

Senate Bill 963 (Enrolled)
Chapter 641, Oregon Laws 2009
Effective: January 1, 2010
GENERAL SUMMARY*
By Subject

AMENDS
Oregon Planned Community Act ("PCA")
& Oregon Condominium Act ("OCA")

I.
ASSOCIATION OPERATION AND ADMINISTRATION
Mirror Amendments to PCA & OCA

A. BOARD OF DIRECTOR QUALIFICATIONS

- ▶ Specifies each director must be an individual and owner or co-owner. Except:
 - X A director appointed by a declarant under ORS 94.600 or 100.200 need not be an owner or co-owner of a lot in the planned community or a unit in the condominium.
 - X If a corporation, limited liability company or partnership owns a lot in the planned community/unit in the condominium or owns an interest in an entity that owns a lot in the planned community/unit in the condominium, an officer, employee or agent of a corporation, a member, manager, employee or agent of a limited liability company, or a partner, employee or agent of a partnership may serve on the board of directors.
 - X A trustee may serve on the board of directors if the trustee holds legal title to a lot in the planned community/unit in the condominium for the benefit of the owner of the beneficial interest in the lot/unit.
 - X An executor, administrator, guardian, conservator, or other individual appointed by a court to serve in a fiduciary capacity for an owner of a lot in the planned community/unit in the condominium, or an officer or employee of an entity if an entity is appointed, may serve on the board of directors.
- ▶ Except as otherwise provided in the bylaws, prior to election to the board of directors, an individual described above must, upon request of the board, provide the board with documentation satisfactory to the board that the individual is qualified to represent the entity or is a trustee or is serving in a fiduciary capacity for the owner of a lot or a unit.
- ▶ The position of an individual serving on the board of directors automatically becomes vacant if the individual no longer meets the above requirements.

New: Sec. 2 / Sec. 18

B. BOARD MEETINGS - EXECUTIVE SESSIONS

- ▶ Clarifies meaning of executive session by stating that the board may close the meeting to owners other than board members and meet in executive session.
- ▶ Permits consultation with legal counsel for any purpose to be in executive session.
- ▶ Revises format.

ORS 94.640 (Sec. 8) / ORS 100.420 (Sec. 28)

C. COMMON EXPENSES, ALLOCATION

- ▶ *PCA*: Permits association to exclusively assess one or more lots for any loss or cost incurred (not limited to common expense) that board determines is fault of responsible owners.
- ▶ *OCA*: Provides if board determines that any loss or cost incurred by association is the fault of one or more owners, the amount may be assessed exclusively against the units of responsible owners.

ORS 94.704 (Sec. 15) / ORS 100.530 (Sec. 33)

D. MANAGEMENT AGREEMENTS

- ▶ Excludes from limitations imposed for management agreements entered into before turnover meeting:
 - Performance-based energy or water efficiency contracts.
 - Contracts relating to renewable energy facilities or their output serving the planned community or condominium, including facilities leased to the association.
- ▶ Defines renewable energy facilities.
- ▶ Imposes conditions.

ORS 94.700 (Sec. 14) / ORS 100.485 (Sec. 30)

E. QUORUM REQUIREMENTS FOR ASSOCIATION MEETINGS

- ▶ Prescribes minimum quorum requirement of 20 percent for association meetings.
- ▶ Limits the quorum requirement for a meeting following a meeting adjourned for lack of a quorum (“Reduced Quorum Requirement”). The Reduced Quorum Requirement is the greater of:
 - * One-half of the quorum required in the declaration or bylaws; or
 - * Twenty percent of the votes that may be cast by persons who are present in person, by proxy or by absentee ballot, if absentee ballots are permitted.
- ▶ Provides a quorum is not reduced unless:
 - * The meeting is adjourned to a date that is at least 48 hours from the time the original meeting was called; or
 - * The meeting notice specifies:
 - (1) That the quorum requirement will be reduced if the meeting cannot be organized because of a lack of a quorum; and
 - (2) The reduced quorum requirement.

ORS 94.655 (Sec. 9) / ORS 100.408 (Sec. 25)

F. RECORDS & ACCOUNTS OF ASSOCIATION

- ▶ Requires proxies and ballots relating to amendments to governing documents to be maintained for one year from date amendment is recorded (OCA) or is otherwise effective (PCA).
- ▶ Requires all assessment and all other association funds to be maintained in federally insured accounts specified in section until disbursed.
- ▶ Permits purchase of obligations of U.S. government.
- ▶ Provides association communications with legal counsel concerning the rights and duties of the association regarding existing or potential litigation or criminal matters are not available for owner examination.

ORS 94.670 (Sec. 13) / ORS 100.480 (Sec. 29)

G. RESERVE ACCOUNT

- ▶ Makes reserve account subject to requirements and limitations of association bank accounts.
See Sec. 13 (ORS 94.670) / Sec. 29 (ORS 100.480).
- ▶ Clarifies and revises right of owners to reduce, increase and eliminate funding of reserve account.
- ▶ Provides unless the board of directors determines that the reserve account will be adequately funded for the following year, the board of directors or the owners may not vote to eliminate funding a reserve account required under ORS 94.595 or 100.175 or under the declaration or bylaws. EXCEPT: Following the turnover meeting, on an annual basis, the board of directors, with the approval of all owners, may elect not to fund the reserve account for the following year.

ORS 94.595 (Sec. 4) / ORS 100.175 (Sec. 23)

H. RIGHT OF ENTRY BY ASSOCIATION

- ▶ *PCA*: Upon request given to the owner and any occupant, grants any person authorized by the association the right of entry to a lot to perform required maintenance, repairs and replacements and emergency repairs.
- ▶ Requires that requests for entry must be made in advance and for a reasonable time, except in the case of an emergency, when the right of entry is immediate.
- ▶ Provides that an emergency entry does not constitute a trespass or otherwise create a right of action in the owner of the lot.
- ▶ *OCA*: Revises and conforms right of entry of association under OCA to the above new requirements under PCA.

ORS 94.733(Sec. 16) / ORS 100.540 (Sec. 34)

I. RULES OF ORDER

- ▶ Makes provisions regarding right to challenge and validity of Robert's Rules of Order applicable to all rules of order adopted by association or board of directors.

ORS 94.657(Sec. 10) / ORS 100.409 (Sec. 26)

J. VOTING RIGHTS OF FIDUCIARIES

- ▶ Includes attorneys-in-fact and conservators as fiduciaries entitled to vote or grant consent with respect to a lot or unit owned or held in fiduciary capacity.

ORS 94.658 (Sec. 11) / ORS 100.525 (Sec. 32)

II.

AMENDMENTS AFFECTING PLANNED COMMUNITIES

A. ASSOCIATION INCORPORATION AND DISSOLUTION

- ▶ Provides if association is dissolved, association automatically continues under same name as an unincorporated association with all property, powers and obligations of incorporated association. Specifies:
 - Members of board of directors and officers prior to dissolution continue to serve.
 - Association is governed by bylaws and applicable provisions of articles of incorporation of incorporated association.
- ▶ Provides a separate association is not created when association is reinstated after administrative dissolution or again incorporated. Association automatically continues without any further action as may otherwise be required under corporation laws. Specifies:
 - Association has all of the property, powers and obligations of unincorporated association existing immediately prior to reinstatement or incorporation.
 - Bylaws in effect prior to reinstatement or incorporation constitute bylaws of incorporated association.
 - Members of board of directors and officers prior to incorporation continue to serve.
- ▶ Provides section applies notwithstanding any provision of a governing document that appears to the contrary.

New (Sec. 3)

B. BYLAWS

- ▶ *Content*: Requires quorum requirements to comply with ORS 94.655 as amended by (Sec. 9).

ORS 94. 635 (Sec.7)

- ▶ *Amendment*: Requires once bylaws are recorded, all amendments to bylaws thereafter must be recorded.

ORS 94. 625 (Sec.5)

C. COMMON PROPERTY

- ▶ Clarifies existing provisions governing the sale and encumbrance of common property.
- ▶ Adds provisions governing consenting to roadway vacations and granting of leases, easements and other similar interest in common property (conforms to requirements of OCA, as amended by Sec. 24, ORS 100.405). Provides:

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

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

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

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

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

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

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

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

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

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

(7) The association shall treat proceeds of any sale, transfer or conveyance under subsection (1) of this section, any grant under subsection (4) of this section or any consent to vacation under subsection (5) of this section as an asset of the association.

ORS 94. 665 (Sec.12)

D. POWERS OF ASSOCIATION

- ▶ Makes power of association to grant easements and other concessions affecting common property subject to ORS 94.665 (Sec.12).

ORS 94.630 (Sec.6)

E. APPLICATION OF ACT TO PLANNED COMMUNITIES NOT ESTABLISHED UNDER ACT

- ▶ Adds new Sections 2 and 3 to ORS 94.572 (application of Act to certain planned communities not established under Act).

ORS 94.572 (Sec. 3a)

III.

AMENDMENTS AFFECTING CONDOMINIUMS

A. AMENDMENTS TO DECLARATION

- ▶ Prescribes amendment requirements when an additional unit is created from common elements.

ORS 100.135 (Sec. 21)

B. APPLICATION OF OCA

- ▶ Defines nonresidential purposes for use in certain provisions.
- ▶ Provides an association is exempt from specific filing provisions with Real Estate Agency if not more than two additional units are created from common elements.

ORS 100.020 (Sec. 20)

C. ASSOCIATION INCORPORATION AND DISSOLUTION

- ▶ Clarifies that a separate association is not created when association is incorporated.
- ▶ Provides:
 - No further action as may otherwise be required under corporation laws is required.
 - Members of board of directors and officers prior to incorporation continue to serve.
 - Bylaws prior to incorporation constitute bylaws of incorporated association.
- ▶ Clarifies if an incorporated association is dissolved, it automatically continues as an unincorporated association under same name. Provides:
 - Association has all of the property, powers and obligations of incorporated association existing immediately prior to dissolution.
 - Members of board of directors and officers prior to dissolution continue to serve.
 - Association is governed by bylaws and applicable provisions of articles of incorporation of incorporated association.

ORS 100.405 (Sec. 24)

D. BOUNDARIES OF UNITS

- ▶ Corrects drafting error. Makes section a default section that does not apply if the declaration provides otherwise.

ORS 100.510 (Sec. 31)

E. CONDOMINIUM FORM OF OWNERSHIP/LOCAL JURISDICTION

- ▶ Prohibits local jurisdiction from discriminating against condominium form of ownership.

New (Sec. 19)

F. COMMON ELEMENTS

- ▶ Revises requirements governing consenting to roadway vacations in and adjacent to the condominium and granting of leases, easements and other similar interests in the general common elements. Conforms to requirements for PCA, as amended under ORS 94.665 (Sec. 12).

- ▶ Reduces the required approval by owners for most easements from 75% of all owners to 75% of the owners present at a meeting of the association. Except, the required approval remains at 75% of all owners if approval is solicited by a means (other than at a meeting) that the board of directors determines reasonable.
- ▶ Provides for consent to vacation of roadways within and adjacent to the condominium, the consent of at least a majority of all owners is required if owner consent is solicited by a means other than at a meeting of the association. The current requirement of a majority of owners present at a meeting of the association remains unchanged.
- ▶ Provides if a meeting is held to conduct a vote under ORS 100.405, the meeting notice must include a statement that the approval of the grant or roadway vacation will be an item of business on the agenda of the meeting.

ORS 100.405 (Sec. 24)

G. BYLAWS

- ▶ Requires quorum requirements to comply with ORS 100.408 as amended by (Sec. 25).

ORS 100.415 (Sec. 27)

H. REMOVAL OF PROPERTY FROM CONDOMINIUM

- ▶ Revises requirements for removal of a portion of the property from the condominium.

ORS 100.600 (Sec. 35)

I. VARIABLE PROPERTY, AUTOMATIC STATUS

- ▶ Requires county assessor to reflect on assessor records the status of any variable property affected by automatic property reclassification.
- ▶ Removes requirement that county surveyor include certain information regarding reclassification or withdrawal of variable property on surveyor's copy of plat.

ORS 100.155 (Sec. 22)

J. CORRECTION AMENDMENTS

- ▶ Prescribes requirements and procedures to make corrections to recorded declarations, bylaws and other governing documents and plats.

New Sec. 43, 43a and 43b

K. APPROVAL OF DOCUMENTS BY REAL ESTATE COMMISSIONER

- ▶ Reduces period that commissioner's approval of declarations, supplemental declarations and amendments to declarations, supplemental declarations and bylaws is valid from two years to one year.

ORS 100.110 (Sec. 40) and 100.410 (Sec. 26a)

**IV.
MISCELLANEOUS**

- A. SPLITS ORS 100.115 (CONDOMINIUM PLATS) INTO TWO SECTIONS (Retained section governs plats and supplemental plats; new section governs plat amendments)**
- B. CONFORMS STATUTORY REFERENCES**
- C. ADDS NEW SECTIONS TO APPLICABLE ACT**
- D. MAKES CHANGES TO CONFORM TO NEW SECTIONS.**

**This is a general summary to assist when reviewing the entire bill.*

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