

Enrolled
Senate Bill 955

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to properties governed by declarations; amending ORS 94.572, 94.595 and 100.175.

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

SECTION 1. ORS 94.595 is amended to read:

94.595. (1) The declarant shall:

(a) Conduct a reserve study described in subsection (3) of this section; and

(b) Establish a reserve account for replacement of all items of common property which will normally require replacement, in whole or in part, in more than three and less than 30 years, for exterior painting if the common property includes exterior painted surfaces, for other items, whether or not involving common property, if the association has responsibility to maintain the items and for other items required by the declaration or bylaws. The reserve account need not include reserves for those items:

(A) That could reasonably be funded from operating assessments; or

(B) For which one or more owners are responsible for maintenance and replacement under the provisions of the declaration or bylaws.

(2)(a) A reserve account established under this section must be funded by assessments against the individual lots for which the reserves are established.

(b) Unless the declaration provides otherwise, the assessments under this subsection begin accruing for all lots from the date the first lot is conveyed.

(3)(a) The reserve account shall be established in the name of the homeowners association. The association is responsible for administering the account and for making periodic payments into the account.

(b) The reserve portion of the initial assessment determined by the declarant shall be based on:

(A) The reserve study described in paragraph (c) of this subsection; or

(B) Other sources of reliable information.

(c) The board of directors of the association annually shall conduct a reserve study or review and update an existing study to determine the reserve account requirements and may:

(A) Adjust the amount of payments as indicated by the study or update; and

(B) Provide for other reserve items that the board of directors, in its discretion, may deem appropriate.

(d) The reserve study shall include:

(A) Identification of all items for which reserves are required to be established;

(B) The estimated remaining useful life of each item as of the date of the reserve study;

(C) The estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and

(D) A 30-year plan **for the maintenance, repair and replacement of common property** with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(4) The 30-year plan under subsection (3) of this section shall:

(a) Be appropriate for the size and complexity of the common property; and

(b) Address issues that include but are not limited to warranties and the useful life of the common property.

(5) The board of directors and the declarant shall, within 30 days after conducting the reserve study, provide to every owner a written summary of the reserve study and of any revisions to the 30-year plan adopted by the board of directors or the declarant as a result of the reserve study.

[4(a)] **(6)(a)** If the declaration or bylaws require a reserve account, the reserve study requirements of subsection (3) of this section first apply to the association of a subdivision that meets the definition of a planned community under ORS 94.550 and is recorded prior to October 23, 1999, when:

(A) The board of directors adopts a resolution in compliance with the bylaws that applies the requirements of subsection (3) of this section to the association; or

(B) A petition signed by a majority of owners is submitted to the board of directors mandating that the requirements of subsection (3) of this section apply to the association.

(b) A reserve study shall be completed within one year of adoption of the resolution or submission of the petition to the board of directors.

[5(a)] **(7)(a)** Except as provided in paragraph (b) of this subsection, the reserve account may be used only for the purposes for which reserves have been established and is to be kept separate from other funds.

(b) After the individual lot owners have assumed responsibility for administration of the planned community under ORS 94.616, if the board of directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds:

(A) The board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses.

(B) Not later than the adoption of the budget for the following year, the board of directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

[6] **(8)** Nothing in this section prohibits prudent investment of reserve account funds subject to any constraints imposed by the declaration, bylaws or rules of the association.

[7] **(9)** In addition to the authority of the board of directors under subsection (3)(c) of this section, following the second year after the association has assumed administrative responsibility for the planned community under ORS 94.616:

(a) By an affirmative vote of at least 75 percent of the owners of the planned community, the association may elect to reduce or increase future assessments for the reserve account; and

(b) The association may, on an annual basis by a unanimous vote, elect not to fund the reserve account.

[8] **(10)** Assessments paid into the reserve account are the property of the association and are not refundable to sellers or owners of lots.

SECTION 2. ORS 100.175 is amended to read:

100.175. (1) The declarant shall:

(a) Conduct a reserve study described in subsection (3) of this section; and

(b) Establish a reserve account for replacement of those common elements all or part of which will normally require replacement in more than three and less than 30 years, for exterior painting if the common elements include exterior painted surfaces, and for such other items as may be required by the declaration or bylaws. The reserve account need not include:

(A) Items that could reasonably be funded from operating assessments; or

(B) A reserve for limited common elements for which maintenance and replacement are the responsibility of one or more unit owners under the provisions of the declaration or bylaws.

(2)(a) The reserve account must be funded by assessments against the individual units for the purposes for which the reserve account is being established.

(b) The assessment under this subsection will accrue from the time of the conveyance of the first individual unit assessed as provided in ORS 100.530.

(3)(a) The reserve account shall be established in the name of the association of unit owners that will be responsible for administering the account and for making periodic payments into the account.

(b) The reserve portion of the initial assessment determined by the declarant shall be based on the following:

(A) The reserve study described in paragraph (c) of this subsection;

(B) In the case of a conversion condominium, the statement described in ORS 100.655 (1)(g); or

(C) Other reliable information.

(c) The board of directors of the association annually shall conduct a reserve study or review and update an existing study to determine the reserve account requirements and may:

(A) Adjust the amount of payments in accordance with the study or review; and

(B) Provide for other reserve items that the board of directors, in its discretion, may deem appropriate.

(d) The reserve study shall include:

(A) Identification of all items for which reserves are to be established;

(B) The estimated remaining useful life of each item as of the date of the reserve study;

(C) An estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and

(D) A 30-year plan **for the maintenance, repair and replacement of common elements and association property** with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(4) The 30-year plan under subsection (3) of this section shall:

(a) Be appropriate for the size and complexity of the common elements and association property; and

(b) Address issues that include but are not limited to warranties and the useful life of the common elements and association property.

(5) The board of directors and the declarant shall, within 30 days after conducting the reserve study, provide to every unit owner a written summary of the reserve study and of any revisions to the 30-year plan adopted by the board of directors or the declarant as a result of the reserve study.

~~[(4)(a)]~~ **(6)(a)** If the declaration or bylaws require a reserve account, the reserve study requirements of subsection (3) of this section first apply to the association of a condominium recorded prior to October 23, 1999:

(A) Upon adoption of a resolution by the board of directors in accordance with the bylaws providing that the requirements of subsection (3) of this section apply to the association; or

(B) Upon submission to the board of directors of a petition signed by a majority of unit owners mandating that the requirements of subsection (3) of this section apply to the association.

(b) The reserve study shall be completed within one year of the date of adoption of the resolution or submission of the petition to the board of directors.

~~[(5)(a)]~~ **(7)(a)** Except as provided in paragraph (b) of this subsection, the reserve account is to be used only for the purposes for which reserves have been established and is to be kept separate from other funds.

(b) After the individual unit owners have assumed administrative responsibility for the association under ORS 100.210, if the board of directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds:

(A) The board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses.

(B) Not later than the adoption of the budget for the following year, the board of directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

[~~(6)~~] **(8)** Restrictions on the use of the reserve account do not prohibit its prudent investment subject to any constraints on investment of association funds imposed by the declaration, bylaws or rules of the association of unit owners.

[~~(7)~~] **(9)** Assessments paid into the reserve account are the property of the association of unit owners and are not refundable to sellers of units.

[~~(8)~~] **(10)** In addition to the authority of the board of directors under subsection (3)(c) of this section, following turnover, the association may:

(a) On an annual basis, elect not to fund the reserve account described in subsection (1) of this section by unanimous vote of the owners; or

(b) Elect to reduce or increase future assessments for the reserve account described in subsection (1) of this section by an affirmative vote of at least 75 percent of the owners.

SECTION 3. ORS 94.572 is amended to read:

94.572. (1)(a) A Class I or Class II planned community created before January 1, 2002, that was not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 [~~(4) to (8)~~] **(6) to (10)**, 94.625, 94.630 (1), (3) and (4), 94.640, 94.645, 94.647, 94.650, 94.655, 94.657, 94.658, 94.660, 94.662, 94.665, 94.670, 94.675, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 to the extent that those statutes are consistent with any governing documents. If the governing documents do not provide for the formation of an association, the requirements of this subsection are not effective until the formation of an association in accordance with paragraph (b) of this subsection. If a provision of the governing documents is inconsistent with this subsection, the owners may amend the governing documents using the procedures in this subsection:

(A) In accordance with the procedures for the adoption of amendments in the governing documents and subject to any limitations in the governing documents, the owners may amend the inconsistent provisions of the governing documents to conform to the extent feasible with this section and ORS 94.550, 94.590, 94.595 [~~(4) to (8)~~] **(6) to (10)**, 94.625, 94.630 (1), (3) and (4), 94.640, 94.645, 94.647, 94.650, 94.655, 94.657, 94.658, 94.660, 94.662, 94.665, 94.670, 94.675, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780. Nothing in this paragraph requires the owners to amend a declaration or bylaws to include the information required by ORS 94.580 or 94.635.

(B) If there are no procedures for amendment in the governing documents:

(i) For an amendment to a recorded governing document other than bylaws, the owners may amend the inconsistent provisions of the document to conform to this section and ORS 94.550, 94.590, 94.595 [~~(4) to (8)~~] **(6) to (10)**, 94.625, 94.630 (1), (3) and (4), 94.640, 94.645, 94.647, 94.650, 94.655, 94.657, 94.658, 94.660, 94.662, 94.665, 94.670, 94.675, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 by a vote of at least 75 percent of the owners in the planned community.

(ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the bylaws to conform to this section and ORS 94.550, 94.590, 94.595 [~~(4) to (8)~~] **(6) to (10)**, 94.625, 94.630 (1), (3) and (4), 94.640, 94.645, 94.647, 94.650, 94.655, 94.657, 94.658, 94.660, 94.662, 94.665, 94.670, 94.675, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.770, 94.775, 94.777 and 94.780 by a vote of at least a majority of the owners in the planned community.

(iii) An amendment may be adopted at a meeting held in accordance with the governing documents or by another procedure permitted by the governing documents following the procedures prescribed in ORS 94.647, 94.650 or 94.660.

(iv) An amendment to a recorded declaration shall be executed, certified and recorded as provided in ORS 94.590 (2) and (3) and shall be subject to ORS 94.590 (5). An amendment to the bylaws

and any other governing document shall be executed and certified as provided in ORS 94.590 (3) and shall be recorded in the office of the recording officer of every county in which the planned community is located if the bylaws or other governing document to which the amendment relates were recorded.

(C) An amendment adopted pursuant to this paragraph shall include:

(i) A reference to the recording index numbers and date of recording of the declaration or other governing document, if recorded, to which the amendment relates; and

(ii) A statement that the amendment is adopted pursuant to the applicable subparagraph of this paragraph.

(b)(A) If the governing documents do not provide for the formation of an association of owners, at least 10 percent of the owners in the planned community or any governing entity may initiate the formation of an association as provided in this paragraph. The owners or the governing entity initiating the association formation shall call an organizational meeting for the purpose of voting whether to form an association described in ORS 94.625. The notice of the meeting shall:

(i) Name the initiating owners or governing entity;

(ii) State that the organizational meeting is for the purpose of voting whether to form an association in accordance with the proposed articles of incorporation;

(iii) State that if the owners vote to form an association, the owners may elect the initial board of directors provided for in the articles of incorporation and may adopt the initial bylaws;

(iv) State that to form an association requires an affirmative vote of at least a majority of the owners in the planned community, or, if a larger percentage is specified in the applicable governing document, the larger percentage;

(v) State that to adopt articles of incorporation, to elect the initial board of directors pursuant to the articles of incorporation or to adopt the initial bylaws requires an affirmative vote of at least a majority of the owners present;

(vi) State that if the initial board of directors is not elected, an interim board of directors shall be elected pursuant to bylaws adopted as provided in subparagraph (C) of this paragraph;

(vii) State that a copy of the proposed articles of incorporation and bylaws will be available at least five business days before the meeting and state the method of requesting a copy; and

(viii) Be delivered in accordance with the declaration and bylaws. If there is no governing document or the document does not include applicable provisions, the owners or governing entity shall follow the procedures prescribed in ORS 94.650 (3).

(B) At least five business days before the organizational meeting, the initiating owners or governing entity shall cause articles of incorporation and bylaws to be drafted. The bylaws shall include, to the extent applicable, the information required by ORS 94.635.

(C) At the organizational meeting:

(i) Representatives of the initiating owners or governing entity shall, to the extent not inconsistent with the governing documents, conduct the meeting according to Robert's Rules of Order as provided in ORS 94.657.

(ii) The initiating owners or governing entity shall make available copies of the proposed articles of incorporation and the proposed bylaws.

(iii) The affirmative vote of at least a majority of the owners of a planned community, or, if a larger percentage is specified in the applicable governing document, the larger percentage, is required to form an association under this paragraph.

(iv) If the owners vote to form an association, the owners shall adopt articles of incorporation and may elect the initial board of directors as provided in the articles of incorporation, adopt bylaws and conduct any other authorized business by an affirmative vote of at least a majority of the owners present. If the owners do not elect the initial board of directors, owners shall elect an interim board of directors by an affirmative vote of at least a majority of the owners present to serve until the initial board of directors is elected.

(v) An owner may vote by proxy, or by written ballot, if approved, in the discretion of a majority of the initiating owners or governing entity.

(D) Not later than 10 business days after the organizational meeting, the board of directors shall:

(i) Cause the articles of incorporation to be filed with the Secretary of State under ORS chapter 65;

(ii) Cause the notice of planned community described in subsection (4) of this section to be prepared, executed and recorded in accordance with subsection (4) of this section;

(iii) Provide a copy of the notice of planned community to each owner, together with a copy of the adopted articles of incorporation and bylaws, if any, or a statement of the procedure and method for adoption of bylaws described in subparagraph (C) of this paragraph. The copies and any statement shall be delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated by the owners in writing; and

(iv) Cause a statement of association information to be prepared, executed and recorded in accordance with ORS 94.667.

(E) If the owners vote to form an association, all costs incurred under this paragraph, including but not limited to the preparation and filing of the articles of incorporation, drafting of bylaws, preparation of notice of meeting and the drafting, delivery and recording of all notices and statements shall be a common expense of the owners and shall be allocated as provided in the appropriate governing document or any amendment thereto.

(2)(a) The owners of lots in a Class I or Class II planned community that are subject to the provisions of ORS chapter 94 specified in subsection (1) of this section may elect to be subject to any other provisions of ORS 94.550 to 94.783 upon compliance with the procedures prescribed in subsection (1) of this section.

(b) If the owners of lots in a Class I or Class II planned community elect to be subject to additional provisions of ORS 94.550 to 94.783, unless the notice of planned community otherwise required or permitted under subsection (4) of this section includes a statement of the election pursuant to this paragraph, the board of directors of the association shall cause the notice of planned community described in subsection (4) of this section to be prepared, executed and recorded in accordance with subsection (4) of this section.

(3)(a) The owners of lots in a Class III planned community created before January 1, 2002, may elect to be subject to provisions of ORS 94.550 to 94.783 upon compliance with the applicable procedures in subsection (1) of this section.

(b) If the owners of lots in a Class III planned community elect to be subject to provisions of ORS 94.550 to 94.783, the board of directors of the association shall cause the notice of planned community described in subsection (4) of this section to be prepared, executed and recorded in accordance with subsection (4) of this section.

(4) The notice of planned community required or permitted by this section shall be:

(a) Titled "Notice of Planned Community under ORS 94.572";

(b) Executed by the president and secretary of the association; and

(c) Recorded in the office of the recording officer of every county in which the property is located.

(5) The notice of planned community shall include:

(a) The name of the planned community and association as identified in the recorded declaration, conditions, covenants and restrictions or other governing document and, if different, the current name of the association;

(b) A list of the properties, described as required for recordation in ORS 93.600, within the jurisdiction of the association;

(c) Information identifying the recorded declaration, conditions, covenants and restrictions or other governing documents and a reference to the recording index numbers and date of recording of the governing documents;

(d) A statement that the property described in accordance with paragraph (b) of this subsection is subject to specific provisions of the Oregon Planned Community Act;

(e) A reference to the specific provisions of the Oregon Planned Community Act that apply to the subject property and a reference to the subsection of this section under which the application is made; and

(f) If an association is formed under subsection (1)(b)(A) of this section, a statement to that effect.

(6) An amended statement shall include a reference to the recording index numbers and the date of recording of prior statements.

(7) The county clerk may charge a fee for recording a statement under this section according to the provisions of ORS 205.320 (4).

(8) The board of directors of an association not otherwise required to cause a notice of planned community described in subsection (4) of this section to be prepared and recorded under this section may cause a notice of planned community to be prepared, executed and recorded as provided in subsection (4) of this section.

(9) Title to a unit, lot or common property in a Class I or Class II planned community created before January 1, 2002, may not be rendered unmarketable or otherwise affected by a failure of the planned community to be in compliance with a requirement of this section.

(10) As used in this section:

(a) "Governing entity" means an incorporated or unincorporated association, committee, person or any other entity that has authority, under a governing document, to maintain commonly maintained property, impose assessments on lots or to act on behalf of lot owners within the planned community on matters of common concern.

(b) "Recorded declaration" means an instrument recorded with the county recording officer of the county in which the planned community is located that contains conditions, covenants and restrictions binding lots in the planned community or imposes servitudes upon the real property.

Passed by Senate June 6, 2005

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Secretary of Senate

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President of Senate

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Speaker of House

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Approved:

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Governor

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