

# House Bill 3432

Sponsored by Representatives MEEK, POWER, Senator MANNING JR, Representatives HELT, SMITH DB, Senator HEARD; Representatives BYNUM, CLEM, GOMBERG, GORSEK, KENY-GUYER, LEWIS, NOBLE, NOSSE, REARDON, WALLAN, ZIKA, Senator ROBLAN

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires amendment of state building code to include special inspections to detect construction defects in exterior waterproofing system of common property of homeowners association, residential dwelling in planned community served by homeowners association or condominium. Provides for construction design professional to identify appropriate special inspections. Provides for general contractor to ensure proper performance of special inspections and remedying of discovered defects. Prohibits issuance of certificate of occupancy if applicable special inspections have not been conducted.

Reduces statute of limitations for tort action by homeowners association or association of unit owners to bring action for construction defect in structure on which special inspections were performed. Imposes notice, voting and approval requirements as prerequisite to homeowners association or association of unit owners bringing or intervening in action for construction defect.

Creates special procedural requirements for giving notice to contractor prior to filing of construction defect claim if action is brought by homeowners association or association of unit owners. Extends time for sender of secondary notice of defect to bring action against recipient of secondary notice of defect.

## A BILL FOR AN ACT

1  
2 Relating to construction defects; creating new provisions; and amending ORS 12.135, 94.630, 94.662,  
3 100.105, 100.405, 100.490, 701.570, 701.575 and 701.585.

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

5 **SECTION 1.** ORS 12.135 is amended to read:

6 12.135. (1) **As used in this section:**

7 (a) **“Association of unit owners” has the meaning given that term in ORS 100.005.**

8 (b) **“Condominium unit” has the meaning given that term in ORS 100.005.**

9 (c) **“Homeowners association” has the meaning given that term in ORS 94.550.**

10 (d) **“Large commercial structure,” “residential structure” and “small commercial struc-**  
11 **ture” have the meanings given those terms in ORS 701.005.**

12 (e) **“Manufactured dwelling” has the meaning given that term in ORS 446.003.**

13 (f) **“Prefabricated structure” has the meaning given that term in ORS 455.010.**

14 (g) **“Public body” has the meaning given that term in ORS 174.109.**

15 (h) **“Substantial completion” means the date when the contractee accepts in writing the**  
16 **construction, alteration or repair of the improvement to real property or any designated**  
17 **portion thereof as having reached that state of completion when it may be used or occupied**  
18 **for its intended purpose or, if there is no such written acceptance, the date of acceptance**  
19 **of the completed construction, alteration or repair of such improvement by the contractee.**

20 *[(1)]* (2) An action against a person by a plaintiff who is not a public body, whether in contract,  
21 tort or otherwise, arising from the person having performed the construction, alteration or repair  
22 of any improvement to real property or the supervision or inspection thereof, or from the person

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 having furnished design, planning, surveying, architectural or engineering services for the improve-  
 2 ment, must be commenced before the earliest of:

3 (a) The applicable period of limitation otherwise established by law;

4 (b) Ten years after substantial completion or abandonment of the construction, alteration or  
 5 repair **of a residential structure or** of a small commercial structure[, *as defined in ORS 701.005,*  
 6 *a residential structure, as defined in ORS 701.005, or a large commercial structure, as defined in ORS*  
 7 *701.005, that is owned or maintained by a homeowners association, as defined in ORS 94.550, or that*  
 8 *is owned or maintained by an association of unit owners, as defined in ORS 100.005]; or*

9 (c) Six years after substantial completion or abandonment of the construction, alteration or re-  
 10 pair of a large commercial structure[, *as defined in ORS 701.005, other than a large commercial*  
 11 *structure described in paragraph (b) of this subsection].*

12 [(2)] (3) An action against a person by a public body, whether in contract, tort or otherwise,  
 13 arising from the person having performed the construction, alteration or repair of any improvement  
 14 to real property or the supervision or inspection thereof, or from the person having furnished design,  
 15 planning, surveying, architectural or engineering services for the improvement, must be commenced  
 16 not more than 10 years after substantial completion or abandonment of such construction, alteration  
 17 or repair of the improvement to real property.

18 (4)(a) **Notwithstanding subsection (2) of this section and except as provided in paragraph**  
 19 **(b) of this subsection, the period of limitation for a tort action against a person by a home-**  
 20 **owners association arising from the defective construction, alteration or repair of a struc-**  
 21 **ture for which there is documentation of inspection under section 12 of this 2019 Act, or the**  
 22 **supervision or inspection thereof, is six years after substantial completion or abandonment**  
 23 **of the construction, alteration or repair of the structure.**

24 (b) **Notwithstanding subsection (2) of this section and except as provided in paragraph (c)**  
 25 **of this subsection, the period of limitation for a tort action against a person by an associ-**  
 26 **ation of unit owners arising from the defective construction, alteration or repair of a con-**  
 27 **dominium unit for which there is documentation of inspection under section 12 of this 2019**  
 28 **Act, or the supervision or inspection thereof, is six years after substantial completion or**  
 29 **abandonment of the construction, alteration or repair of the structure.**

30 (c) **If a construction defect described in this subsection is discovered more than five but**  
 31 **less than six years after substantial completion or abandonment, the period of limitation**  
 32 **under this subsection for a tort action arising from the construction defect is one year after**  
 33 **discovery of the defect.**

34 [(3)(a)] (5)(a) Notwithstanding subsections [(1) and] (2) **and (3)** of this section, an action against  
 35 a person registered to practice architecture under ORS 671.010 to 671.220, a person registered to  
 36 practice landscape architecture under ORS 671.310 to 671.459 or a person registered to practice  
 37 engineering under ORS 672.002 to 672.325 to recover damages for injury to a person, property or to  
 38 any interest in property, including damages for delay or economic loss, regardless of legal theory,  
 39 arising out of the construction, alteration or repair of any improvement to real property must be  
 40 commenced before the earliest of:

41 (A) Two years after the date the injury or damage is first discovered or in the exercise of rea-  
 42 sonable care should have been discovered;

43 (B) Ten years after substantial completion or abandonment of the construction, alteration or  
 44 repair **of a residential structure or** of a small commercial structure[, *as defined in ORS 701.005,*  
 45 *a residential structure, as defined in ORS 701.005, or a large commercial structure, as defined in ORS*

1 701.005, that is owned or maintained by a homeowners association, as defined in ORS 94.550, or that  
 2 is owned or maintained by an association of unit owners, as defined in ORS 100.005]; or

3 (C) Six years after substantial completion or abandonment of the construction, alteration or re-  
 4 pair of a large commercial structure[, as defined in ORS 701.005, other than a large commercial  
 5 structure described in subparagraph (B) of this paragraph].

6 (b) This subsection applies to actions brought by any person or public body.

7 [(4) For purposes of this section:]

8 [(a) "Public body" has the meaning given that term in ORS 174.109; and]

9 [(b) "Substantial completion" means the date when the contractee accepts in writing the con-  
 10 struction, alteration or repair of the improvement to real property or any designated portion thereof as  
 11 having reached that state of completion when it may be used or occupied for its intended purpose or,  
 12 if there is no such written acceptance, the date of acceptance of the completed construction, alteration  
 13 or repair of such improvement by the contractee.]

14 [(5)] (6) For purposes of this section, an improvement to real property is considered abandoned  
 15 on the same date that the improvement is considered abandoned under ORS 87.045.

16 [(6)] (7) This section:

17 (a) Applies to an action against a manufacturer, distributor, seller or lessor of a manufactured  
 18 dwelling[, as defined in ORS 446.003,] or of a prefabricated structure[, as defined in ORS 455.010];  
 19 and

20 (b) Does not apply to actions against any person in actual possession and control of the im-  
 21 provement, as owner, tenant or otherwise, at the time such cause of action accrues.

22 **SECTION 2.** ORS 94.630 is amended to read:

23 94.630. (1) Subject to subsection (2) of this section and ORS 94.779, and except as otherwise  
 24 provided in its declaration or bylaws, a homeowners association may:

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

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

28 (c) Hire and terminate managing agents and other employees, agents and independent contrac-  
 29 tors;

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

31 (e) Subject to [subsection] **subsections (2)(b) and (4)** of this section, initiate or intervene in  
 32 litigation or administrative proceedings in its own name and without joining the individual owners  
 33 in the following:

34 (A) Matters relating to the collection of assessments and the enforcement of governing docu-  
 35 ments;

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

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

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

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

43 (ii) Common property;

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

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

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

5 (F) Any other matter to which the association has standing under law or pursuant to the dec-  
6 laration or bylaws;

7 (f) Make contracts and incur liabilities;

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

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

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

13 (j) Grant easements, leases, licenses and concessions through or over the common property as  
14 provided in ORS 94.665;

15 (k) Modify, close, remove, eliminate or discontinue the use of common property, including any  
16 improvement or landscaping, regardless of whether the common property is mentioned in the decla-  
17 ration, provided that:

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

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

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

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

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

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

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

41 (o) Impose reasonable charges for the preparation and recordation of amendments to the decla-  
42 ration;

43 (p) Provide for the indemnification of its officers and the board of directors and maintain li-  
44 ability insurance for directors and officers;

45 (q) Assign its right to future income, including the right to receive common expense assess-

1 ments; and

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

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

7 **(b) Notwithstanding any contrary provision in a declaration or bylaws, a homeowners**  
8 **association may not initiate or intervene in litigation or administrative proceedings under**  
9 **subsection (1)(e)(E) of this section regarding a matter that results from a defect in, or**  
10 **damage arising from a defect in, common property unless owners representing a majority**  
11 **of the lots approve in writing of the initiation or intervention within 60 days after the mailing**  
12 **date of the notice required under ORS 94.662.**

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

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

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

22 (c) Identify, by the designations stated or referenced in the declaration or applicable supple-  
23 mental declaration, all affected lots and common property; and

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

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

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

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

44 (d) Unless a stay has been granted under paragraph (c) of this subsection, if the dispute resolu-  
45 tion process is not completed within 30 days after receipt of the initial offer, the initiating party

1 may commence litigation or an administrative proceeding without regard to whether the dispute  
2 resolution is completed.

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

6 (f) The requirements of this subsection do not apply to circumstances in which irreparable harm  
7 to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect  
8 assessments, other than assessments attributable to fines.

9 **SECTION 3.** ORS 94.662 is amended to read:

10 94.662. (1) At least 10 days prior to instituting any litigation or administrative proceeding to  
11 recover damages under ORS 94.630 (1)(e)(E), the homeowners association shall provide written no-  
12 tice to each affected owner of the association's intent to seek damages on behalf of the owner. The  
13 notice shall, at a minimum:

14 (a) Be mailed to the mailing address of each lot or to the mailing address designated in writing  
15 to the association by the owner;

16 (b) Inform each owner of the general nature of the litigation or proceeding;

17 (c) Describe the specific nature of the damages to be sought on the owner's behalf;

18 (d) Set forth the terms under which the association is willing to seek damages on the owner's  
19 behalf, including any mechanism proposed for the determination and distribution of any damages  
20 recovered;

21 (e) Inform each owner of the owner's right not to have the damages sought on the owner's behalf  
22 and specify the procedure for exercising the right; and

23 (f) Inform the owner that exercising the owner's right not to have damages sought on the  
24 owner's behalf:

25 (A) Relieves the association of its duty to reimburse or indemnify the owner for the damages;

26 (B) Does not relieve the owner from the owner's obligation to pay dues or assessments relating  
27 to the litigation or proceeding;

28 (C) Does not impair any easement owned or possessed by the association; and

29 (D) Does not interfere with the association's right to make repairs to common areas.

30 (2) Within 10 days of mailing the notice described in this section, any owner may request in  
31 writing that the association not seek damages on the owner's behalf. If an owner makes such a re-  
32 quest, the association shall not make or continue any claim or action for damages with regard to  
33 the objecting owner's lot and shall be relieved of any duty to reimburse or indemnify the owner for  
34 damages under the litigation or proceeding.

35 **(3) If the action is for a claim described in ORS 94.630 (2)(b):**

36 **(a) The notice sent under subsection (1) of this section must be sent by certified mail.**

37 **(b) In addition to the contents described in subsection (1) of this section, the notice must:**

38 **(A) State that the association believes that a defect in the common property exists;**

39 **(B) Provide a detailed description of the defect;**

40 **(C) Identify the parties the association considers responsible for the defect; and**

41 **(D) State that the association may not institute litigation or an administrative proceed-**  
42 **ing unless owners representing a majority of the lots approve in writing of the initiation or**  
43 **intervention within 60 days after the mailing date of the notice.**

44 **(c) The association shall send a copy of the notice by certified mail to each person iden-**  
45 **tified in the notice as a party the association considers responsible for the defect. The re-**

1 **quirement for sending notice under this subsection is in addition to the notice of defect**  
 2 **requirement in ORS 701.565 and does not initiate the procedure described in ORS 701.560 to**  
 3 **701.595.**

4 **SECTION 4.** ORS 100.405 is amended to read:

5 100.405. (1)(a) An association of unit owners shall be organized to serve as a means through  
 6 which the unit owners may take action with regard to the administration, management and opera-  
 7 tion of the condominium.

8 (b) The association of a condominium created on or after September 27, 2007, shall be organized:

9 (A) As a corporation for profit or a nonprofit corporation; or

10 (B) If the condominium consists of four or fewer units, excluding units used for parking, storage  
 11 or other use ancillary to a unit, as an unincorporated association, corporation for profit or a  
 12 nonprofit corporation.

13 (c) If the association is incorporated, the name of the association shall include the complete  
 14 name of the condominium.

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

20 (e) A separate association is not created when an unincorporated association formed under this  
 21 section is incorporated, reinstated after administrative dissolution under ORS 60.654 or 65.654 or  
 22 again incorporated following dissolution. The association automatically continues and, without any  
 23 further action by incorporators, directors or officers that may otherwise be required under Oregon  
 24 corporation laws:

25 (A) The incorporated association has all of the property, powers and obligations of the associ-  
 26 ation that existed immediately prior to incorporation in addition to the powers and obligations under  
 27 Oregon corporation laws.

28 (B) The bylaws in effect immediately prior to incorporation or reinstatement constitute the by-  
 29 laws of the incorporated association.

30 (C) The members of the board of directors and the officers continue to serve as directors and  
 31 officers.

32 (f) If an incorporated association is at any time dissolved, whether inadvertently or deliberately:

33 (A) The association continues as an unincorporated association under the same name.

34 (B) The unincorporated association has all of the property, powers and obligations of the in-  
 35 corporated association existing immediately prior to dissolution.

36 (C) The unincorporated association shall be governed by the bylaws, and to the extent applica-  
 37 ble, the articles of incorporation of the incorporated association.

38 (D) The board of directors and the officers serving immediately prior to the dissolution continue  
 39 to serve as the directors and officers of the unincorporated association.

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

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

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

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

1 (b) Adopt and amend budgets for revenues, expenditures and reserves and levy and collect as-  
 2 sessments for common expenses from unit owners;

3 (c) Hire and terminate managing agents and other employees, agents and independent contrac-  
 4 tors;

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

6 (e) Subject to [subsection (11)] **subsections (5) and (12)** of this section, initiate or intervene in  
 7 litigation or administrative proceedings in its own name, and without joining the individual unit  
 8 owners, in the following:

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

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

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

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

16 (E) Matters relating to or affecting the units or interests of unit owners including but not lim-  
 17 ited to damage, destruction, impairment or loss of use of a unit or portion thereof, if:

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

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

20 (F) Any other matter to which the association has standing under law or pursuant to the dec-  
 21 laration, bylaws or any articles of incorporation;

22 (f) Make contracts and incur liabilities;

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

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

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

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

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

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

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

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

44 (m) Impose reasonable charges for the preparation and recordation of amendments to the dec-  
 45 laration or statements of assessments;

1 (n) Assign its right to future income, including the right to receive common expense assess-  
 2 ments;

3 (o) Provide for the indemnification of its officers and executive board, as may be limited by ORS  
 4 61.218 (3)(d) (1987 Replacement Part), and maintain directors' and officers' liability insurance;

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

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

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

9 **(5) Notwithstanding any contrary provision in a declaration or bylaws, an association**  
 10 **may not initiate or intervene in litigation or administrative proceedings under subsection**  
 11 **(4)(e) of this section regarding a matter that results from a defect in, or damage arising from**  
 12 **a defect in, common elements of the condominium unless owners representing a majority of**  
 13 **the units approve in writing of the initiation or intervention within 60 days after the mailing**  
 14 **date of the notice required under ORS 100.490. This subsection does not apply to a breach**  
 15 **of warranty claim against a declarant under ORS 100.185.**

16 [(5)] (6) Subject to subsection [(6)] (7) of this section, unless expressly limited or prohibited by  
 17 the declaration, the association has the authority to grant, execute, acknowledge and deliver on  
 18 behalf of the unit owners leases, easements, rights of way, licenses and other similar interests af-  
 19 fecting the general common elements and consent to vacation of roadways within and adjacent to  
 20 the condominium.

21 [(6)(a)(A)] (7)(a)(A) Except as provided in subparagraph (B) of this paragraph, the granting of  
 22 a lease, easement, right of way, license or other similar interest pursuant to subsection [(5)] (6) of  
 23 this section shall be first approved by at least 75 percent of owners present at a meeting of the as-  
 24 sociation or with the consent of at least 75 percent of all owners solicited by any means the board  
 25 of directors determines is reasonable. If a meeting is held to conduct the vote, the meeting notice  
 26 must include a statement that the approval of the grant will be an item of business on the agenda  
 27 of the meeting.

28 (B) Unless the declaration otherwise provides:

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

32 (ii) The granting of a lease, easement, right of way, license or other similar interest affecting  
 33 the general common elements for a term of more than two years to a public body, as defined in ORS  
 34 174.109, or to a utility or a communications company for installation and maintenance of power, gas,  
 35 electric, water or other utility and communication lines and services requires the approval of a  
 36 majority of the board of directors.

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

1 (b) Unless the declaration otherwise provides, the consent to vacation of roadways within and  
 2 adjacent to the condominium must be approved first by at least a majority of unit owners present  
 3 and voting at a meeting of the association or with consent of at least a majority of all owners so-  
 4 licited by any means the board of directors determines is reasonable. If a meeting is held to conduct  
 5 the vote, the meeting notice must include a statement that the roadway vacation will be an item  
 6 of business on the agenda of the meeting.

7 [(7)] (8) The instrument granting an interest or consent pursuant to subsection [(5)] (6) of this  
 8 section shall be executed by the chairperson and secretary of the association and acknowledged in  
 9 the manner provided for acknowledgment of such instruments by such officers and shall state that  
 10 such grant or consent was approved, if appropriate, by at least the percent of owners required under  
 11 subsection [(6)] (7) of this section.

12 [(8)(a)] (9)(a) Unless expressly prohibited by the declaration, any action permitted under sub-  
 13 sections [(5) and] (6) **and** (7) of this section regarding a general common element may be taken with  
 14 respect to any limited common element as provided in this subsection.

15 (b) Except as provided in paragraph (c) of this subsection, the easement, lease or other action  
 16 under this section requires the approval or consent of the owner of the unit to which the use of the  
 17 limited common element is reserved and the holder of a first mortgage or first trust deed affecting  
 18 the unit. However, if the use of the limited common element is reserved for five or more units:

19 (A) When the action is for more than two years, the owners of 75 percent of the units to which  
 20 the use of the limited common element is reserved must approve or consent.

21 (B) When the action is for two years or less, the owners of a majority of the units to which the  
 22 use of the limited common element is reserved must approve or consent.

23 (c) The instrument granting an interest or consent under this section must:

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

26 (B) State that the grant or consent is given pursuant to this subsection.

27 (C) Include a certification by the chairperson and secretary that the action was approved by the  
 28 owners in accordance with this subsection.

29 [(9)] (10) Except as otherwise provided in the association's declaration or bylaws, the board of  
 30 directors of the association may modify, close, remove, eliminate or discontinue the use of a general  
 31 common element facility or improvement or portion of the common element landscaping, regardless  
 32 of whether such facility, improvement or landscaping is mentioned in the declaration or shown on  
 33 the plat provided that:

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

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

41 [(10)(a)] (11)(a) A permit or authorization issued by the board of directors pursuant to authority  
 42 granted to the board under law, the declaration or the bylaws, may be recorded in the deed records  
 43 of the county where the condominium is located. An instrument recorded under this subsection shall:

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

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

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

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

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

12 [(11)(a)] (12)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an ad-  
 13 ministrative proceeding in which the association and an owner have an adversarial relationship, the  
 14 party that intends to initiate litigation or an administrative proceeding shall offer to use any dispute  
 15 resolution program available within the county in which the condominium is located that is in sub-  
 16 stantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer  
 17 must be hand-delivered or mailed by certified mail, return receipt requested, to the address, con-  
 18 tained in the records of the association, for the other party.

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

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

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

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

37 (f) The requirements of this subsection do not apply to circumstances in which irreparable harm  
 38 to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect  
 39 assessments, other than assessments attributable to fines.

40 **SECTION 5.** ORS 100.490 is amended to read:

41 100.490. (1) At least 10 days prior to instituting any litigation or administrative proceeding to  
 42 recover damages under ORS 100.405 (4)(e)(E), the association of unit owners shall provide written  
 43 notice to each affected owner of the association's intent to seek damages on behalf of the owner.  
 44 The notice shall, at a minimum:

45 (a) Be mailed to the mailing address of each unit or to the mailing addresses designated by the

1 owners in writing to the association;

2 (b) Inform each owner of the general nature of the litigation or proceeding;

3 (c) Describe the specific nature of the damages to be sought on the owner's behalf;

4 (d) Set forth the terms under which the association is willing to seek damages on the owner's  
5 behalf, including any mechanism proposed for the determination and distribution of any damages  
6 recovered;

7 (e) Inform each owner of the owner's right not to have the damages sought on the owner's behalf  
8 and specify the procedure for exercising the right; and

9 (f) Inform the owner that exercising the owner's right not to have damages sought on the  
10 owner's behalf:

11 (A) Relieves the association of its duty to reimburse or indemnify the owner for the damages;

12 (B) Does not relieve the owner from the owner's obligation to pay dues or assessments relating  
13 to the litigation or proceeding;

14 (C) Does not impair any easement owned or possessed by the association; and

15 (D) Does not interfere with the association's right to make repairs to common elements.

16 (2) Within 10 days of mailing the notice described in this section, any owner may request in  
17 writing that the association not seek damages on the owner's behalf. If an owner makes such a re-  
18 quest, the association shall not make or continue any claim or action for damages with regard to  
19 the objecting owner's unit or interest and shall be relieved of any duty to reimburse or indemnify  
20 the owner for damages under the litigation or proceeding.

21 **(3) If the action is for a claim described in ORS 105.405 (5):**

22 **(a) The notice sent under subsection (1) of this section must be sent by certified mail.**

23 **(b) In addition to the contents described in subsection (1) of this section, the notice must:**

24 **(A) State that the association believes that a defect in the common property exists;**

25 **(B) Provide a detailed description of the defect;**

26 **(C) Identify the parties the association considers responsible for the defect; and**

27 **(D) State that the association may not institute litigation or an administrative proceed-**  
28 **ing unless owners representing a majority of the units approve in writing of the initiation**  
29 **or intervention within 60 days after the mailing date of the notice.**

30 **(c) The association shall send a copy of the notice by certified mail to each person iden-**  
31 **tified in the notice as a party the association considers responsible for the defect. The re-**  
32 **quirement for sending notice under this subsection is in addition to the notice of defect**  
33 **requirement in ORS 701.565 and does not initiate the procedure described in ORS 701.560 to**  
34 **701.595.**

35 **SECTION 6.** ORS 100.105 is amended to read:

36 100.105. (1) A declaration shall contain:

37 (a) A description of the property, including property on which a unit or a limited common ele-  
38 ment is located, whether held in fee simple, leasehold, easement or other interest or combination  
39 thereof, that is being submitted to the condominium form of ownership and that conforms to the  
40 description in the surveyor's certificate provided under ORS 100.115 (1).

41 (b) Subject to subsection (11) of this section, a statement of the interest in the property being  
42 submitted to the condominium form of ownership, whether fee simple, leasehold, easement or other  
43 interest or combination thereof.

44 (c) Subject to subsection (5) of this section, the name by which the property shall be known and  
45 a general description of each unit and the building or buildings, including the number of stories and

1 basements of each building, the total number of units and the principal materials of which they are  
2 constructed.

3 (d) The unit designation, a statement that the location of each unit is shown on the plat, a de-  
4 scription of the boundaries and area in square feet of each unit and any other data necessary for  
5 proper identification. The area of a unit shall be the same as shown for that unit on the plat de-  
6 scribed in ORS 100.115 (1).

7 (e) A notice in substantially the following form in at least 12-point type that is either all capitals  
8 or boldface:

---

10 NOTICE

11 THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION AND THE PLAT ARE  
12 BASED ON THE BOUNDARIES OF THE UNITS AS DESCRIBED IN THIS DECLARATION AND  
13 MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PURPOSES.  
14  
15

---

16  
17 (f) A description of the general common elements.

18 (g) An allocation to each unit of an undivided interest in the common elements in accordance  
19 with ORS 100.515 and the method used to establish the allocation.

20 (h) The designation of any limited common elements including:

21 (A) A general statement of the nature of the limited common element;

22 (B) A statement of the unit to which the use of each limited common element is reserved, pro-  
23 vided the statement is not a reference to an assignment of use specified on the plat; and

24 (C) The allocation of use of any limited common element appertaining to more than one unit.

25 (i) The method of determining liability for common expenses and right to common profits in ac-  
26 cordance with ORS 100.530.

27 (j) The voting rights allocated to each unit in accordance with ORS 100.525 or in the case of  
28 condominium units committed as property in a timeshare plan defined in ORS 94.803, the voting  
29 rights allocated in the timeshare instrument.

30 (k) A statement of the use, residential or otherwise, for which the building or buildings and each  
31 of the units is intended.

32 (L) A statement that the designated agent to receive service of process in cases provided in ORS  
33 100.550 (1) is named in the Condominium Information Report which will be filed with the Real Estate  
34 Agency in accordance with ORS 100.250 (1)(a).

35 (m) The method of amending the declaration and the percentage of voting rights required to  
36 approve an amendment of the declaration in accordance with ORS 100.135.

37 (n) A statement as to whether or not the association of unit owners pursuant to ORS 100.405  
38 [(5) and (8)] **(6) and (9)** has authority to grant leases, easements, rights of way, licenses and other  
39 similar interests affecting the general and limited common elements of the condominium and consent  
40 to vacation of roadways within and adjacent to the condominium.

41 (o) If the condominium contains a floating structure described in ORS 100.020 (3), a statement  
42 regarding the authority of the board of directors of the association, subject to ORS 100.410, to  
43 temporarily relocate the floating structure without a majority vote of affected unit owners.

44 (p) Any restrictions on alienation of units. Any such restrictions created by documents other  
45

1 than the declaration may be incorporated by reference in the declaration to the official records of  
 2 the county in which the property is located.

3 (q) Any other details regarding the property that the person executing the declaration considers  
 4 desirable. However, if a provision required to be in the bylaws under ORS 100.415 is included in the  
 5 declaration, the voting requirements for amending the bylaws shall also govern the amendment of  
 6 the provision in the declaration.

7 (2) In the event the declarant proposes to annex additional property to the condominium under  
 8 ORS 100.125, the declaration shall also contain a general description of the plan of development,  
 9 including:

10 (a) The maximum number of units to be included in the condominium.

11 (b) The date after which any right to annex additional property will terminate.

12 (c) A general description of the nature and proposed use of any additional common elements  
 13 which declarant proposes to annex to the condominium, if such common elements might substantially  
 14 increase the proportionate amount of the common expenses payable by existing unit owners.

15 (d) A statement that the method used to establish the allocation of undivided interest in the  
 16 common elements, the method used to determine liability for common expenses and right to common  
 17 profits and the method used to allocate voting rights for each unit annexed shall be as stated in the  
 18 declaration in accordance with subsection (1)(g), (i) and (j) of this section.

19 (e) Such other information as the Real Estate Commissioner shall require in order to carry out  
 20 the purposes of ORS 100.015, 100.116, 100.635 to 100.730 and 100.740 to 100.910.

21 (3) Except where expressly prohibited by the declaration and subject to the requirements of ORS  
 22 100.135 (2) and subsections (9) and (10) of this section:

23 (a) Not later than two years following the termination dates specified in subsections (2)(b) and  
 24 (7)(d) of this section, such termination dates may be extended for a period not exceeding two years;  
 25 and

26 (b) The general description under subsection (2)(c) of this section and the information included  
 27 in the declaration in accordance with subsection (7)(c), (g) and (h) of this section may be changed  
 28 by an amendment to the declaration.

29 (4) The information included in the declaration in accordance with subsection (2)(a) and (d) of  
 30 this section and subsection (7)(a), (b), (e), (f) and (k) of this section may not be changed unless all  
 31 owners agree to the change and record an amendment to the declaration in accordance with this  
 32 chapter.

33 (5) The name of the property shall include the word "condominium" or "condominiums" or the  
 34 words "a condominium."

35 (6) A condominium may not bear a name which is the same as or deceptively similar to the name  
 36 of any other condominium located in the same county.

37 (7) If the condominium is a flexible condominium containing variable property, the declaration  
 38 shall also contain a general description of the plan of development, including:

39 (a) A statement that the rights provided for under ORS 100.150 (1) are being reserved.

40 (b) A statement:

41 (A) Of any limitations on rights reserved under ORS 100.150 (1), including whether the consent  
 42 of any unit owner shall be required, and if so, a statement of the method by which the consent shall  
 43 be ascertained; or

44 (B) That there are no limitations on rights reserved under ORS 100.150 (1).

45 (c) A statement of the total number of tracts of variable property within the condominium, in-

1 cluding:

2 (A) A designation of each tract as withdrawable or nonwithdrawable variable property;

3 (B) Identification of each variable tract by a label in accordance with ORS 100.115 (1)(i);

4 (C) A statement of the method of labeling each tract depicted on the plat in accordance with  
5 ORS 100.115 (1)(i); and

6 (D) A statement of the total number of tracts of each type of variable property.

7 (d) The termination date, which is the date or time period after which any right reserved under  
8 ORS 100.150 (1) will terminate, and a statement of the circumstances, if any, that will terminate any  
9 right on or before the date or time period specified. The date or time period may not exceed seven  
10 years from the recording of the conveyance of the first unit in the condominium to a person other  
11 than the declarant. Recording shall be in the county in which the property is located.

12 (e) The maximum number of units that may be created.

13 (f) A statement that the method used to establish the allocations of undivided interest in the  
14 common elements, the method used to determine liability for common expenses and right to common  
15 profits and the method used to allocate voting rights as additional units are created shall be the  
16 same as stated in the declaration in accordance with subsection (1)(g), (i) and (j) of this section.

17 (g) A general description of all existing improvements and the nature and proposed use of any  
18 improvements that may be made on variable property if the improvements might substantially in-  
19 crease the proportionate amount of the common expenses payable by existing unit owners.

20 (h) A statement of whether or not the declarant reserves the right to create limited common  
21 elements within any variable property, and if so, a general description of the types that may be  
22 created.

23 (i) A statement that the plat shows the location and dimensions of all withdrawable variable  
24 property that is labeled "WITHDRAWABLE VARIABLE PROPERTY."

25 (j) A statement that if by the termination date all or a portion of the withdrawable variable  
26 property has not been withdrawn or reclassified, the withdrawable property shall automatically be  
27 withdrawn from the condominium as of the termination date.

28 (k) A statement of the rights of the association under ORS 100.155 (2).

29 (L) A statement of whether or not all or any portion of the variable property may not be with-  
30 drawn from the condominium and, if so, with respect to the nonwithdrawable variable property:

31 (A) A statement that the plat shows the location and dimensions of all nonwithdrawable prop-  
32 erty that is labeled "NONWITHDRAWABLE VARIABLE PROPERTY."

33 (B) A description of all improvements that may be made and a statement of the intended use of  
34 each improvement.

35 (C) A statement that, if by the termination date all or a portion of the variable property desig-  
36 nated as "nonwithdrawable variable property" has not been reclassified, the property shall auto-  
37 matically be reclassified as of the termination date as a general common element of the  
38 condominium and any interest in such property held for security purposes shall be automatically  
39 extinguished by such classification.

40 (D) A statement of the rights of the association under ORS 100.155 (3).

41 (m) A statement by the local governing body or appropriate department thereof that the with-  
42 drawal of any variable property designated as "withdrawable variable property" in the declaration  
43 in accordance with paragraph (L) of this subsection, will not violate any applicable planning or  
44 zoning regulation or ordinance. The statement may be attached as an exhibit to the declaration.

45 (8) The plan of development for any variable property included in the declaration or any sup-

1 plemental declaration of any stage in accordance with subsection (7) of this section shall be subject  
 2 to any plan of development included in the declaration in accordance with subsection (2) of this  
 3 section, except that the time limitation specified in subsection (7)(d) of this section shall govern any  
 4 right reserved under ORS 100.150 (1) with respect to any variable property.

5 (9) The information included in the declaration in accordance with subsection (7)(j), (k) and (m)  
 6 of this section may not be deleted by amendment.

7 (10) Approval by the unit owners shall not be required to redesignate variable property as  
 8 “nonwithdrawable variable property” by supplemental declaration or amendment if such redesi-  
 9 nation is required by the local governing body or appropriate department thereof to comply with  
 10 any planning or zoning regulation or ordinance. If as a result of such redesignation the information  
 11 required to be included in the supplemental declaration or an amendment under subsection (7)(L)(B)  
 12 of this section is inconsistent with the information included in the declaration or supplemental  
 13 declaration in accordance with subsection (7)(g) of this section, an amendment to the declaration  
 14 approved by at least 75 percent of owners shall be required.

15 (11) The statement of an interest in property other than fee simple submitted to the condomin-  
 16 ium form of ownership and any easements, rights or appurtenances belonging to property submitted  
 17 to the condominium form of ownership, whether leasehold or fee simple, shall include:

18 (a) A reference to the recording index numbers and date of recording of the instrument creating  
 19 the interest; or

20 (b) A reference to the law, administrative rule, ordinance or regulation that creates the interest  
 21 if the interest is created under law, administrative rule, ordinance or regulation and not recorded  
 22 in the office of the recording officer of the county in which the property is located.

23 **SECTION 7.** ORS 701.570 is amended to read:

24 701.570. (1) A contractor, subcontractor or supplier that receives a notice of defect sent under  
 25 ORS 701.565 shall, not later than 14 days after receiving the notice of defect, send a secondary no-  
 26 tice to any other known contractor, subcontractor or supplier that may be responsible for some or  
 27 all of the defects described in the notice of defect. The contractor, subcontractor or supplier must  
 28 send the secondary notice by registered or certified mail, return receipt requested, to an address  
 29 described in ORS 701.565 (2). The secondary notice must be accompanied by a statement describing  
 30 the basis for contending that the other contractor, subcontractor or supplier may be responsible for  
 31 some or all of the defects.

32 (2) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice  
 33 may send the owner a written request to conduct a visual examination of the residence. **Except as**  
 34 **provided in section 11 of this 2019 Act**, the written request must be sent not later than 14 days  
 35 after the requesting contractor, subcontractor or supplier receives a notice of defect or secondary  
 36 notice. The written request to conduct a visual examination of the residence must state the esti-  
 37 mated time required for the visual examination.

38 (3) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice  
 39 may send the owner a written request to inspect the residence. **Except as provided in section 11**  
 40 **of this 2019 Act**, the written request must be sent not later than 14 days after the requesting con-  
 41 tractor, subcontractor or supplier conducted a visual examination of the residence. The written re-  
 42 quest to inspect the residence must state the nature and scope of the inspection, whether any testing  
 43 is to be performed and the estimated time required for the inspection. The recipient of a secondary  
 44 notice that requests to inspect the residence shall send a copy of the request to the sender of the  
 45 secondary notice.

1 (4) A contractor, subcontractor or supplier that sends a secondary notice and intends to hold  
 2 the recipient of the secondary notice liable for a defect described in a notice of defect shall coordi-  
 3 nate the scheduling of any inspection with the owner and all recipients of a secondary notice from  
 4 the contractor, subcontractor or supplier. The contractor, subcontractor or supplier shall deliver a  
 5 copy of any written request to inspect the residence to each recipient of the secondary notice in  
 6 time to provide the recipient with an opportunity to attend the requested inspection and to partici-  
 7 pate in any remediation. The sender of a secondary notice shall give reasonable advance notice to  
 8 the owner or the owner’s legal representative, if any, of the identity of any contractor, subcontrac-  
 9 tor or supplier who will attend the inspection. **If the sender of the notice of defect is a home-**  
 10 **owners association or an association of unit owners, the notice must also conform to section**  
 11 **11 of this 2019 Act.**

12 (5) **Except as provided in section 11 of this 2019 Act**, unless otherwise agreed to by the  
 13 owner, a contractor, subcontractor or supplier that receives a notice of defect or secondary notice  
 14 shall send a written response to the owner not later than 90 days after the contractor, subcontractor  
 15 or supplier receives a notice of defect or secondary notice. A contractor, subcontractor or supplier  
 16 that receives a secondary notice also shall send a copy of the written response to the sender of the  
 17 secondary notice. The written response must be sent by registered or certified mail, return receipt  
 18 requested. The written response must include:

19 (a) One or more of the following for each defect described in the notice of defect or secondary  
 20 notice or discovered during the course of any visual examination or inspection:

21 (A) An acknowledgment of the existence, nature and extent of the defect without regard to re-  
 22 sponsibility for the defect.

23 (B) A statement describing the existence of a defect different in nature or extent from the defect  
 24 described in the notice of defect or secondary notice, without regard to responsibility for the defect.

25 (C) A denial of the existence of the defect.

26 (b) A copy of the documents described in ORS 701.575 (4).

27 (c) One or more of the following:

28 (A) An offer to perform some or all of the remediation. The offer must specify the date by which  
 29 the offered remediation will be completed.

30 (B) An offer to pay a stated amount of monetary compensation to the owner for some or all of  
 31 the acknowledged defects and any incidental damage. The offer must specify the date by which  
 32 payment will be made.

33 (C) A denial of responsibility for some or all of the acknowledged defects or incidental damage.

34 **SECTION 8.** ORS 701.575 is amended to read:

35 701.575. (1) An owner sending a notice of defect under ORS 701.565 shall make the residence  
 36 available for visual examination pursuant to any written request sent under ORS 701.570 **or section**  
 37 **11 of this 2019 Act.** The owner shall make the residence available for visual examination, during  
 38 normal business hours or as otherwise agreed, not later than 20 days after receiving the written  
 39 request for visual examination.

40 (2) An owner sending a notice of defect under ORS 701.565 shall make the residence available  
 41 for an inspection pursuant to any written request sent under ORS 701.570 **or section 11 of this 2019**  
 42 **Act.** The owner shall make the residence available for inspection during normal business hours or  
 43 at a time that is mutually agreeable to the owner and the requester.

44 (3) An inspection by a contractor, subcontractor or supplier may include any reasonable meas-  
 45 ures, including testing, for determining the nature, cause and extent of the defects described in the

1 notice of defect or incidental damage and the nature and extent of the necessary remediation. Unless  
 2 the contractor, subcontractor or supplier conducting the inspection and the owner agree otherwise,  
 3 the contractor, subcontractor or supplier conducting the inspection shall repair any damage caused  
 4 by the inspection. Any damage caused by the inspection that is not repaired may be sought as in-  
 5 cidental damage in any subsequent arbitration or court action by an owner against the contractor,  
 6 subcontractor or supplier conducting the inspection.

7 (4) A contractor, subcontractor or supplier that requests to inspect a residence must include as  
 8 part of the written response of the contractor, subcontractor or supplier under ORS 701.570 **or**  
 9 **section 11 of this 2019 Act**[,] a written report or other document evidencing the result of the in-  
 10 spection and the existence or nonexistence of the defects described in the notice of defect or dis-  
 11 covered during the inspection.

12 **SECTION 9.** ORS 701.585 is amended to read:

13 701.585. (1) If an owner sends a contractor, subcontractor or supplier a notice of defect within  
 14 the time allowed for the owner to commence a court action against that contractor, subcontractor  
 15 or supplier for a claim described in ORS 701.565, the time for the owner to commence the action  
 16 shall be extended, notwithstanding any statute of limitation or statute of ultimate repose, until the  
 17 later of:

18 (a) One hundred and twenty days after the owner receives a written response from the con-  
 19 tractor, subcontractor or supplier that received the notice of defect if the written response does not  
 20 contain a written offer to perform remediation or pay monetary compensation for one or more of the  
 21 defects or incidental damage described in the notice of defect;

22 (b) One hundred and twenty days after the owner rejects a written offer by any contractor,  
 23 subcontractor or supplier to perform remediation or pay monetary compensation for one or more of  
 24 the defects or incidental damage described in the notice of defect; or

25 (c) Thirty days after the date specified in an accepted written offer by which the offering con-  
 26 tractor, subcontractor or supplier is to complete the remediation or complete payment of monetary  
 27 compensation for one or more of the defects and any incidental damage described in the notice of  
 28 defect.

29 (2) Subsection (1) of this section does not shorten or terminate the time for bringing a claim in  
 30 accordance with applicable statutes of ultimate repose and statutes of limitation.

31 (3) Delivery of a secondary notice sent by a contractor, subcontractor or supplier under ORS  
 32 701.570 **or section 11 of this 2019 Act** does not act to toll the expiration of any right of the owner  
 33 to commence a court action against the recipient of the secondary notice. **However, the right of**  
 34 **the sender of the secondary notice to commence a court action against the recipient of the**  
 35 **secondary notice shall be extended, notwithstanding any statute of limitation or statute of**  
 36 **ultimate repose, until the date that the right of the owner to commence an action against**  
 37 **the sender of the secondary notice expires.**

38 (4) Any remediation performed pursuant to an accepted offer made under ORS 701.570 **or sec-**  
 39 **tion 11 of this 2019 Act** does not constitute a new performance and, for purposes of ORS 12.135,  
 40 relates back to the earliest date of substantial completion or abandonment of the construction, al-  
 41 teration or repair of the improvement to real property.

42 **SECTION 10.** Section 11 of this 2019 Act is added to and made a part of ORS 701.560 to  
 43 701.595.

44 **SECTION 11.** (1) **If the sender of a notice of defect under ORS 701.565 is a homeowners**  
 45 **association or an association of unit owners:**

1 (a) A written request under ORS 701.570 (2) for visual examination of a residence must  
 2 be sent not later than 30 days after the requesting contractor, subcontractor or supplier  
 3 receives a notice of defect or secondary notice.

4 (b) A written request under ORS 701.570 (3) to inspect a residence must be sent not later  
 5 than 30 days after the requesting contractor, subcontractor or supplier receives a notice of  
 6 defect or secondary notice.

7 (c) The contractor, subcontractor or supplier may have a technical or construction ex-  
 8 pert attend the inspection. However, the selection of the expert must be mutually agreed to  
 9 by the contractor, subcontractor or supplier and the owner or owner's representative. In  
 10 addition to the information described in ORS 701.570 (3), a request under ORS 701.570 (3)  
 11 must identify an expert acceptable to the contractor, subcontractor or supplier. If the owner  
 12 or owner's representative disapproves of the expert, the owner or owner's representative  
 13 shall give the contractor, subcontractor or supplier written notice of the disapproval and of  
 14 the identity of an expert acceptable to the owner or owner's representative. If the contrac-  
 15 tor, subcontractor or supplier disapproves of the expert identified by the owner or owner's  
 16 representative, the two identified and disapproved experts shall jointly select a third expert  
 17 to be the expert that attends the inspection. The contractor, subcontractor or supplier shall  
 18 include the identity of a selected expert in any advance notice that the contractor, subcon-  
 19 tractor or supplier sends under ORS 701.570 (4).

20 (d) The contractor, subcontractor or supplier shall send the owner a response to the  
 21 notice of defect not later than:

22 (A) Fourteen days after conducting an inspection of the residence under ORS 701.575 (3);  
 23 or

24 (B) If no inspection of the residence is conducted under ORS 701.575 (3), not later than  
 25 90 days after the contractor, subcontractor or supplier receives a notice of defect or sec-  
 26 ondary notice.

27 (2) A response under subsection (1)(d) of this section must contain:

28 (a) An offer to cure the defect;

29 (b) An offer to pay an amount equal to the cost of curing the defect;

30 (c) An offer allowing the owner a choice between cure of the defect or an amount equal  
 31 to the cost of curing the defect; or

32 (d) A statement that the contractor, subcontractor or supplier declines to pursue a cure  
 33 in lieu of litigation.

34 (3) If the contractor, subcontractor or supplier does not send a timely response under  
 35 subsection (1)(d) of this section, or if the response does not conform to subsection (2) of this  
 36 section, the owner is excused from further compliance with this section.

37 (4) An owner may accept an offer contained in a written response under this section by  
 38 delivering a written acceptance to the offering contractor, subcontractor or supplier within  
 39 30 days after receiving the offer. If an owner fails to accept an offer within 30 days after  
 40 receipt, the offer is deemed rejected.

41 (5) If a response under subsection (1)(d) of this section offers to pay an amount equal to  
 42 the cost of curing the defect, the contractor, subcontractor or supplier shall have 30 days  
 43 after sending the response to determine the payment amount. For purposes of subsection (4)  
 44 of this section, the offer contained in the response is not complete until the owner receives  
 45 the written determination by the contractor, subcontractor or supplier. If the owner wishes

1 to accept an offer of payment, but disputes the amount, the parties may select a mediator  
 2 to attempt resolution. If the parties cannot agree on a mediator after 45 days, they may  
 3 request that the administrator of the Construction Contractors Board inform a professional  
 4 mediation association or service that the parties wish to have a mediator selected by the  
 5 association or service.

6 (6) If an owner accepts payment of an amount equal to the cost of curing the defect, the  
 7 owner must make a good faith effort to have a construction contractor correct the defect.

8 (7) If the owner accepts a contractor, subcontractor or supplier's offer to perform re-  
 9 mediation or to pay monetary compensation, completion of the remediation or payment sat-  
 10 isfies the claims by the owner for those defects included in the offer for which remediation  
 11 was performed or compensation paid, but not for any other defect. Except as provided in  
 12 subsection (8) of this section, if the owner accepts an offer by a contractor, subcontractor  
 13 or supplier that received a secondary notice, completion of the remediation or payment sat-  
 14 isfies claims for those defects included in the offer for which remediation was performed or  
 15 compensation paid, including claims by the owner and claims for contribution or indemnity  
 16 against the contractor, subcontractor or supplier by the sender of the secondary notice, but  
 17 not for any other defect.

18 (8) If the owner accepts an offer by a contractor, subcontractor or supplier that received  
 19 a secondary notice to perform remediation or to pay monetary compensation and the con-  
 20 tractor, subcontractor or supplier fails to perform in accordance with the accepted offer,  
 21 then the sender of the secondary notice may perform the remediation or pay the monetary  
 22 compensation offered by the nonperforming contractor, subcontractor or supplier.

23 (9) A response under subsection (2) of this section that is rejected by an owner is not  
 24 admissible to establish contractor, subcontractor or supplier liability for a defect, or for  
 25 damages arising out of a defect, in a subsequent arbitration or court action.

26 **SECTION 12.** (1) As used in this section:

27 (a) "Building envelope penetrations" means window and trim installations and other  
 28 penetrations of the building envelope, flashings and water resistant barriers.

29 (b) "Condominium" has the meaning given that term in ORS 100.005.

30 (c) "Construction design professional" has the meaning given that term in ORS 30.785.

31 (2)(a) The Director of the Department of Consumer and Business Services shall adopt,  
 32 as part of the state building code structural specialty code, standards for special inspections  
 33 of building envelope penetrations and other special inspections to detect construction defects  
 34 in the exterior waterproofing system of:

35 (A) Structures that are common property of a homeowners association; and

36 (B) Residential dwellings constructed on lots within the planned community served by the  
 37 homeowners association.

38 (b) The director shall adopt inspection standards under this subsection in a format that  
 39 allows a construction design professional to identify and select specific special inspections  
 40 that are necessary for a particular structure to qualify for the statute of limitation estab-  
 41 lished in ORS 12.135 (4) with regard to any alleged construction defect in the structure.

42 (3) A construction design professional responsible for the design of a structure that is  
 43 common property of a homeowners association, or of residential dwellings to be constructed  
 44 on lots in a planned community served by a homeowners association, shall identify in the  
 45 plans for the structure any special inspection for which the director has adopted standards

1 under subsection (2) of this section that the construction design professional deems appro-  
2 priate for ensuring the proper performance of the exterior waterproofing system of the  
3 structure.

4 (4) The director shall adopt, as part of the state building code structural specialty code,  
5 standards for special inspections of building envelope penetrations and other special in-  
6 spections to detect construction defects in the exterior waterproofing system of a condo-  
7 minium. The director shall adopt inspection standards under this subsection in a format that  
8 allows a construction design professional to identify and select specific special inspections  
9 that are necessary for a unit of the condominium to qualify for the statute of limitation es-  
10 tablished in ORS 12.135 (4) with regard to any alleged construction defect in the structure.

11 (5) A construction design professional responsible for the design of a condominium shall  
12 identify in the plans for the condominium any special inspection for which the director has  
13 adopted standards under subsection (4) of this section that the construction design profes-  
14 sional deems appropriate for ensuring the proper performance of the exterior waterproofing  
15 system of the condominium.

16 (6) The general contractor for a condominium or other structure described in subsection  
17 (3) or (5) of this section shall ensure that all special inspections recommended by a con-  
18 struction design professional designing the condominium or other structure are performed.  
19 The owner shall pay all costs for the special inspections and shall ensure that the special  
20 inspection results are sent to the building official for the jurisdiction where the condominium  
21 or other structure is located or, if there is no building official, to the Department of Con-  
22 sumer and Business Services. The building official or the department may not issue a cer-  
23 tificate of occupancy for the condominium or other structure unless the owner has  
24 submitted the results of any special inspections required in the plans prepared by the con-  
25 struction design professional and proof that any defects identified during the special in-  
26 spection have been remedied.

27 (7) The building official or the department shall, at the time of issuing the certificate of  
28 occupancy for a condominium or other structure inspected under subsection (6) of this sec-  
29 tion, provide the general contractor and the construction design professional with doc-  
30 umentation that inspections and the remedying of defects have occurred as required by this  
31 section. Documentation issued under this subsection is prima facie evidence that any con-  
32 struction defect claim brought by a homeowners association or association of unit owners  
33 is subject to the statute of limitation described in ORS 12.135 (4).

34 **SECTION 13.** The Director of the Department of Consumer and Business Services shall  
35 include special inspection standards described in section 12 of this 2019 Act by rule in the  
36 structural specialty code chapter dealing with special inspections. The director shall adopt  
37 rules to include the standards in the structural specialty code during the first regular rule  
38 adoption amending a state building code specialty code that the director undertakes after the  
39 effective date of this 2019 Act, but if no amendment of a specialty code occurs by July 1, 2020,  
40 the director shall immediately undertake rulemaking to adopt special inspection standards.

41 **SECTION 14.** Section 13 of this 2019 Act is repealed on January 2, 2021.

42 **SECTION 15.** The amendments to ORS 12.135 by section 1 of this 2019 Act apply to causes  
43 of action arising on or after the effective date of this 2019 Act.

44 **SECTION 16.** Section 11 of this 2019 Act and the amendments to ORS 701.570 and 701.585  
45 by sections 7 and 9 of this 2019 Act apply to notices of construction defect sent by an owner

1 on or after the effective date of this 2019 Act and to any resulting secondary notices.

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