b) Notwithstanding a provision in the declaration or bylaws of a condominium created before September 27, 2007, that states that the association shall be unincorporated or that requires approval of owners to incorporate as a nonprofit corporation under ORS chapter 65, an unincorporated association may be incorporated as a nonprofit corporation under ORS chapter 65 if the board of directors adopts a resolution that states the association will be incorporated.

(2) Membership in the association of unit owners shall be limited to unit owners.

(3) The affairs of the association shall be governed by a board of directors as provided for in the bylaws adopted under ORS 100.410.

(4) Subject to the provisions of the condominium's declaration and bylaws, and whether or not the association is unincorporated, the association may:

(a) Adopt and amend bylaws and rules and regulations;

(b) Adopt and amend budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from unit owners;

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

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

(e) Subject to subsection (11) of this section, initiate or intervene in litigation or administrative proceedings in its own

name, and without joining the individual unit owners, in the following:

(A) Matters relating to the collection of assessments and the enforcement of declarations and bylaws;

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

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

(D) Matters relating to or affecting common elements, including but not limited to actions for damage, destruction, impairment or loss of use of any common element;

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

(i) Resulting from a nuisance or a defect in or damage to a common element; or

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

(F) Any other matter to which the association has standing under law or pursuant to the declaration, bylaws or any articles of incorporation;

(f) Make contracts and incur liabilities;

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

(h) Cause additional improvement to be made as a part of the common elements;

(i) Acquire by purchase, lease, devise, gift or voluntary grant real or personal property or any interest therein and take, hold, possess and convey real or personal property or any interest therein;

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements;

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

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

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

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

(m) Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of assessments;

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

(o) Provide for the indemnification of its officers and executive board, as may be limited by ORS 61.218 (3)(d) (1987 Replacement Part), and maintain directors' and officers' liability insurance;

(p) Exercise any other powers conferred by the declaration or bylaws;

(q) Exercise all other powers that may be exercised in this state by any such association; and

(r) Exercise any other powers determined by the association to be necessary and proper for the governance and operation of the association.

(5) Subject to subsection (6) of this section, unless expressly limited or prohibited by the declaration, the association has the authority to grant, execute, acknowledge and deliver on behalf of the unit owners leases, easements, rights of way, licenses and other similar interests affecting the general common elements and consent to vacation of roadways within and adjacent to the condominium.

(6)(a)(A) Except as provided in subparagraph (B) of this paragraph, the granting of

a lease, easement, right of way, license or other similar interest pursuant to subsection (5) of this section shall be first approved by at least 75 percent of owners. Unit owner approval may be solicited by any means the board of directors determines is reasonable and need not be at a meeting of the association.

(B) Unless the declaration otherwise provides:

(i) The granting of a lease, easement, right of way, license or other similar interest affecting the general common elements for a term of two years or less shall require the approval of a majority of the board of directors.

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

(iii) The granting of a lease, easement, license or other similar interest to an owner for the exclusive use of a part of the general common elements to which the owner's unit provides primary access requires the approval of a majority of the board of directors. If the approval by the board of directors includes the right of the owner to make improvements to the general common elements to which the owner is being granted exclusive use, ORS 100.535 applies to the general common elements to the same extent that ORS 100.535 applies to a unit, including the right of the board under ORS 100.535 to require an owner, at owner's expense, to submit an opinion of a registered architect or registered professional engineer that the proposed improvement will not impair the structural integrity or mechanical systems of the condominium.

(b) Unless the declaration otherwise provides, the consent to vacation of roadways within and adjacent to the condominium must be approved first by at least a majority of unit owners present voting in person or by proxy at a duly constituted meeting of the association called for the purpose.

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(7) The instrument granting an interest or consent pursuant to subsection (5) of this section shall be executed by the chairperson and secretary of the association and acknowledged in the manner provided for acknowledgment of such instruments by such officers and shall state that such grant or consent was approved, if appropriate, by at least the percent of owners required under sub-section (6) of this section.

(8) Unless expressly prohibited by the declaration, any action permitted under subsections (5) and (6) of this section regarding a general common element may be taken with respect to any limited common element, provided that the owner of the unit to which the use of the limited common element is reserved and the holder of any mortgage or trust deed affecting the unit consent to the action and also execute an instrument as provided under subsection (7) of this section.

(9) Except as otherwise provided in the association's declaration or bylaws, the board of directors of the association may modify, close, remove, eliminate or discontinue the use of a general common element facility or improvement or portion of the common element landscaping, regardless of whether such facility, improvement or landscaping is mentioned in the declaration or shown on the plat provided that:

(a) Nothing in this subsection shall be construed as limiting the authority of the board of directors, in its discretion, to seek approval of such modification, closure, removal, elimination or discontinuance by the unit owners; and

(b) Modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreation or community building must be approved by at least a majority of the unit owners voting on such matter at a meeting or by written ballot held in accordance with the declaration, bylaws or ORS 100.425.

(10)(a) A permit or authorization issued by the board of directors pursuant to authority granted to the board under law, the declaration or the bylaws, may be recorded in the deed records of the county where the condominium is located. An instrument recorded under this subsection shall:

(A) Include the name of the condominium and a reference to where the declaration and any applicable supplemental declarations are recorded;

(B) Identify, by the designations stated in the declaration or applicable supplemental declaration, all affected units and common elements;

(C) Include such other information and signatures as may be required by law, under the declaration or bylaws or as the board of directors may desire; and

(D) Be executed by the chairperson and secretary of the association and acknowledged in the manner provided for acknowledgment of such instruments by the officers.

(b) The board of directors may record an amendment, modification, termination or other instrument relating to the permit or authorization described in this subsection. Any such instrument shall include a reference to the location of the recorded instrument and be executed by the chairperson and secretary of the association and acknowledged in the manner provided for acknowledgment of such instruments.

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

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

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

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

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

(f) The requirements of this subsection do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines. [Formerly 94.146; 1997 c.816 §9; 1999 c.677 §47; 2001 c.756 §39; 2003 c.569 §28; 2007 c.410 §11]

Note: Section 29, chapter 569, Oregon Laws 2003, provides:

Sec. 29. Unless the declaration of a condominium recorded before July 14, 2003, expressly limits or prohibits the authority of the association of unit owners to grant, execute, acknowledge and deliver on behalf of the unit owners leases, easements, rights of way, licenses and other similar interests affecting the general common elements and consent to vacation of roadways within and adjacent to the condominium pursuant to ORS 100.405 (6) in effect at the time the declaration was recorded, the amendments to ORS 100.405 (6) by section 28, chapter 569, Oregon Laws 2003, apply to the authority of the association of unit owners of a condominium recorded before July 14, 2003, except for the limitation or prohibition on the authority of the association under this section. [2003 c.569 §29; 2007 c.410 §12]