

D R A F T

SUMMARY

Specifies individuals who may control association accounts of planned community or condominium. Requires regular review or audit of association accounts.

Allows reserve accounts to be invested in accounts insured by Securities Investor Protection Corporation.

Specifies investment objectives for association.

Requires association to obtain insurance to protect against dishonest and criminal conduct of representatives of association.

A BILL FOR AN ACT

Relating to communities governed by declaration; creating new provisions; and amending ORS 94.550, 94.640, 94.670, 94.680, 100.005, 100.417, 100.435 and 100.480 and sections 24 and 26, chapter 803, Oregon Laws 2003.

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

SECTION 1. ORS 94.670 is amended to read:

94.670. (1) A homeowners association shall retain within this state the documents, information and records delivered to the association under ORS 94.616 and all other records of the association for not less than the period specified for the record in ORS 65.771 or any other applicable law except that:

(a) The documents specified in ORS 94.616 (3)(o), if received, must be retained as permanent records of the association.

(b) Proxies and ballots must be retained for one year from the date of determination of the vote, except that proxies and ballots relating to an amendment to the declaration, bylaws or other governing document must be retained for one year from the date the amendment is effective.

1 *[(2)(a) All assessments, including declarant subsidies and all other associ-*
 2 *ation funds, shall be deposited and maintained in the name of the association*
 3 *in one or more separate federally insured accounts, including certificates of*
 4 *deposit, at a financial institution, as defined in ORS 706.008, other than an*
 5 *extranational institution. Except as provided in paragraph (b) of this sub-*
 6 *section, funds must be maintained in an association account until disbursed.]*

7 *[(b) Subject to any limitations imposed by the declaration or bylaws, funds*
 8 *of the association maintained in accounts established under this subsection*
 9 *may be used to purchase obligations of the United States government.]*

10 *[(c) All expenses of the association shall be paid from the association ac-*
 11 *count.]*

12 **(2)(a) Except as provided otherwise in paragraph (e) of this sub-**
 13 **section, all funds of the association, including assessments and**
 14 **declarant subsidies, must be deposited and maintained in the name of**
 15 **the association in one or more association accounts until disbursed.**

16 **(b) An operating account must be held in a federally insured ac-**
 17 **count, including a certificate of deposit, at a financial institution, as**
 18 **defined in ORS 706.008, other than an extranational institution.**

19 **(c) A reserve account, as described in ORS 94.595, must be held in:**

20 **(A) A federally insured account, including a certificate of deposit,**
 21 **at a financial institution, as defined in ORS 706.008, other than an**
 22 **extranational institution; or**

23 **(B) An account insured by the Securities Investor Protection Cor-**
 24 **poration.**

25 **(d) The association may not maintain funds in an account, or at**
 26 **any one institution, in an amount that exceeds the insurance limits**
 27 **applicable to the account or institution.**

28 **(e) Subject to limitations imposed by the declaration or bylaws, if**
 29 **any, funds of the association may be used to purchase obligations of**
 30 **the United States Government.**

31 **(f) The investment objectives of an association are:**

1 (A) **Preservation of capital; and**

2 (B) **Maintaining sufficient liquidity to meet the financial obligations**
3 **of the planned community.**

4 (g) **The association may maintain a nonconforming investment of**
5 **association funds established before the effective date of this 2013 Act.**
6 **When the nonconforming investment is liquidated, future investments**
7 **of the association funds must conform with the requirements of this**
8 **subsection.**

9 (3) The association shall keep financial records sufficiently detailed for
10 proper accounting purposes.

11 (4) Within 90 days after the end of the fiscal year, the board of directors
12 shall:

13 (a) Prepare or cause to be prepared an annual financial statement con-
14 sisting of a balance sheet and income and expenses statement for the pre-
15 ceding fiscal year; and

16 (b) Distribute to each owner and, upon written request, any mortgagee
17 of a lot, a copy of the annual financial statement.

18 (5) Subject to section 24, chapter 803, Oregon Laws 2003, the association
19 of a planned community that has annual assessments [*exceeding*] **greater**
20 **than \$75,000 and less than \$500,000** shall cause the financial statement re-
21 quired under subsection (4) of this section to be reviewed **in the manner**
22 **required by subsection (9) of this section** within 180 days after the end
23 of the fiscal year [*by an independent certified public accountant licensed in*
24 *the State of Oregon in accordance with the Statements on Standards for Ac-*
25 *counting and Review Services issued by the American Institute of Certified*
26 *Public Accountants*].

27 (6) **Subject to section 24, chapter 803, Oregon Laws 2003,** the associ-
28 ation of a planned community created on or after January 1, 2004, or the
29 association of a planned community described in ORS 94.572 that has annual
30 assessments of \$75,000 or less shall cause the most recent financial statement
31 required by subsection (4) of this section to be reviewed in the manner [*de-*

scribed in subsection (5)] **required by subsection (9)** of this section within 180 days after the association receives a petition requesting review signed by at least a majority of the owners.

(7) The association of a planned community that has annual assessments of \$500,000 or more shall cause the financial statement required under subsection (4) of this section to be audited within 180 days after the end of the fiscal year in the manner required by subsection (9) of this section.

[(7)] **(8)** An association subject to the *[requirements of subsection (5)] review requirements of subsection (5) or (6)* of this section may elect, on an annual basis, not to comply with the requirements *[of subsection (5) of this section]* by an affirmative vote of at least 60 percent of the owners, not including the votes of the declarant with respect to lots owned by the declarant.

(9) The reviews of financial statements required under subsection (5) or (6) of this section and the audits required under subsection (7) of this section must be performed in accordance with standards issued by the American Institute of Certified Public Accountants by an independent certified public accountant licensed in Oregon.

[(8)(a)] **(10)(a)** The association shall provide, within 10 business days of receipt of a written request from an owner, a written statement that provides:

(A) The amount of assessments due from the owner and unpaid at the time the request was received, including:

- (i) Regular and special assessments;
- (ii) Fines and other charges;
- (iii) Accrued interest; and
- (iv) Late payment charges.

(B) The percentage rate at which interest accrues on assessments that are not paid when due.

(C) The percentage rate used to calculate the charges for late payment

1 or the amount of a fixed charge for late payment.

2 (b) The association is not required to comply with paragraph (a) of this
3 subsection if the association has commenced litigation by filing a complaint
4 against the owner and the litigation is pending when the statement would
5 otherwise be due.

6 ~~[(9)(a)]~~ **(11)(a)** Except as provided in paragraph (b) of this subsection, the
7 association shall make the documents, information and records described in
8 subsections (1) and (4) of this section and all other records of the association
9 reasonably available for examination and, upon written request, available for
10 duplication by an owner and any mortgagee of a lot that makes the request
11 in good faith for a proper purpose.

12 (b) Records kept by or on behalf of the association may be withheld from
13 examination and duplication to the extent the records concern:

14 (A) Personnel matters relating to a specific identified person or a person's
15 medical records.

16 (B) Contracts, leases and other business transactions that are currently
17 under negotiation to purchase or provide goods or services.

18 (C) Communications with legal counsel that relate to matters specified in
19 subparagraphs (A) and (B) of this paragraph and the rights and duties of the
20 association regarding existing or potential litigation or criminal matters.

21 (D) Disclosure of information in violation of law.

22 (E) Documents, correspondence or management or board reports compiled
23 for or on behalf of the association or the board of directors by its agents or
24 committees for consideration by the board of directors in executive session
25 held in accordance with ORS 94.640 (8).

26 (F) Documents, correspondence or other matters considered by the board
27 of directors in executive session held in accordance with ORS 94.640 (8).

28 (G) Files of individual owners, other than those of a requesting owner or
29 requesting mortgagee of an individual owner, including any individual
30 owner's file kept by or on behalf of the association.

31 ~~[(10)]~~ **(12)** The association shall maintain a copy, suitable for the purpose

of duplication, of the following:

(a) The declaration and bylaws, including amendments or supplements in effect, the recorded plat, if feasible, and the association rules and regulations currently in effect.

(b) The most recent financial statement prepared pursuant to subsection (4) of this section.

(c) The current operating budget of the association.

(d) The reserve study, if any, described in ORS 94.595.

(e) Architectural standards and guidelines, if any.

~~[(11)]~~ **(13)** The association, within 10 business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under subsection ~~[(10)]~~ **(12)** of this section.

~~[(12)]~~ **(14)** The board of directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs for furnishing the documents, information or records.

SECTION 2. ORS 94.680 is amended to read:

94.680. (1) If a declaration or bylaws provide that the homeowners association has the sole authority to decide whether to repair or reconstruct a unit that has suffered damage or whether a unit must be repaired or reconstructed, the board of directors **of the association** shall obtain blanket all-risk insurance for the full replacement cost of all structures in the planned community. Cost of the coverage shall be a common expense to the association.

(2) If the declaration or bylaws contain a provision described in subsection (1) of this section, the declaration or bylaws also shall provide:

(a) Requirements of or limitations on repairing or reconstructing damaged or destroyed property;

(b) The time within which the repair or reconstruction must begin; and

(c) The actions the board of directors must take if:

(A) Damage or destruction is not repaired or replaced; or

(B) Insurance proceeds exceed or fall short of the costs of repair or reconstruction.

(3) Notwithstanding a provision in the declaration or bylaws, the board of directors, or a declarant as provided in subsection (4) of this section, shall obtain and maintain insurance:

(a) That covers acts of dishonesty, embezzlement and theft by officers, directors, association employees, contracted community association managers, bookkeepers and other persons authorized by the association to handle moneys of the association; and

(b) In an amount equal to or greater than the sum of aggregate assessments on all units for three months plus the total amount of moneys in reserve accounts.

(4) During a period of declarant control of the association, the declarant, on behalf of the association, shall obtain and maintain insurance required under subsection (3) of this section within 30 days after the date of conveyance of the first unit in the condominium.

SECTION 3. Section 4 of this 2013 Act is added to and made a part of ORS 94.550 to 94.783.

SECTION 4. (1) Notwithstanding a provision in the declaration or bylaws of a planned community, unless a resolution adopted by the board of directors of a homeowners association provides otherwise, only the following individuals may be an association account holder:

(a) A member of the board of directors.

(b) An officer of the association who is either:

(A) An owner or co-owner of a lot; or

(B) A representative of an owner or co-owner of a lot who meets the qualifications described in subsection (2) of this section.

(2) An individual who is an officer of the association under subsection (1)(b)(B) of this section must meet one of the following quali-

fications:

(a) If a corporation, limited liability company or partnership is the owner or co-owner of a lot, or owns an interest in an entity that owns the lot, the officer of the association representing the entity must be:

(A) An officer, employee or agent of the corporation;

(B) A member, manager, employee or agent of the limited liability company; or

(C) A partner, employee or agent of the partnership.

(b) If a trustee holds legal title to a lot in trust for the benefit of the owner of the beneficial interest in the lot, the officer of the association representing the trust must be a trustee.

(c) If a court has appointed an executor, administrator, guardian, conservator or other individual to serve in a fiduciary capacity for an owner of a lot, the officer of the association must be the executor, administrator, guardian, conservator or other individual appointed by the court. If the court has appointed an entity to serve in a fiduciary capacity for an owner of a lot, the officer of the association must be an officer or employee of the appointed entity.

(3) An association account holder may not delegate the holder's authority to transact business on behalf of the association or to access an association account.

SECTION 5. ORS 94.550 is amended to read:

94.550. As used in ORS 94.550 to 94.783:

(1) "Assessment" means any charge imposed or levied by a homeowners association on or against an owner or lot pursuant to the provisions of the declaration or the bylaws of the planned community or provisions of ORS 94.550 to 94.783.

(2) "Association account" means an operating account, as described in ORS 94.670, or a reserve account, as described in ORS 94.595.

(3) "Association account holder" means an individual:

(a) Who is designated and authorized to transact business on behalf

1 **of a homeowners association by accessing moneys in an association**
2 **account required by ORS 94.670; and**

3 **(b) Whose signature is on file with the financial institution that**
4 **maintains the association account.**

5 [(2)] (4) “Blanket encumbrance” means a trust deed or mortgage or any
6 other lien or encumbrance, mechanic’s lien or otherwise, securing or evi-
7 dencing the payment of money and affecting more than one lot in a planned
8 community, or an agreement affecting more than one lot by which the de-
9 veloper holds such planned community under an option, contract to sell or
10 trust agreement.

11 [(3)] (5) “Class I planned community” means a planned community that:

12 (a) Contains at least 13 lots or in which the declarant has reserved the
13 right to increase the total number of lots beyond 12; and

14 (b) Has an estimated annual assessment, including an amount required for
15 reserves under ORS 94.595, exceeding \$10,000 for all lots or \$100 per lot,
16 whichever is greater, based on:

17 (A) For a planned community created on or after January 1, 2002, the
18 initial estimated annual assessment, including a constructive assessment
19 based on a subsidy of the association through a contribution of funds, goods
20 or services by the declarant; or

21 (B) For a planned community created before January 1, 2002, a reasonable
22 estimate of the cost of fulfilling existing obligations imposed by the decla-
23 ration, bylaws or other governing document as of January 1, 2002.

24 [(4)] (6) “Class II planned community” means a planned community that:

25 (a) Is not a Class I planned community;

26 (b) Contains at least five lots; and

27 (c) Has an estimated annual assessment exceeding \$1,000 for all lots based
28 on:

29 (A) For a planned community created on or after January 1, 2002, the
30 initial estimated annual assessment, including a constructive assessment
31 based on a subsidy of the association through a contribution of funds, goods

or services by the declarant; or

(B) For a planned community created before January 1, 2002, a reasonable estimate of the cost of fulfilling existing obligations imposed by the declaration, bylaws or other governing document as of January 1, 2002.

[(5)] (7) "Class III planned community" means a planned community that is not a Class I or II planned community.

[(6)] (8) "Common expenses" means expenditures made by or financial liabilities incurred by the homeowners association and includes any allocations to the reserve account under ORS 94.595.

[(7)] (9) "Common property" means any real property or interest in real property within a planned community which is owned, held or leased by the homeowners association or owned as tenants in common by the lot owners, or designated in the declaration or the plat for transfer to the association.

[(8)] (10) "Condominium" means property submitted to the provisions of ORS chapter 100.

[(9)] (11) "Declarant" means any person who creates a planned community under ORS 94.550 to 94.785.

[(10)] (12) "Declarant control" means any special declarant right relating to administrative control of a homeowners association, including but not limited to:

(a) The right of the declarant or person designated by the declarant to appoint or remove an officer or a member of the board of directors;

(b) Any weighted vote or special voting right granted to a declarant or to units owned by the declarant so that the declarant will hold a majority of the voting rights in the association by virtue of such weighted vote or special voting right; and

(c) The right of the declarant to exercise powers and responsibilities otherwise assigned by the declaration or bylaws or by the provisions of ORS 94.550 to 94.783 to the association, officers of the association or board of directors of the association.

[(11)] (13) "Declaration" means the instrument described in ORS 94.580

which establishes a planned community, and any amendments to the instrument.

[(12)] (14) "Governing document" means an instrument or plat relating to common ownership or common maintenance of a portion of a planned community and that is binding upon lots within the planned community.

[(13)] (15) "Homeowners association" or "association" means the organization of owners of lots in a planned community, created under ORS 94.625, required by a governing document or formed under ORS 94.572.

[(14)] (16) "Majority" or "majority of votes" or "majority of owners" means more than 50 percent of the votes in the planned community.

[(15)] (17) "Mortgagee" means any person who is:

- (a) A mortgagee under a mortgage;
- (b) A beneficiary under a trust deed; or
- (c) The vendor under a land sale contract.

(18) "Obligations of the United States Government" means Treasury bills, notes or bonds.

[(16)] (19) "Owner" means the owner of any lot in a planned community, unless otherwise specified, but does not include a person holding only a security interest in a lot.

[(17)] (20) "Percent of owners" or "percentage of owners" means the owners representing the specified voting rights as determined under ORS 94.658.

[(18)(a)] (21)(a) "Planned community" means any subdivision under ORS 92.010 to 92.192 that results in a pattern of ownership of real property and all the buildings, improvements and rights located on or belonging to the real property, in which the owners collectively are responsible for the maintenance, operation, insurance or other expenses relating to any property within the planned community, including common property, if any, or for the exterior maintenance of any property that is individually owned.

(b) "Planned community" does not mean:

- (A) A condominium under ORS chapter 100;

1 (B) A planned community that is exclusively commercial or industrial; or

2 (C) A timeshare plan under ORS 94.803 to 94.945.

3 [(19)] **(22)** “Purchaser” means any person other than a declarant who, by
4 means of a voluntary transfer, acquires a legal or equitable interest in a lot,
5 other than as security for an obligation.

6 [(20)] **(23)** “Purchaser for resale” means any person who purchases from
7 the declarant more than two lots for the purpose of resale whether or not
8 the purchaser for resale makes improvements to the lots before reselling
9 them.

10 [(21)] **(24)** “Special declarant rights” means any rights, in addition to the
11 rights of the declarant as a lot owner, reserved for the benefit of the
12 declarant under the declaration or ORS 94.550 to 94.783, including but not
13 limited to:

14 (a) Constructing or completing construction of improvements in the
15 planned community which are described in the declaration;

16 (b) Expanding the planned community or withdrawing property from the
17 planned community under ORS 94.580 (3) and (4);

18 (c) Converting lots into common property;

19 (d) Making the planned community subject to a master association under
20 ORS 94.695; or

21 (e) Exercising any right of declarant control reserved under ORS 94.600.

22 [(22)] **(25)** “Successor declarant” means the transferee of any special
23 declarant right.

24 [(23)] **(26)** “Turn over” means the act of turning over administrative re-
25 sponsibility pursuant to ORS 94.609 and 94.616.

26 [(24)] **(27)** “Unit” means a building or portion of a building located upon
27 a lot in a planned community and designated for separate occupancy or
28 ownership, but does not include any building or portion of a building located
29 on common property.

30 [(25)] **(28)** “Votes” means the votes allocated to lots in the declaration
31 under ORS 94.580 (2).

SECTION 6. Section 24, chapter 803, Oregon Laws 2003, as amended by section 38, chapter 641, Oregon Laws 2009, is amended to read:

Sec. 24. The requirements of ORS 94.670 (5) **and (6)** first apply:

(1) Commencing with the fiscal year following the turnover meeting required by ORS 94.616 for the association of a planned community created under ORS 94.550 to 94.783 prior to January 1, 2004, if the turnover meeting has not yet occurred on January 1, 2004.

(2) Commencing with the fiscal year beginning in calendar year 2004 for the association of a planned community created under ORS 94.550 to 94.783 if the turnover meeting required by ORS 94.616 has occurred on or before January 1, 2004.

(3) Commencing with the fiscal year following the turnover meeting required by ORS 94.616 for the association of a planned community created under ORS 94.550 to 94.783 on or after January 1, 2004.

(4) Commencing with the fiscal year following the year in which owners assume responsibility for administration of a planned community described in ORS 94.572 if the owners have not assumed responsibility for administration of the planned community on January 1, 2004.

(5) Commencing with the fiscal year beginning in calendar year 2004 for the association of a planned community described in ORS 94.572 if the owners have assumed responsibility for administration of the planned community on or before January 1, 2004.

SECTION 7. ORS 100.435 is amended to read:

100.435. (1) If the bylaws provide that *[the]* **an** association of unit owners has the sole authority to decide whether to repair or reconstruct a unit that has suffered damage or that a unit must be repaired or reconstructed, the board of directors shall obtain, *[and]* maintain at all times and *[shall pay for]* **pay**, out of the common expense funds, **for** the following insurance covering both the common elements and individual units:

(a) Property insurance including, but not limited to, fire, extended coverage, vandalism and malicious mischief; and

(b) Insurance covering the legal liability of the association of unit owners, the unit owners individually and the manager including, but not limited to, the board of directors, the public and the unit owners and their invitees or tenants, incident to ownership, supervision, control or use of the property. There may be excluded from the policy required under this paragraph, coverage of a unit owner, other than coverage as a member of the association of unit owners or board of directors, for liability arising out of acts or omissions of that unit owner and liability incident to the ownership or use of the part of the property as to which that unit owner has the exclusive use or occupancy. Liability insurance required under this paragraph shall be issued on a comprehensive liability basis and shall provide a cross liability indorsement providing that the rights of a named insured under the policy do not prejudice any action against another named insured.

(2) If the bylaws require the individual unit owners to obtain insurance for their units, the bylaws also shall contain a provision requiring the board of directors to obtain the following insurance covering the common elements:

(a) Property insurance including, but not limited to, fire, extended coverage, vandalism and malicious mischief; and

(b) Insurance covering the legal liability of the association of unit owners and the manager including, but not limited to, the board of directors, to the public or the unit owners and their invitees or tenants, incident to supervision, control or use of the property.

(3) The board of directors shall obtain, if reasonably available, terms in insurance policies under this section that provide a waiver of subrogation by the insurer as to any claims against the board of directors of the association.

(4) Notwithstanding a provision in the declaration or bylaws of a condominium, including a condominium created before September 27, 2007, that imposes a maximum deductible amount of \$10,000 or less in an association insurance policy, if the board of directors determines that it is in the best interest of the association of unit owners and of the unit owners, as provided

1 in subsection (5) of this section, the board may adopt a resolution authoriz-
2 ing the association to obtain and maintain an insurance policy with a
3 deductible amount exceeding the specified maximum, but not in excess of the
4 greater of:

5 (a) The maximum deductible acceptable to the Federal National Mortgage
6 Association; or

7 (b) \$10,000.

8 (5) In making the determination under subsection (4) of this section, the
9 board of directors shall consider such factors as the availability and cost of
10 insurance and the loss experience of the association.

11 (6) If the declaration or bylaws of a condominium created before Septem-
12 ber 27, 2007, do not assign the responsibility for payment of the amount of
13 the deductible in an association insurance policy, the board of directors may
14 adopt a resolution that assigns the responsibility for payment of the amount
15 of the deductible. The resolution must include, but need not be limited to:

16 (a) The circumstances under which the deductible will be charged against:

17 (A) A unit owner or the unit owners affected by a loss; or

18 (B) All unit owners;

19 (b) The allocation of the deductible charged under paragraph (a) of this
20 subsection; and

21 (c) If a unit owner and the association have duplicate insurance coverage,
22 the insurance policy that is primary, unless otherwise provided in the dec-
23 laration or bylaws.

24 (7) If the board of directors adopts a resolution described in subsection
25 (6) of this section, the resolution may require that a unit owner, in addition
26 to any other insurance required by the declaration or bylaws, obtain and
27 maintain:

28 (a) An insurance policy that insures the unit owner's unit and
29 appurtenant limited common elements for not less than the amount of the
30 deductible in the association's insurance policy for which the unit owner
31 may be responsible and that insures the unit owner's personal property for

any loss or damage; and

(b) Comprehensive liability insurance that includes, but is not limited to, coverage for negligent acts of unit owners and tenants, guests of unit owners and tenants and occupants of other units for damage to the general and limited common elements, to other units and to the personal property of other persons that is located in other units or the common elements.

(8) Unless otherwise provided in the declaration or bylaws, the board of directors may adopt a resolution that:

(a) Prescribes a procedure for processing insurance claims. The procedure may require that all claims against the association's insurance policy be processed through and coordinated by the board of directors or the managing agent, if authorized by the board.

(b) Assigns the responsibility for payment of charges for handling claims, including any charges by a managing agent.

(9) Not later than 10 days after adoption of a resolution under subsection (4), (6) or (8) of this section, the board of directors shall ensure that a copy of the resolution and a notice described in subsection (10) of this section are:

(a) Delivered to each unit owner; or

(b) Mailed to the mailing address of each unit owner or to the mailing address designated in writing by the unit owner.

(10) The notice required under subsection (9) of this section shall:

(a) Advise the unit owner to contact the unit owner's insurance agent to determine the effect of the resolution on the unit owner's individual insurance coverage; and

(b) Be in a form and style reasonably calculated to inform the unit owner of the importance of the notice.

(11) Failure to provide a copy of a resolution or a notice required under this section does not affect the responsibility of a unit owner to comply with a resolution adopted under this section.

(12) Notwithstanding a provision in the declaration or bylaws, the board of directors of an association, or a declarant as provided in

subsection (13) of this section, shall obtain and maintain insurance:

(a) That covers acts of dishonesty, embezzlement and theft by officers, directors, association employees, contracted community association managers, bookkeepers and other persons authorized by the association to handle moneys of the association; and

(b) In an amount equal to or greater than the sum of aggregate assessments on all units for three months plus the total amount of moneys in reserve accounts.

(13) During a period of declarant control of the association, the declarant, on behalf of the association, shall obtain and maintain insurance required under subsection (12) of this section within 30 days after the date of conveyance of the first unit in the condominium.

SECTION 8. ORS 100.480 is amended to read:

100.480. (1) An association of unit owners shall retain within this state the documents, information and records delivered to the association under ORS 100.210 and all other records of the association for not less than the period specified for the record in ORS 65.771 or any other applicable law, except that:

(a) The documents specified in ORS 100.210 (5)(j), if received, must be retained as permanent records of the association.

(b) Proxies and ballots must be retained for one year from the date of determination of the vote, except proxies and ballots relating to an amendment to the declaration, supplemental declaration plat, supplemental plat or bylaws must be retained for one year from the date the amendment is recorded.

(2) The association of unit owners shall keep financial records sufficient for proper accounting purposes.

[(3)(a) All assessments and other association funds shall be deposited and maintained in the name of the association in one or more separate federally insured accounts, including certificates of deposit, at a financial institution, as defined in ORS 706.008, other than an extranational institution. Except as

1 *provided in paragraph (b) of this subsection, funds must be maintained in an*
2 *association account until disbursed.]*

3 *[(b) Subject to any limitations imposed by the declaration or bylaws, asso-*
4 *ciation funds maintained in accounts established under this subsection may*
5 *be used to purchase obligations issued by the United States government.]*

6 *[(c) All expenses of the association shall be paid from the association ac-*
7 *count.]*

8 **(3)(a) Except as provided otherwise in paragraph (e) of this sub-**
9 **section, all funds of the association, including assessments and**
10 **declarant subsidies, must be deposited and maintained in the name of**
11 **the association in one or more fully insured association accounts until**
12 **disbursed.**

13 **(b) An operating account must be held in a federally insured ac-**
14 **count, including a certificate of deposit, at a financial institution, as**
15 **defined in ORS 706.008, other than an extranational institution.**

16 **(c) A reserve account, as described in ORS 100.175, must be held in:**

17 **(A) A federally insured account, including a certificate of deposit,**
18 **at a financial institution, as defined in ORS 706.008, other than an**
19 **extranational institution; or**

20 **(B) An account insured by the Securities Investor Protection Cor-**
21 **poration.**

22 **(d) The association may not maintain funds in an account, or at**
23 **any one institution, in an amount that exceeds the insurance limits**
24 **applicable to the account or institution.**

25 **(e) Subject to limitations imposed by the declaration or bylaws, if**
26 **any, funds of the association may be used to purchase obligations of**
27 **the United States Government.**

28 **(f) The investment objectives of an association are:**

29 **(A) Preservation of capital; and**

30 **(B) Maintaining sufficient liquidity to meet the financial obligations**
31 **of the condominium.**

(g) The association may maintain a nonconforming investment of association funds established before the effective date of this 2013 Act. When the nonconforming investment is liquidated, future investments of the association funds must conform with the requirements of this subsection.

(4) Within 90 days after the end of the fiscal year, the board of directors shall:

(a) Prepare or cause to be prepared an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year; and

(b) Distribute to each unit owner a copy of the annual financial statement.

(5) Subject to section 26, chapter 803, Oregon Laws 2003, the association of unit owners of a condominium that has annual assessments *[exceeding]* **greater than \$75,000 and less than \$500,000** shall cause the financial statement required under subsection (4) of this section to be reviewed **in the manner required by subsection (9) of this section** within 180 days after the end of the fiscal year *[by an independent certified public accountant licensed in the State of Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.]*

(6) **Subject to section 26, chapter 803, Oregon Laws 2003,** the association of unit owners of a condominium that has annual assessments of \$75,000 or less shall cause the most recent financial statement required by subsection (4) of this section to be reviewed in the manner *[described in subsection (5)]* **required by subsection (9)** of this section within 180 days after the board of directors receives the petition requesting review signed by at least a majority of the owners.

(7) The association of unit owners of a condominium that has annual assessments of \$500,000 or more shall cause the financial statement required under subsection (4) of this section to be audited within

180 days after the end of the fiscal year in the manner required by subsection (9) of this section.

[(7)] **(8)** An association of unit owners subject to the *[requirements of subsection (5)]* **review requirements of subsection (5) or (6)** of this section may elect, on an annual basis, not to comply with the requirements *[of subsection (5) of this section]* by an affirmative vote of at least 60 percent of the owners, not including the votes of the declarant with respect to units owned by the declarant.

(9) The reviews of financial statements required under subsection (5) or (6) of this section and the audits required under subsection (7) of this section must be performed in accordance with standards issued by the American Institute of Certified Public Accountants by an independent certified public accountant licensed in Oregon.

[(8)(a)] **(10)(a)** The association shall provide, within 10 business days of receipt of a written request from an owner, a written statement that provides:

(A) The amount of assessments due from the owner and unpaid at the time the request was received, including:

- (i) Regular and special assessments;
- (ii) Fines and other charges;
- (iii) Accrued interest; and
- (iv) Late payment charges.

(B) The percentage rate at which interest accrues on assessments that are not paid when due.

(C) The percentage rate used to calculate the charges for late payment or the amount of a fixed charge for late payment.

(b) The association is not required to comply with paragraph (a) of this subsection if the association has commenced litigation by filing a complaint against the owner and the litigation is pending when the statement would otherwise be due.

[(9)(a)] **(11)(a)** Except as provided in paragraph (b) of this subsection, the

documents, information and records described in subsections (1) to (4) of this section and all other records of the association of unit owners must be reasonably available for examination and, upon written request, available for duplication by a unit owner and any mortgagee of a unit that makes the request in good faith for a proper purpose.

(b) Records kept by or on behalf of the association may be withheld from examination and duplication to the extent the records concern:

(A) Personnel matters relating to a specific identified person or a person's medical records.

(B) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.

(C) Communications with legal counsel that relate to matters specified in subparagraphs (A) and (B) of this paragraph and the rights and duties of the association regarding existing or potential litigation or criminal matters.

(D) Disclosure of information in violation of law.

(E) Documents, correspondence or management or board reports compiled for or behalf of the association or the board of directors by its agents or committees for consideration by the board of directors in executive session held in accordance with ORS 100.420 (1) and (2).

(F) Documents, correspondence or other matters considered by the board of directors in executive session held in accordance with ORS 100.420 (1) and (2).

(G) Files of individual owners, other than those of a requesting owner or requesting mortgagee of an individual owner, including any individual owner's file kept by or on behalf of the association.

~~[(10)]~~ **(12)** The association of unit owners shall maintain a copy, suitable for the purpose of duplication, of the following:

(a) The declaration and bylaws, including amendments or supplements in effect, the recorded plat, if feasible, and the association rules and regulations currently in effect;

(b) The most recent annual financial statement prepared in accordance

with subsection (4) of this section;

(c) The current operating budget of the association;

(d) The reserve study, if any, described in ORS 100.175; and

(e) Architectural standards and guidelines, if any.

~~[(11)]~~ **(13)** The association, within 10 business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under subsection ~~[(10)]~~ **(12)** of this section.

~~[(12)]~~ **(14)** The board of directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

~~[(13)]~~ **(15)** Subsection (4) of this section first applies to property submitted to the provisions of this chapter before January 1, 1982, when the board of directors of the association of unit owners receives a written request from at least one unit owner that a copy of the annual financial statement be distributed in accordance with subsection (4) of this section.

SECTION 9. Section 10 of this 2013 Act is added to and made a part of ORS chapter 100.

SECTION 10. (1) Notwithstanding a provision in the declaration or bylaws of a condominium, unless a resolution adopted by the board of directors of an association of unit owners provides otherwise, only the following individuals may be an association account holder:

(a) A member of the board of directors, as provided in ORS 100.416; and

(b) An officer of the association who is either:

(A) An owner or co-owner of a unit; or

(B) A representative of an owner or co-owner of a unit who meets the qualifications described in subsection (2) of this section.

(2) An individual who is an officer of the association under sub-

1 **section (1)(b)(B) of this section must meet one of the following quali-**
2 **fications:**

3 **(a) If a corporation, limited liability company or partnership is the**
4 **owner or co-owner of a unit, or owns an interest in an entity that**
5 **owns the unit, the officer of the association representing the entity**
6 **must be:**

7 **(A) An officer, employee or agent of the corporation;**

8 **(B) A member, manager, employee or agent of the limited liability**
9 **company; or**

10 **(C) A partner, employee or agent of the partnership.**

11 **(b) If a trustee holds legal title to a unit in trust for the benefit of**
12 **the owner of the beneficial interest in the unit, the officer of the as-**
13 **sociation representing the trust must be a trustee.**

14 **(c) If a court has appointed an executor, administrator, guardian,**
15 **conservator or other individual to serve in a fiduciary capacity for an**
16 **owner of a unit, the officer of the association must be the executor,**
17 **administrator, guardian, conservator or other individual appointed by**
18 **the court. If the court appointed an entity to serve in a fiduciary ca-**
19 **capacity for an owner of a unit, the officer of the association must be**
20 **an officer or employee of the appointed entity.**

21 **(3) An association account holder may not delegate the holder's**
22 **authority to transact business on behalf of the association or to access**
23 **an association account.**

24 **SECTION 11. ORS 100.005 is amended to read:**

25 **100.005. As used in this chapter, unless the context requires otherwise:**

26 **(1) "Assessment" means any charge imposed or levied by the association**
27 **of unit owners on or against a unit owner or unit pursuant to provisions of**
28 **the declaration or the bylaws of the condominium or provisions of ORS**
29 **100.005 to 100.910.**

30 **(2) "Association account" means an operating account, as described**
31 **in ORS 100.480, or a reserve account, as described in ORS 100.175.**

1 **(3) “Association account holder” means an individual:**

2 **(a) Who is designated and authorized to transact business on behalf**
3 **of an association of unit owners by accessing moneys in an association**
4 **account required by ORS 100.480; and**

5 **(b) Whose signature is on file with the financial institution that**
6 **maintains the association account.**

7 [(2)] **(4) “Association of unit owners” or “association” means the asso-**
8 **ciation provided for under ORS 100.405.**

9 [(3)] **(5) “Association property” means any real property or interest in real**
10 **property acquired, held or possessed by the association under ORS 100.405.**

11 [(4)] **(6) “Blanket encumbrance” means a trust deed or mortgage or any**
12 **other lien or encumbrance, mechanic’s lien or otherwise, securing or evi-**
13 **dencing the payment of money and affecting more than one unit in a con-**
14 **dominium, or an agreement affecting more than one such unit by which the**
15 **developer holds such condominium under an option, contract to sell or trust**
16 **agreement.**

17 [(5)] **(7) “Building” means a multiple-unit building or single-unit**
18 **buildings, or any combination thereof, comprising a part of the property.**
19 **“Building” also includes a floating structure described in ORS 100.020**
20 **(3)(b)(D).**

21 [(6)] **(8) “Commissioner” means the Real Estate Commissioner.**

22 [(7)] **(9) “Common elements” means the general common elements and the**
23 **limited common elements.**

24 [(8)] **(10) “Common expenses” means:**

25 **(a) Expenses of administration, maintenance, repair or replacement of the**
26 **common elements;**

27 **(b) Expenses agreed upon as common by all the unit owners; and**

28 **(c) Expenses declared common by ORS 100.005 to 100.625 or by the decla-**
29 **ration or the bylaws of the particular condominium.**

30 [(9)] **(11) “Condominium” means:**

31 **(a) With respect to property located within this state:**

1 (A) The land, if any, whether fee simple, leasehold, easement or other
2 interest or combination thereof, and whether contiguous or noncontiguous;

3 (B) Any buildings, improvements and structures on the property; and

4 (C) Any easements, rights and appurtenances belonging to the property
5 submitted to the provisions of ORS 100.005 to 100.625; and

6 (b) With respect to property located outside this state, the property that
7 has been committed to the condominium form of ownership in accordance
8 with the jurisdiction within which the property is located.

9 ~~[(10)]~~ **(12)** “Conversion condominium” means a condominium in which
10 there is a building, improvement or structure that was occupied prior to any
11 negotiation and that is:

12 (a) Residential in nature, at least in part; and

13 (b) Not wholly commercial or industrial, or commercial and industrial, in
14 nature.

15 ~~[(11)]~~ **(13)** “Declarant” means a person who records a declaration under
16 ORS 100.100 or a supplemental declaration under ORS 100.110.

17 ~~[(12)]~~ **(14)** “Declaration” means the instrument described in ORS 100.100
18 by which the condominium is created and as modified by any amendment
19 recorded in accordance with ORS 100.135 or supplemental declaration re-
20 corded in accordance with ORS 100.120.

21 ~~[(13)]~~ **(15)** “Developer” means a declarant or any person who purchases
22 an interest in a condominium from declarant, successor declarant or subse-
23 quent developer for the primary purpose of resale.

24 ~~[(14)]~~ **(16)** “Flexible condominium” means a condominium containing
25 property that may be reclassified or withdrawn from the condominium pur-
26 suant to ORS 100.150 (1).

27 ~~[(15)]~~ **(17)** “General common elements,” unless otherwise provided in a
28 declaration, means all portions of the condominium that are not part of a
29 unit or a limited common element, including but not limited to the following:

30 (a) The land, whether fee simple, leasehold, easement, other interest or
31 combination thereof, together with any rights and appurtenances;

(b) The foundations, columns, girders, beams, supports, bearing and shear walls, windows, except glazing and screening, unit access doors, except glazing and screening, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of a building;

(c) The basements, yards, gardens, parking areas and outside storage spaces;

(d) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal and incinerating;

(e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(f) The premises for the lodging of janitors or caretakers of the property; and

(g) All other elements of a building and the condominium necessary or convenient to their existence, maintenance and safety, or normally in common use.

~~[(16)]~~ **(18)** “Leasehold” means the interest of a person, firm or corporation who is the lessee under a lease from the owner in fee and who files a declaration creating a condominium under ORS 100.100.

~~[(17)]~~ **(19)** “Limited common elements” means those common elements designated in the declaration, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

~~[(18)]~~ **(20)** “Majority” or “majority of unit owners” means more than 50 percent of the voting rights allocated to the units by the declaration.

~~[(19)]~~ **(21)** “Mortgagee” means any person who is:

(a) A mortgagee under a mortgage;

(b) A beneficiary under a trust deed; or

(c) The vendor under a land sale contract.

~~[(20)]~~ **(22)** “Negotiation” means any activity preliminary to the execution by either developer or purchaser of a unit sales agreement, including but not limited to advertising, solicitation and promotion of the sale of a unit.

1 [(21)] **(23)** “Nonwithdrawable property” means property which pursuant
2 to ORS 100.150 (1)(b):

3 (a) Is designated nonwithdrawable in the declaration and on the plat; and

4 (b) Which may not be withdrawn from the condominium without the
5 consent of all of the unit owners.

6 **(24) “Obligations of the United States Government” means Treasury**
7 **bills, notes or bonds.**

8 [(22)] **(25)** “Percent of owners” or “percentage of owners” means the per-
9 cent of the voting rights determined under ORS 100.525.

10 [(23)] **(26)** “Purchaser” means an actual or prospective purchaser of a
11 condominium unit pursuant to a sale.

12 [(24)] **(27)** “Recording officer” means the county officer charged with the
13 duty of filing and recording deeds and mortgages or any other instruments
14 or documents affecting the title to real property.

15 [(25)] **(28)** “Reservation agreement” means an agreement relating to the
16 future sale of a unit which is not binding on the purchaser and which grants
17 purchaser the right to cancel the agreement without penalty and obtain a
18 refund of any funds deposited at any time until purchaser executes a unit
19 sales agreement.

20 [(26)] **(29)** “Sale” includes every disposition or transfer of a condominium
21 unit, or an interest or estate therein, by a developer, including the offering
22 of the property as a prize or gift when a monetary charge or consideration
23 for whatever purpose is required by the developer. “Interest or estate” in-
24 cludes a lessee’s interest in a unit for more than three years or less than
25 three years if the interest may be renewed under the terms of the lease for
26 a total period of more than three years. “Interest or estate” does not include
27 any interest held for security purposes or a timeshare regulated or otherwise
28 exempt under ORS 94.803 and 94.807 to 94.945.

29 [(27)] **(30)** “Special declarant right” means any right, in addition to the
30 regular rights of the declarant as a unit owner, reserved for the benefit of
31 or created by the declarant under the declaration, bylaws or the provisions

of this chapter.

[(28)] **(31)** “Staged condominium” means a condominium which provides for annexation of additional property pursuant to ORS 100.115 and 100.120.

[(29)] **(32)** “Successor declarant” means the transferee of any special declarant right.

[(30)] **(33)** “Termination date” means that date described in ORS 100.105 (2)(b) or (7)(d).

[(31)] **(34)** “Transitional committee” means the committee provided for under ORS 100.205.

[(32)] **(35)** “Turnover meeting” means the meeting provided for under ORS 100.210.

[(33)] **(36)** “Unit” or “condominium unit” means a part of the property which:

(a) Is described in ORS 100.020 (3);

(b) Is intended for any type of independent ownership; and

(c) The boundaries of which are described pursuant to ORS 100.105 (1)(d).

[(34)] **(37)** “Unit designation” means the number, letter or combination thereof designating a unit in the declaration and on the plat.

[(35)] **(38)** “Unit owner” means, except to the extent the declaration or bylaws provide otherwise, the person owning fee simple interest in a unit, the holder of a vendee’s interest in a unit under a recorded installment contract of sale and, in the case of a leasehold condominium, the holder of the leasehold estate in a unit.

[(36)] **(39)** “Unit sales agreement” means a written offer or agreement for the sale of a condominium unit which when fully executed will be binding on all parties. “Unit sales agreement” includes but is not limited to an earnest money receipt and agreement to purchase and other such agreements which serve as an agreement of sale for a cash transaction or which are preliminary to the execution of an installment contract of sale, but does not include a reservation agreement.

[(37)] **(40)** “Variable property” means property described in ORS 100.150

(2) and designated as variable property in the declaration and on the plat.

[(38)] (41) "Voting rights" means the portion of the votes allocated to a unit by the declaration in accordance with ORS 100.105 (1)(j).

SECTION 12. Section 26, chapter 803, Oregon Laws 2003, as amended by section 39, chapter 641, Oregon Laws 2009, is amended to read:

Sec. 26. The requirements of ORS 100.480 (5) **and (6)** first apply:

(1) Commencing with the fiscal year following the turnover meeting for the association of unit owners of a condominium created prior to January 1, 2004, if the turnover meeting has not yet occurred on January 1, 2004.

(2) Commencing with the fiscal year beginning in calendar year 2004 for the association of unit owners of a condominium created prior to January 1, 2004, if the turnover meeting has occurred on or before January 1, 2004.

(3) Commencing with the fiscal year following the turnover meeting for the association of unit owners of a condominium created on or after January 1, 2004.

SECTION 13. ORS 94.640 is amended to read:

94.640. (1) The board of directors of an association may act on behalf of the association except as limited by the declaration and the bylaws. In the performance of their duties, officers and members of the board of directors are governed by this section and the applicable provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377, whether or not the association is incorporated under ORS chapter 65.

(2) Subject to subsection (7) of this section, unless otherwise provided in the bylaws, the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) At least annually, the board of directors of an association shall review the insurance coverage of the association.

(4) The board of directors of the association annually shall cause to be filed the necessary income tax returns for the association.

(5) The board of directors of the association may record a statement of association information as provided in ORS 94.667.

(6)(a) Unless otherwise provided in the declaration or bylaws, at a meeting of the owners at which a quorum is present, the owners may remove a director from the board of directors, other than directors appointed by the declarant or individuals who are ex officio directors, with or without cause, by a majority vote of owners who are present and entitled to vote.

(b) Notwithstanding contrary provisions in the declaration or bylaws:

(A) Before a vote to remove a director, owners must give the director whose removal has been proposed an opportunity to be heard at the meeting.

(B) The owners must vote on the removal of each director whose removal is proposed as a separate question.

(C) Removal of a director by owners is effective only if the matter of removal was an item on the agenda and was stated in the notice of the meeting if notice is required under ORS 94.650.

(c) A director who is removed by the owners remains a director until a successor is elected by the owners or the vacancy is filled as provided in subsection (7) of this section.

(7) Unless the declaration or bylaws specifically prescribe a different procedure for filling a vacancy created by the removal of a director by owners, the owners shall fill a vacancy created by the removal of a director by the owners at a meeting of owners. The notice of the meeting must state that filling a vacancy is an item on the agenda.

(8)(a) All meetings of the board of directors of the association shall be open to owners, except that at the discretion of the board, the board may close the meeting to owners other than board members and meet in executive session to:

(A) Consult with legal counsel.

(B) Consider the following:

(i) Personnel matters, including salary negotiations and employee discipline;

(ii) Negotiation of contracts with third parties; or

(iii) Collection of unpaid assessments.

(b) Except in the case of an emergency, the board of directors of an association shall vote in an open meeting whether to meet in executive session. If the board of directors votes to meet in executive session, the presiding officer of the board of directors shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

(c) A contract or an action considered in executive session does not become effective unless the board of directors, following the executive session, reconvenes in open meeting and votes on the contract or an action, which must be reasonably identified in the open meeting and included in the minutes.

(9) The meeting and notice requirements in subsections (8) and (10) of this section may not be circumvented by chance or social meetings or by any other means.

(10) In a planned community in which the majority of the lots are the principal residences of the occupants, meetings of the board of directors must comply with the following:

(a) For other than emergency meetings, notice of board of directors' meetings shall be posted at a place or places on the property at least three days prior to the meeting or notice shall be provided by a method otherwise reasonably calculated to inform lot owners of such meetings;

(b) Emergency meetings may be held without notice, if the reason for the emergency is stated in the minutes of the meeting; and

(c) Only emergency meetings of the board of directors may be conducted by telephonic communication or by the use of a means of communication that allows all members of the board of directors participating to hear each other simultaneously or otherwise to be able to communicate during the meeting. A member of the board of directors participating in a meeting by this means is deemed to be present in person at the meeting.

(11) The board of directors, in the name of the association, shall maintain a current mailing address of the association.

(12) The board of directors shall cause the information required to enable the association to comply with ORS 94.670 [(8)] (10) to be maintained and kept current.

(13) As used in this section, "meeting" means a convening of a quorum of members of the board of directors at which association business is discussed, except a convening of a quorum of members of the board of directors for the purpose of participating in litigation, mediation or arbitration proceedings.

SECTION 14. ORS 100.417 is amended to read:

100.417. (1) The board of directors of an association of unit owners may act on behalf of the association except as limited by the declaration or bylaws. In the performance of their duties, officers and members of the board of directors shall be governed by this section and the applicable provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377 whether or not the association is incorporated under ORS chapter 65.

(2) Subject to subsection (8) of this section, unless otherwise provided in the bylaws, the board of directors of an association may fill vacancies in its membership for the unexpired portion of any term.

(3) At least annually, the board of directors of an association shall review the insurance coverage of the association.

(4) The board of directors of the association annually shall cause to be filed the necessary income tax returns for the association.

(5) The board of directors of the association may record a statement of association information as provided in ORS 94.667.

(6) The board of directors, in the name of the association, shall maintain a current mailing address.

(7) The board of directors shall cause to be maintained and kept current the information required to enable the association to comply with ORS 100.480 [(11)] (13).

1 (8)(a) Unless otherwise provided in the declaration or bylaws, at a meet-
2 ing of the unit owners at which a quorum is present, the unit owners may
3 remove a director from the board of directors, other than directors appointed
4 by the declarant or individuals who are ex officio directors, with or without
5 cause, by a majority vote of unit owners who are present and entitled to
6 vote.

7 (b) Notwithstanding contrary provisions in the declaration or bylaws:

8 (A) Before a vote to remove a director, unit owners must give the director
9 whose removal has been proposed an opportunity to be heard at the meeting.

10 (B) The unit owners must vote on the removal of each director whose
11 removal is proposed as a separate question.

12 (C) Removal of a director by unit owners is effective only if the matter
13 of removal was an item on the agenda and was stated in the notice of the
14 meeting required under ORS 100.407.

15 (c) A director who is removed by the unit owners remains a director until
16 a successor is elected by the unit owners or the vacancy is filled as provided
17 in subsection (9) of this section.

18 (9) Unless the declaration or bylaws specifically prescribe a different
19 procedure for filling a vacancy created by the removal of a director by unit
20 owners, the unit owners shall fill a vacancy created by the removal of a di-
21 rector by the unit owners at a meeting of unit owners. The notice of the
22 meeting must state that filling a vacancy is an item on the agenda.