

2007 HOA LEGISLATION UPDATE

Presented By:
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**AMENDMENTS TO
OREGON PLANNED
COMMUNITY ACT ("PCA")
& OREGON CONDOMINIUM
ACT ("OCA")**

**Enrolled House Bill 2665
(Chapter 409, Oregon Laws 2007)**

EFFECTIVE DATE: September 27, 2007

ASSOCIATION OPERATION AND ADMINISTRATION

I. ASSOCIATION MEETINGS; VOTING & ELECTRONIC COMMUNICATION

FAILURE TO ELECT QUORUM OF DIRECTORS

- Establishes procedure for appointment of receiver if owners fail to elect quorum of directors. *New: Sec. 2 & 19*

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/ORS 100.408: Sec. 11 & 26*

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/ORS 100.210: Sec. 8 & 24***

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/ORS 100.407: Sec. 10 & 25***

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/ORS 100.427: Sec. 13 & 28***

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: Sec. 4 & 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: Sec. 5 & 21*

VOTE BY WRITTEN BALLOT

- Expands exceptions.
- Provides secret ballot procedure does not apply when consents of specific owners are required.
- Permits specified date certain to be extended.
- Clarifies procedure when vote by secrecy procedure.
- Restructures section and conforms style. ***ORS 94.647/ORS 100.425: Sec. 9 & 27***

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/ORS 100.525: Sec. 12 & 32***

II. INSURANCE

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 100.435: Sec. 3 & 31

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

- Provides if the board of directors 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/ORS 100.435: Sec. 14 & 31***

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 100.435: Sec. 3.& 31

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 100.435: Sec. 3 & 31*

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/ORS 100.415: Sec. 16 & 30***

III. MISCELLANEOUS

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 for 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/ORS 100.175: Sec. 7 & 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.
ORS94.94.580/ORS 100.415: Sec. 6a & 30

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/ORS 100.412: Sec. 8a & 26a.***

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: Sec. 6. ☺ 22*

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 /ORS 100.470: Sec. 17 & 29*

APPLICATION & CONFORMING AMENDMENTS

- Makes sections added to PCA applicable to existing planned communities regulated under ORS 94.572.
- *ORS 94.572: Sea 33*
- Conforms statutory references.
- *ORS 100.410: Sec. 30 ORS 100.640: Sec.31 ORS 100.655: Sec. 32*

AMENDMENTS TO
OREGON PLANNED
COMMUNITY ACT ("PCA")
& OREGON CONDOMINIUM
ACT ("OCA")

Enrolled House Bill 2666
(Chapter 410, Oregon Laws 2007)

EFFECTIVE DATE: September 27, 2007

I. AMENDMENTS AFFECTING PLANNED COMMUNITIES

DEFINITIONS

- Adds "other governing document" as source of requirement for assessment obligations. *ORS 94.550(3)(b)(B) & (4)(c)(B): Sec. 1*
- Revises definition of common property to include property designated on the plat to be transferred to the association.
- *ORS 94.550(7): Sec. 1*

TIME OF INCORPORATION OF ASSOCIATION

- Requires association to be incorporated prior to recording of plat if property is conveyed to association on face of plat.
- *ORS 94.625: Sec. 2*

ASSOCIATION POWERS

- Conforms to OCA the right of the association under section to initiate or intervene in litigation or administrative proceedings if association has maintenance or certain other responsibility for property individually owned.
- *ORS 94.630: Sec. 2a*

II. AMENDMENTS AFFECTING CONDOMINIUMS

DEFINITIONS

- **General Common Elements (Default Definition) ORS 100.005(16)**
 - Makes windows and unit access doors, except for glazing and screening, general common elements, unless declaration provides otherwise.
 - *(Corresponds with amendments to .ORS 100.510.)*
 - **ORS 100.005: Sec. 5**
- **Unit Boundary (Default Definition) ORS 100.510/ORS 100.005(16)**
 - Expands application of default provision.
 - Makes glazing and screening of windows and unit access doors part of the unit, unless otherwise provided in declaration.
 - **ORS 100.510: Sec. 14**

- Dwelling Unit *ORS 100.005(14)*
 - Removes definition of "dwelling unit" as defined under Landlord Tenant Law from general definition section.
 - Adds new section making definition only applicable to ORS 100.300 *et seq.* (conversion condominium procedures).
 - *Sec. 9 & 10*
- **Mortgagee**
 - Adds definition of "mortgagee."

CREATION OF CONDOMINIUM WITHIN UNIT

- Permits unit in condominium to be submitted to ORS. chapter 100 unless otherwise provided under declaration or bylaws.
- *ORS 100.020: Sec. 6*

INCORPORATION OF ASSOCIATION

- Requires association of condominium created on and after September 27, 2007 to be incorporated if condominium consists of more than 4 units.
- Permits board of existing association to incorporate association as an Oregon nonprofit corporation notwithstanding a provision in the declaration or bylaws providing otherwise or requiring approval of owners to incorporate.
- *ORS 100.405(1)(a): Sec. 11*

DISCLOSURE REGARDING UNIT AREAS

- Requires declaration to include disclosure regarding square footage areas stated in declaration and plat.
- *ORS 100.105: Sec. 8*

GRANTING OF EASEMENTS BY ASSOCIATION

- Removes limitation that easement or other interest granted under section be for "underground" installation of certain utilities and communication lines.
- Clarifies that required owner consent is not required to be obtained at a meeting.
- *ORS 100.405(5)-(8): Sec. 11*
- Clarifies application (Sec.29) of 2003 amendments. *Sec. 12*

MAINTENANCE OF PROPERTY

- Provides unit owner is responsible for maintenance, repair and replacement of unit unless otherwise provided in declaration or bylaws.
- *ORS 100.535: Sec. 15*
- Provides association is responsible for maintenance, repair and replacement of common elements and that cost is a common expense unless otherwise provided in declaration or bylaws. *ORS 100.540: Sec. 16*

REGULATION OF SALES

- Exempts sale of nonresidential units from disclosure statement and related sales procedure requirements.
- *ORS 100.020(4): Sec. 6*

AMENDMENTS

■ Compliance With Regulatory Requirements

- Permits declarant to amend declaration and bylaws to comply with requirements of certain government agencies, Fannie Mae and others.
- *(Conforms to ORS 94.585)*
- *New: Sec. 4*

■ Approval of Bylaw Amendments by Real Estate Commissioner

- Requires amendments to bylaws approved by Commissioner to be recorded within two years. *(Conforms to requirement for declaration approved under. ORS 100.110(7).)*
- ***ORS 100.410: Sec 13***