

Requested by Representative MEEK

**PROPOSED AMENDMENTS TO
HOUSE BILL 3432**

1 On page 1 of the printed bill, delete lines 5 through 22 and delete pages
2 2 through 22 and insert:

3 **“SECTION 1. ORS 12.135 is amended to read:**

4 **“12.135. (1) As used in this section:**

5 **“(a) ‘Association of unit owners’ has the meaning given that term**
6 **in ORS 100.005.**

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

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

11 **“(d) ‘Large commercial structure,’ ‘residential structure’ and ‘small**
12 **commercial structure’ have the meanings given those terms in ORS**
13 **701.005.**

14 **“(e) ‘Manufactured dwelling’ has the meaning given that term in**
15 **ORS 446.003.**

16 **“(f) ‘Prefabricated structure’ has the meaning given that term in**
17 **ORS 455.010.**

18 **“(g) ‘Public body’ has the meaning given that term in ORS 174.109.**

19 **“(h) ‘Substantial completion’ means the date when the contractee**
20 **accepts in writing the construction, alteration or repair of the im-**
21 **provement to real property or any designated portion thereof as hav-**

1 **ing reached that state of completion when it may be used or occupied**
2 **for its intended purpose or, if there is no such written acceptance, the**
3 **date of acceptance of the completed construction, alteration or repair**
4 **of such improvement by the contractee.**

5 “[1] (2) An action against a person by a plaintiff who is not a public
6 body, whether in contract, tort or otherwise, arising from the person having
7 performed the construction, alteration or repair of any improvement to real
8 property or the supervision or inspection thereof, or from the person having
9 furnished design, planning, surveying, architectural or engineering services
10 for the improvement, must be commenced before the earliest of:

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

12 “(b) Ten years after substantial completion or abandonment of the con-
13 struction, alteration or repair **of a residential structure or** of a small
14 commercial structure[, *as defined in ORS 701.005, a residential structure, as*
15 *defined in ORS 701.005, or a large commercial structure, as defined in ORS*
16 *701.005, that is owned or maintained by a homeowners association, as defined*
17 *in ORS 94.550, or that is owned or maintained by an association of unit*
18 *owners, as defined in ORS 100.005]; or*

19 “(c) Six years after substantial completion or abandonment of the con-
20 struction, alteration or repair of a large commercial structure[, *as defined*
21 *in ORS 701.005, other than a large commercial structure described in para-*
22 *graph (b) of this subsection].*

23 “[2] (3) An action against a person by a public body, whether in con-
24 tract, tort or otherwise, arising from the person having performed the con-
25 struction, alteration or repair of any improvement to real property or the
26 supervision or inspection thereof, or from the person having furnished de-
27 sign, planning, surveying, architectural or engineering services for the im-
28 provement, must be commenced not more than 10 years after substantial
29 completion or abandonment of such construction, alteration or repair of the
30 improvement to real property.

1 “(4)(a) Notwithstanding subsection (2) of this section and except as
2 provided in paragraphs (c) and (d) of this subsection, the period of
3 limitation for a tort action against a person by a homeowners associ-
4 ation arising from defective construction or alteration, or a defective
5 repair related to construction or alteration, of a structure for which
6 there is documentation of inspection under section 15 of this 2019 Act,
7 or from the supervision or inspection of the defective construction,
8 alteration or repair, is six years after substantial completion or aban-
9 donment of the construction, alteration or repair.

10 “(b) Notwithstanding subsection (2) of this section and except as
11 provided in paragraphs (c) and (d) of this subsection, the period of
12 limitation for a tort action against a person by an association of unit
13 owners arising from defective construction or alteration, or a defective
14 repair related to construction or alteration, of a condominium unit for
15 which there is documentation of inspection under section 15 of this
16 2019 Act, or from the supervision or inspection of the defective con-
17 struction, alteration or repair, is six years after substantial completion
18 or abandonment of the construction, alteration or repair.

19 “(c) If a construction, alteration or repair defect described in this
20 subsection is discovered more than five but less than six years after
21 substantial completion or abandonment of the construction, alteration
22 or repair, except as provided in paragraph (d) of this subsection the
23 period of limitation under this subsection for a tort action arising
24 from the construction defect is one year after discovery of the defect.

25 “(d) If a claim is described in ORS 94.630 (2)(b) or 105.405 (5), and
26 an association sends notice under ORS 94.662 or 100.490 within the ap-
27 plicable period allowed under paragraphs (a) to (c) of this subsection,
28 the period of limitation for the tort action may not be earlier than 120
29 days after the association first mails a notice to owners under ORS
30 94.662 or 100.490 seeking owner approval to initiate litigating the claim.

1 “[~~(3)(a)~~] **(5)(a)** Notwithstanding subsections [~~(1) and~~] (2) **and (3)** of this
2 section, an action against a person registered to practice architecture under
3 ORS 671.010 to 671.220, a person registered to practice landscape architecture
4 under ORS 671.310 to 671.459 or a person registered to practice engineering
5 under ORS 672.002 to 672.325 to recover damages for injury to a person,
6 property or to any interest in property, including damages for delay or eco-
7 nomic loss, regardless of legal theory, arising out of the construction, alter-
8 ation or repair of any improvement to real property must be commenced
9 before the earliest of:

10 “(A) Two years after the date the injury or damage is first discovered or
11 in the exercise of reasonable care should have been discovered;

12 “(B) Ten years after substantial completion or abandonment of the con-
13 struction, alteration or repair **of a residential structure or** of a small
14 commercial structure[, *as defined in ORS 701.005, a residential structure, as*
15 *defined in ORS 701.005, or a large commercial structure, as defined in ORS*
16 *701.005, that is owned or maintained by a homeowners association, as defined*
17 *in ORS 94.550, or that is owned or maintained by an association of unit*
18 *owners, as defined in ORS 100.005*]; or

19 “(C) Six years after substantial completion or abandonment of the con-
20 struction, alteration or repair of a large commercial structure[, *as defined*
21 *in ORS 701.005, other than a large commercial structure described in subpar-*
22 *agraph (B) of this paragraph*].

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

25 “[~~(4)~~ *For purposes of this section:*]

26 “[~~(a)~~ *‘Public body’ has the meaning given that term in ORS 174.109; and*]

27 “[~~(b)~~ *‘Substantial completion’ means the date when the contractee accepts*
28 *in writing the construction, alteration or repair of the improvement to real*
29 *property or any designated portion thereof as having reached that state of*
30 *completion when it may be used or occupied for its intended purpose or, if*

1 *there is no such written acceptance, the date of acceptance of the completed*
2 *construction, alteration or repair of such improvement by the contractee.]*

3 “[5] (6) For purposes of this section, an improvement to real property
4 is considered abandoned on the same date that the improvement is considered
5 abandoned under ORS 87.045.

6 “[6] (7) This section:

7 “(a) Applies to an action against a manufacturer, distributor, seller or
8 lessor of a manufactured dwelling[, *as defined in ORS 446.003,*] or of a pre-
9 fabricated structure[, *as defined in ORS 455.010*]; and

10 “(b) Does not apply to actions against any person in actual possession and
11 control of the improvement, as owner, tenant or otherwise, at the time such
12 cause of action accrues.

13 **“SECTION 2.** ORS 94.630 is amended to read:

14 “94.630. (1) Subject to subsection (2) of this section and ORS 94.779, and
15 except as otherwise provided in its declaration or bylaws, a homeowners as-
16 sociation may:

17 “(a) Adopt and amend bylaws, rules and regulations for the planned
18 community;

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

22 “(c) Hire and terminate managing agents and other employees, agents and
23 independent contractors;

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

25 “(e) Subject to subsection (4) of this section, initiate or intervene in liti-
26 gation or administrative proceedings in its own name and without joining
27 the individual owners in the following:

28 “(A) Matters relating to the collection of assessments and the enforce-
29 ment of governing documents;

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

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

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

6 “(i) Individually owned real property, the expenses for which, including
7 maintenance, repair or replacement, insurance or other expenses, the asso-
8 ciation is responsible; or

9 “(ii) Common property;

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

13 “(i) Resulting from a nuisance or a defect in or damage to common prop-
14 erty or individually owned real property, the expenses for which, including
15 maintenance, repair or replacement, insurance or other expenses, the asso-
16 ciation is responsible; or

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

18 “(F) Any other matter to which the association has standing under law
19 or pursuant to the declaration or bylaws;

20 “(f) Make contracts and incur liabilities;

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

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

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

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

30 “(k) Modify, close, remove, eliminate or discontinue the use of common

1 property, including any improvement or landscaping, regardless of whether
2 the common property is mentioned in the declaration, provided that:

3 “(A) Nothing in this paragraph is intended to limit the authority of the
4 association to seek approval of the modification, closure, removal, elimi-
5 nation or discontinuance by the owners; and

6 “(B) Modification, closure, removal, elimination or discontinuance other
7 than on a temporary basis of any swimming pool, spa or recreation or com-
8 munity building must be approved by at least a majority of owners voting
9 on the matter at a meeting or by written ballot held in accordance with the
10 declaration, bylaws or ORS 94.647;

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

13 “(m) Adopt rules regarding the termination of utility services paid for out
14 of assessments of the association and access to and use of recreational and
15 service facilities available to owners. The rules must provide for written
16 notice and an opportunity to be heard before the association may terminate
17 the rights of any owners to receive the benefits or services until the cor-
18 rection of any violation covered by the rule has occurred;

19 “(n) Impose charges for late payment of assessments and attorney fees
20 related to the collection of assessments and, after giving written notice and
21 an opportunity to be heard, levy reasonable fines for violations of the dec-
22 laration, bylaws, rules and regulations of the association, provided that the
23 charge imposed or the fine levied by the association is based:

24 “(A) On a schedule contained in the declaration or bylaws, or an amend-
25 ment to either that is delivered to each lot, mailed to the mailing address
26 of each lot or mailed to the mailing addresses designated in writing by the
27 owners; or

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

1 “(o) Impose reasonable charges for the preparation and recordation of
2 amendments to the declaration;

3 “(p) Provide for the indemnification of its officers and the board of di-
4 rectors and maintain liability insurance for directors and officers;

5 “(q) Assign its right to future income, including the right to receive
6 common expense assessments; and

7 “(r) Exercise any other powers necessary and proper for the adminis-
8 tration and operation of the association.

9 “(2)(a) A declaration may not impose any limitation on the ability of the
10 association to deal with a declarant that is more restrictive than the limi-
11 tations imposed on the ability of the association to deal with any other
12 person, except during the period of declarant control under ORS 94.600.

13 **“(b) Notwithstanding any contrary provision in a declaration or**
14 **bylaws, a homeowners association may not initiate or intervene in**
15 **litigation or administrative proceedings under subsection (1)(e)(E) of**
16 **this section regarding defective construction or alteration, or a defec-**
17 **tive repair related to construction or alteration, that relates to or af-**
18 **fects common property, unless the association receives owner approval**
19 **as described in notices sent to owners under ORS 94.662 (3). This sub-**
20 **section does not require an association to send notice or obtain owner**
21 **approval regarding matters arising after the initiation of or inter-**
22 **vention in litigation or an administrative proceeding, including but**
23 **not limited to, matters regarding joinder or dismissal of claims or**
24 **parties.**

25 “(3) A permit or authorization, or an amendment, modification, termi-
26 nation or other instrument affecting a permit or authorization, issued by the
27 board of directors that is authorized by law, the declaration or bylaws may
28 be recorded in the deed records of the county in which the planned commu-
29 nity is located. A permit or authorization, or an amendment, modification,
30 termination or other instrument affecting a permit or authorization, recorded

1 under this subsection shall:

2 “(a) Be executed by the president and secretary of the association and
3 acknowledged in the manner provided for acknowledgment of instruments by
4 the officers;

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

7 “(c) Identify, by the designations stated or referenced in the declaration
8 or applicable supplemental declaration, all affected lots and common prop-
9 erty; and

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

12 “(4)(a) Subject to paragraph (f) of this subsection, before initiating liti-
13 gation or an administrative proceeding in which the association and an
14 owner have an adversarial relationship, the party that intends to initiate
15 litigation or an administrative proceeding shall offer to use any dispute re-
16 solution program available within the county in which the planned commu-
17 nity is located that is in substantial compliance with the standards and
18 guidelines adopted under ORS 36.175. The written offer must be hand-
19 delivered or mailed by certified mail, return receipt requested, to the address,
20 contained in the records of the association, for the other party.

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

28 “(c) If a qualified dispute resolution program exists within the county in
29 which the planned community is located and an offer to use the program is
30 not made as required under paragraph (a) of this subsection, litigation or an

1 administrative proceeding may be stayed for 30 days upon a motion of the
2 noninitiating party. If the litigation or administrative action is stayed under
3 this paragraph, both parties shall participate in the dispute resolution pro-
4 cess.

5 “(d) Unless a stay has been granted under paragraph (c) of this sub-
6 section, if the dispute resolution process is not completed within 30 days af-
7 ter receipt of the initial offer, the initiating party may commence litigation
8 or an administrative proceeding without regard to whether the dispute re-
9 solution is completed.

10 “(e) Once made, the decision of the court or administrative body arising
11 from litigation or an administrative proceeding may not be set aside on the
12 grounds that an offer to use a dispute resolution program was not made.

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

17 **“SECTION 3.** ORS 94.662 is amended to read:

18 “94.662. (1) At least 10 days prior to instituting **or intervening in** any
19 litigation or administrative proceeding to recover damages under ORS 94.630
20 (1)(e)(E), the homeowners association shall provide written notice to each
21 affected owner of the association’s intent to seek damages on behalf of the
22 owner. The notice shall, at a minimum:

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

25 “(b) Inform each owner of the general nature of the litigation or pro-
26 ceeding;

27 “(c) Describe the specific nature of the damages to be sought on the
28 owner’s behalf;

29 “(d) Set forth the terms under which the association is willing to seek
30 damages on the owner’s behalf, including any mechanism proposed for the

1 determination and distribution of any damages recovered;

2 “(e) Inform each owner of the owner’s right not to have the damages
3 sought on the owner’s behalf and specify the procedure for exercising the
4 right; and

5 “(f) Inform the owner that exercising the owner’s right not to have dam-
6 ages sought on the owner’s behalf:

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

9 “(B) Does not relieve the owner from the owner’s obligation to pay dues
10 or assessments relating to the litigation or proceeding;

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

13 “(D) Does not interfere with the association’s right to make repairs to
14 common areas.

15 “(2) Within 10 days [*of mailing the notice described in*] **after an associ-**
16 **ation mails a notice to an owner under** this section, [*any*] **the** owner may
17 request in writing that the association not seek damages on the owner’s be-
18 half. If an owner makes such a request, the association [*shall*] **may** not make
19 or continue any claim or action for damages with regard to the objecting
20 owner’s lot and shall be relieved of any duty to reimburse or indemnify the
21 owner for damages under the litigation or proceeding.

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

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

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

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

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

30 “(C) **Identify the parties that the association considers, at the time**

1 of mailing the notice, to be responsible for the defect; and

2 “(D) State that the association may not institute litigation or an
3 administrative proceeding unless the association receives owner ap-
4 proval. The notice must state the owner approval that is required.

5 “(c) If an association mails a notice to owners under this section,
6 in addition to the information described in paragraph (b) of this sub-
7 section:

8 “(A) Except as provided in subparagraph (B) of this paragraph, the
9 notice must inform the owners that the association may proceed with
10 the initiation or intervention if the association receives approval for
11 the initiation or intervention by a majority of the lots in writing
12 within 60 days after the mailing date of the notice.

13 “(B) An association may send owners a series of three notices under
14 subsection (1) of this section regarding the same request for approval
15 to initiate or intervene in a litigation or administrative proceeding.
16 The notices must each comply with subsection (1) of this section and
17 paragraphs (a) and (b) of this subsection. The association shall mail
18 the second notice no earlier than 15 days and no later than 25 days
19 after mailing the first notice. The association shall mail the third no-
20 tice no earlier than 15 days and no later than 25 days after mailing the
21 second notice. The notices must inform the owners that the associ-
22 ation may proceed with the initiation or intervention if owners of a
23 majority of the lots respond in writing within 60 days after the mailing
24 date of the first notice and a majority of the responding lots approve
25 of the initiation or intervention by the association.

26 “(d) The association shall send a copy of the notice by certified mail
27 to each person identified in the notice as a party the association con-
28 siders responsible for the defect. This paragraph does not require
29 sending a party a copy of the second and third notices described in
30 paragraph (c)(B) of this subsection. The requirement for sending no-

1 **tice under this paragraph is in addition to the notice of defect re-**
2 **quirement in ORS 701.565 and does not initiate the procedure described**
3 **in ORS 701.560 to 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
6 as a means through which the unit owners may take action with regard to
7 the administration, management and operation of the condominium.

8 “(b) The association of a condominium created on or after September 27,
9 2007, shall be organized:

10 “(A) As a corporation for profit or a nonprofit corporation; or

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

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

16 “(d) Notwithstanding a provision in the declaration or bylaws of a con-
17 dominium created before September 27, 2007, that states that the association
18 shall be unincorporated or that requires approval of owners to incorporate
19 as a nonprofit corporation under ORS chapter 65, an unincorporated associ-
20 ation may be incorporated as a nonprofit corporation under ORS chapter 65
21 if the board of directors adopts a resolution that states the association will
22 be incorporated.

23 “(e) A separate association is not created when an unincorporated asso-
24 ciation formed under this section is incorporated, reinstated after adminis-
25 trative dissolution under ORS 60.654 or 65.654 or again incorporated
26 following dissolution. The association automatically continues and, without
27 any further action by incorporators, directors or officers that may otherwise
28 be required under Oregon corporation laws:

29 “(A) The incorporated association has all of the property, powers and
30 obligations of the association that existed immediately prior to incorporation

1 in addition to the powers and obligations under Oregon corporation laws.

2 “(B) The bylaws in effect immediately prior to incorporation or rein-
3 statement constitute the bylaws of the incorporated association.

4 “(C) The members of the board of directors and the officers continue to
5 serve as directors and officers.

6 “(f) If an incorporated association is at any time dissolved, whether in-
7 advertently or deliberately:

8 “(A) The association continues as an unincorporated association under
9 the same name.

10 “(B) The unincorporated association has all of the property, powers and
11 obligations of the incorporated association existing immediately prior to
12 dissolution.

13 “(C) The unincorporated association shall be governed by the bylaws, and
14 to the extent applicable, the articles of incorporation of the incorporated
15 association.

16 “(D) The board of directors and the officers serving immediately prior to
17 the dissolution continue to serve as the directors and officers of the unin-
18 corporated association.

19 “(2) Membership in the association of unit owners shall be limited to unit
20 owners.

21 “(3) The affairs of the association shall be governed by a board of direc-
22 tors as provided for in the bylaws adopted under ORS 100.410.

23 “(4) Subject to the provisions of the condominium’s declaration and by-
24 laws, and whether or not the association is unincorporated, the association
25 may:

26 “(a) Adopt and amend bylaws and rules and regulations;

27 “(b) Adopt and amend budgets for revenues, expenditures and reserves and
28 levy and collect assessments for common expenses from unit owners;

29 “(c) Hire and terminate managing agents and other employees, agents and
30 independent contractors;

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

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

5 “(A) Matters relating to the collection of assessments and the enforce-
6 ment of declarations and bylaws;

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

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

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

14 “(E) Matters relating to or affecting the units or interests of unit owners
15 including but not limited to damage, destruction, impairment or loss of use
16 of a unit or portion thereof, if:

17 “(i) Resulting from a nuisance or a defect in or damage to a common
18 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
21 or pursuant to the declaration, bylaws or any articles of incorporation;

22 “(f) Make contracts and incur liabilities;

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

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

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

30 “(j) Impose and receive any payments, fees or charges for the use, rental

1 or operation of the common elements;

2 “(k) Impose charges for late payments of assessments, attorney fees for
3 collection of assessments and, after giving written notice and an opportunity
4 to be heard, levy reasonable fines for violations of the declaration, bylaws
5 and rules and regulations of the association, provided that the charge im-
6 posed or fine levied by the association is based:

7 “(A) On a schedule contained in the declaration or bylaws, or an amend-
8 ment to either that is delivered to each unit, mailed to the mailing address
9 of each unit or mailed to the mailing addresses designated in writing by the
10 owners; or

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

14 “(L) Adopt rules regarding the termination of utility services paid for out
15 of assessments of the association and access to and use of recreational and
16 service facilities available to unit owners that must provide for written no-
17 tice and an opportunity to be heard before the association may terminate the
18 rights of any owners to receive such benefits or services until the correction
19 of any violation covered by the rule has occurred;

20 “(m) Impose reasonable charges for the preparation and recordation of
21 amendments to the declaration or statements of assessments;

22 “(n) Assign its right to future income, including the right to receive
23 common expense assessments;

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

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

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

30 “(r) Exercise any other powers determined by the association to be nec-

1 essary and proper for the governance and operation of the association.

2 **“(5) Notwithstanding any contrary provision in a declaration or**
3 **bylaws, an association may not initiate or intervene in litigation or**
4 **administrative proceedings under subsection (4)(e)(E) of this section**
5 **regarding defective construction or alteration, or a defective repair**
6 **related to construction or alteration, that relates to or affects common**
7 **elements of the condominium unless the association receives owner**
8 **approval as described in notices sent to owners under ORS 100.490. This**
9 **subsection does not apply to a breach of warranty claim against a**
10 **declarant under ORS 100.185. This subsection does not require an as-**
11 **sociation to send notice or obtain owner approval regarding matters**
12 **arising after the initiation of or intervention in litigation or an ad-**
13 **ministrative proceeding, including but not limited to, matters regard-**
14 **ing joinder or dismissal of claims or parties.**

15 “[5] (6) Subject to subsection [(6)] (7) of this section, unless expressly
16 limited or prohibited by the declaration, the association has the authority
17 to grant, execute, acknowledge and deliver on behalf of the unit owners
18 leases, easements, rights of way, licenses and other similar interests affecting
19 the general common elements and consent to vacation of roadways within
20 and adjacent to the condominium.

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

30 “(B) Unless the declaration otherwise provides:

1 “(i) The granting of a lease, easement, right of way, license or other
2 similar interest affecting the general common elements for a term of two
3 years or less shall require the approval of a majority of the board of direc-
4 tors.

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

11 “(iii) The granting of a lease, easement, license or other similar interest
12 to an owner for the exclusive use of a part of the general common elements
13 to which the owner’s unit provides primary access requires the approval of
14 a majority of the board of directors. If the approval by the board of directors
15 includes the right of the owner to make improvements to the general common
16 elements to which the owner is being granted exclusive use, ORS 100.535
17 applies to the general common elements to the same extent that ORS 100.535
18 applies to a unit, including the right of the board under ORS 100.535 to re-
19 quire an owner, at owner’s expense, to submit an opinion of a registered ar-
20 chitect or registered professional engineer that the proposed improvement
21 will not impair the structural integrity or mechanical systems of the condo-
22 minium.

23 “(b) Unless the declaration otherwise provides, the consent to vacation
24 of roadways within and adjacent to the condominium must be approved first
25 by at least a majority of unit owners present and voting at a meeting of the
26 association or with consent of at least a majority of all owners solicited by
27 any means the board of directors determines is reasonable. If a meeting is
28 held to conduct the vote, the meeting notice must include a statement that
29 the roadway vacation will be an item of business on the agenda of the
30 meeting.

1 “[~~(7)~~] **(8)** The instrument granting an interest or consent pursuant to
2 subsection [~~(5)~~] **(6)** of this section shall be executed by the chairperson and
3 secretary of the association and acknowledged in the manner provided for
4 acknowledgment of such instruments by such officers and shall state that
5 such grant or consent was approved, if appropriate, by at least the percent
6 of owners required under subsection [~~(6)~~] **(7)** of this section.

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

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

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

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

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

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

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

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

1 “[9] (10) Except as otherwise provided in the association’s declaration
2 or bylaws, the board of directors of the association may modify, close, re-
3 move, eliminate or discontinue the use of a general common element facility
4 or improvement or portion of the common element landscaping, regardless
5 of whether such facility, improvement or landscaping is mentioned in the
6 declaration or shown on the plat provided that:

7 “(a) Nothing in this subsection shall be construed as limiting the au-
8 thority of the board of directors, in its discretion, to seek approval of such
9 modification, closure, removal, elimination or discontinuance by the unit
10 owners; and

11 “(b) Modification, closure, removal, elimination or discontinuance other
12 than on a temporary basis of any swimming pool, spa or recreation or com-
13 munity building must be approved by at least a majority of the unit owners
14 voting on such matter at a meeting or by written ballot held in accordance
15 with the declaration, bylaws or ORS 100.425.

16 “[10)(a)] (11)(a) A permit or authorization issued by the board of direc-
17 tors pursuant to authority granted to the board under law, the declaration
18 or the bylaws, may be recorded in the deed records of the county where the
19 condominium is located. An instrument recorded under this subsection shall:

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

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

24 “(C) Include such other information and signatures as may be required
25 by law, under the declaration or bylaws or as the board of directors may
26 desire; and

27 “(D) Be executed by the chairperson and secretary of the association and
28 acknowledged in the manner provided for acknowledgment of such instru-
29 ments by the officers.

30 “(b) The board of directors may record an amendment, modification, ter-

1 mination or other instrument relating to the permit or authorization de-
2 scribed in this subsection. Any such instrument shall include a reference to
3 the location of the recorded instrument and be executed by the chairperson
4 and secretary of the association and acknowledged in the manner provided
5 for acknowledgment of such instruments.

6 “[~~(11)(a)~~] **(12)(a)** Subject to paragraph (f) of this subsection, before initi-
7 ating litigation or an administrative proceeding in which the association and
8 an owner have an adversarial relationship, the party that intends to initiate
9 litigation or an administrative proceeding shall offer to use any dispute re-
10 solution program available within the county in which the condominium is
11 located that is in substantial compliance with the standards and guidelines
12 adopted under ORS 36.175. The written offer must be hand-delivered or
13 mailed by certified mail, return receipt requested, to the address, contained
14 in the records of the association, for the other party.

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

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

29 “(d) Unless a stay has been granted under paragraph (c) of this sub-
30 section, if the dispute resolution process is not completed within 30 days af-

1 ter receipt of the initial offer, the initiating party may commence litigation
2 or an administrative proceeding without regard to whether the dispute re-
3 solution is completed.

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

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

11 **“SECTION 5.** ORS 100.490 is amended to read:

12 “100.490. (1) At least 10 days prior to instituting any litigation or ad-
13 ministrative proceeding to recover damages under ORS 100.405 (4)(e)(E), the
14 association of unit owners shall provide written notice to each affected
15 owner of the association’s intent to seek damages on behalf of the owner.
16 The notice shall, at a minimum:

17 “(a) Be mailed to the mailing address of each unit or to the mailing ad-
18 dresses designated by the owners in writing to the association;

19 “(b) Inform each owner of the general nature of the litigation or pro-
20 ceeding;

21 “(c) Describe the specific nature of the damages to be sought on the
22 owner’s behalf;

23 “(d) Set forth the terms under which the association is willing to seek
24 damages on the owner’s behalf, including any mechanism proposed for the
25 determination and distribution of any damages recovered;

26 “(e) Inform each owner of the owner’s right not to have the damages
27 sought on the owner’s behalf and specify the procedure for exercising the
28 right; and

29 “(f) Inform the owner that exercising the owner’s right not to have dam-
30 ages sought on the owner’s behalf:

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

3 “(B) Does not relieve the owner from the owner’s obligation to pay dues
4 or assessments relating to the litigation or proceeding;

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

7 “(D) Does not interfere with the association’s right to make repairs to
8 common elements.

9 “(2) Within 10 days of mailing the notice described in this section, any
10 owner may request in writing that the association not seek damages on the
11 owner’s behalf. If an owner makes such a request, the association shall not
12 make or continue any claim or action for damages with regard to the ob-
13 jecting owner’s unit or interest and shall be relieved of any duty to reim-
14 burse or indemnify the owner for damages under the litigation or proceeding.

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

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

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

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

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

23 **“(C) Identify the parties that the association considers, at the time**
24 **of mailing the notice, to be responsible for the defect; and**

25 **“(D) State that the association may not institute litigation or an**
26 **administrative proceeding unless the association receives owner ap-**
27 **proval. The notice must state the owner approval that is required.**

28 **“(c) If an association mails a notice to owners under this section,**
29 **in addition to the information described in paragraph (b) of this sub-**
30 **section:**

1 “(A) Except as provided in subparagraph (B) of this paragraph, the
2 notice must inform the owners that the association may proceed with
3 the initiation or intervention if the association receives approval for
4 the initiation or intervention by a majority of the units in writing
5 within 60 days after the mailing date of the notice.

6 “(B) An association may send owners a series of three notices under
7 subsection (1) of this section regarding the same request for approval
8 to initiate or intervene in a litigation or administrative proceeding.
9 The notices must each comply with subsection (1) of this section and
10 paragraphs (a) and (b) of this subsection. The association shall mail
11 the second notice no earlier than 15 days and no later than 25 days
12 after mailing the first notice. The association shall mail the third no-
13 tice no earlier than 15 days and no later than 25 days after mailing the
14 second notice. The notices must inform the owners that the associ-
15 ation may proceed with the initiation or intervention if owners of a
16 majority of the units respond in writing within 60 days after the
17 mailing date of the first notice and a majority of the responding units
18 approve of the initiation or intervention by the association.

19 “(d) The association shall send a copy of the notice by certified mail
20 to each person identified in the notice as a party the association con-
21 siders responsible for the defect. This paragraph does not require
22 sending a party a copy of the second and third notices described in
23 paragraph (c)(B) of this subsection. The requirement for sending no-
24 tice under this paragraph is in addition to the notice of defect re-
25 quirement in ORS 701.565 and does not initiate the procedure described
26 in ORS 701.560 to 701.595.

27 “SECTION 6. ORS 100.105 is amended to read:

28 “100.105. (1) A declaration shall contain:

29 “(a) A description of the property, including property on which a unit or
30 a limited common element is located, whether held in fee simple, leasehold,

1 easement or other interest or combination thereof, that is being submitted
2 to the condominium form of ownership and that conforms to the description
3 in the surveyor’s certificate provided under ORS 100.115 (1).

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

8 “(c) Subject to subsection (5) of this section, the name by which the
9 property shall be known and a general description of each unit and the
10 building or buildings, including the number of stories and basements of each
11 building, the total number of units and the principal materials of which they
12 are constructed.

13 “(d) The unit designation, a statement that the location of each unit is
14 shown on the plat, a description of the boundaries and area in square feet
15 of each unit and any other data necessary for proper identification. The area
16 of a unit shall be the same as shown for that unit on the plat described in
17 ORS 100.115 (1).

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

20 “ _____
21 NOTICE

22
23 THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION
24 AND THE PLAT ARE BASED ON THE BOUNDARIES OF THE UNITS AS
25 DESCRIBED IN THIS DECLARATION AND MAY VARY FROM THE
26 AREA OF UNITS CALCULATED FOR OTHER PURPOSES.

27 “ _____
28 “(f) A description of the general common elements.

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

1 the allocation.

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

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

4 “(B) A statement of the unit to which the use of each limited common
5 element is reserved, provided the statement is not a reference to an assign-
6 ment of use specified on the plat; and

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

9 “(i) The method of determining liability for common expenses and right
10 to common profits in accordance with ORS 100.530.

11 “(j) The voting rights allocated to each unit in accordance with ORS
12 100.525 or in the case of condominium units committed as property in a
13 timeshare plan defined in ORS 94.803, the voting rights allocated in the
14 timeshare instrument.

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

17 “(L) A statement that the designated agent to receive service of process
18 in cases provided in ORS 100.550 (1) is named in the Condominium Informa-
19 tion Report which will be filed with the Real Estate Agency in accordance
20 with ORS 100.250 (1)(a).

21 “(m) The method of amending the declaration and the percentage of vot-
22 ing rights required to approve an amendment of the declaration in accord-
23 ance with ORS 100.135.

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

29 “(o) If the condominium contains a floating structure described in ORS
30 100.020 (3), a statement regarding the authority of the board of directors of

1 the association, subject to ORS 100.410, to temporarily relocate the floating
2 structure without a majority vote of affected unit owners.

3 “(p) Any restrictions on alienation of units. Any such restrictions created
4 by documents other than the declaration may be incorporated by reference
5 in the declaration to the official records of the county in which the property
6 is located.

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

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

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

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

18 “(c) A general description of the nature and proposed use of any addi-
19 tional common elements which declarant proposes to annex to the condo-
20 minium, if such common elements might substantially increase the
21 proportionate amount of the common expenses payable by existing unit
22 owners.

23 “(d) A statement that the method used to establish the allocation of un-
24 divided interest in the common elements, the method used to determine li-
25 ability for common expenses and right to common profits and the method
26 used to allocate voting rights for each unit annexed shall be as stated in the
27 declaration in accordance with subsection (1)(g), (i) and (j) of this section.

28 “(e) Such other information as the Real Estate Commissioner shall re-
29 quire in order to carry out the purposes of ORS 100.015, 100.116, 100.635 to
30 100.730 and 100.740 to 100.910.

1 “(3) Except where expressly prohibited by the declaration and subject to
2 the requirements of ORS 100.135 (2) and subsections (9) and (10) of this sec-
3 tion:

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

7 “(b) The general description under subsection (2)(c) of this section and the
8 information included in the declaration in accordance with subsection (7)(c),
9 (g) and (h) of this section may be changed by an amendment to the declara-
10 tion.

11 “(4) The information included in the declaration in accordance with sub-
12 section (2)(a) and (d) of this section and subsection (7)(a), (b), (e), (f) and (k)
13 of this section may not be changed unless all owners agree to the change
14 and record an amendment to the declaration in accordance with this chapter.

15 “(5) The name of the property shall include the word ‘condominium’ or
16 ‘condominiums’ or the words ‘a condominium.’

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

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

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

25 “(b) A statement:

26 “(A) Of any limitations on rights reserved under ORS 100.150 (1), includ-
27 ing whether the consent of any unit owner shall be required, and if so, a
28 statement of the method by which the consent shall be ascertained; or

29 “(B) That there are no limitations on rights reserved under ORS 100.150
30 (1).

1 “(c) A statement of the total number of tracts of variable property within
2 the condominium, including:

3 “(A) A designation of each tract as withdrawable or nonwithdrawable
4 variable property;

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

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

9 “(D) A statement of the total number of tracts of each type of variable
10 property.

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

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

19 “(f) A statement that the method used to establish the allocations of un-
20 divided interest in the common elements, the method used to determine li-
21 ability for common expenses and right to common profits and the method
22 used to allocate voting rights as additional units are created shall be the
23 same as stated in the declaration in accordance with subsection (1)(g), (i) and
24 (j) of this section.

25 “(g) A general description of all existing improvements and the nature
26 and proposed use of any improvements that may be made on variable prop-
27 erty if the improvements might substantially increase the proportionate
28 amount of the common expenses payable by existing unit owners.

29 “(h) A statement of whether or not the declarant reserves the right to
30 create limited common elements within any variable property, and if so, a

1 general description of the types that may be created.

2 “(i) A statement that the plat shows the location and dimensions of all
3 withdrawable variable property that is labeled ‘WITHDRAWABLE VARI-
4 ABLE PROPERTY.’

5 “(j) A statement that if by the termination date all or a portion of the
6 withdrawable variable property has not been withdrawn or reclassified, the
7 withdrawable property shall automatically be withdrawn from the condo-
8 minium as of the termination date.

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

10 “(L) A statement of whether or not all or any portion of the variable
11 property may not be withdrawn from the condominium and, if so, with re-
12 spect to the nonwithdrawable variable property:

13 “(A) A statement that the plat shows the location and dimensions of all
14 nonwithdrawable property that is labeled ‘NONWITHDRAWABLE VARI-
15 ABLE PROPERTY.’

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

18 “(C) A statement that, if by the termination date all or a portion of the
19 variable property designated as ‘nonwithdrawable variable property’ has not
20 been reclassified, the property shall automatically be reclassified as of the
21 termination date as a general common element of the condominium and any
22 interest in such property held for security purposes shall be automatically
23 extinguished by such classification.

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

25 “(m) A statement by the local governing body or appropriate department
26 thereof that the withdrawal of any variable property designated as
27 ‘withdrawable variable property’ in the declaration in accordance with par-
28 agraph (L) of this subsection, will not violate any applicable planning or
29 zoning regulation or ordinance. The statement may be attached as an exhibit
30 to the declaration.

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

8 “(9) The information included in the declaration in accordance with sub-
9 section (7)(j), (k) and (m) of this section may not be deleted by amendment.

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

20 “(11) The statement of an interest in property other than fee simple sub-
21 mitted to the condominium form of ownership and any easements, rights or
22 appurtenances belonging to property submitted to the condominium form of
23 ownership, whether leasehold or fee simple, shall include:

24 “(a) A reference to the recording index numbers and date of recording of
25 the instrument creating the interest; or

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

30 **“SECTION 7.** ORS 701.570 is amended to read:

1 “701.570. (1) A contractor, subcontractor or supplier that receives a notice
2 of defect sent under ORS 701.565 shall, not later than 14 days after receiving
3 the notice of defect, send a secondary notice to any other known contractor,
4 subcontractor or supplier that may be responsible for some or all of the de-
5 fects described in the notice of defect. The contractor, subcontractor or
6 supplier must send the secondary notice by registered or certified mail, re-
7 turn receipt requested, to an address described in ORS 701.565 (2). The sec-
8 ondary notice must be accompanied by a statement describing the basis for
9 contending that the other contractor, subcontractor or supplier may be re-
10 sponsible for some or all of the defects.

11 “(2) A contractor, subcontractor or supplier that receives a notice of de-
12 fect or secondary notice may send the owner a written request to conduct a
13 visual examination of the residence. **Except as provided in section 11 of**
14 **this 2019 Act**, the written request must be sent not later than 14 days after
15 the requesting contractor, subcontractor or supplier receives a notice of de-
16 fect or secondary notice. The written request to conduct a visual examina-
17 tion of the residence must state the estimated time required for the visual
18 examination.

19 “(3) A contractor, subcontractor or supplier that receives a notice of de-
20 fect or secondary notice may send the owner a written request to inspect the
21 residence. **Except as provided in section 11 of this 2019 Act**, the written
22 request must be sent not later than 14 days after the requesting contractor,
23 subcontractor or supplier conducted a visual examination of the residence.
24 The written request to inspect the residence must state the nature and scope
25 of the inspection, whether any testing is to be performed and the estimated
26 time required for the inspection. The recipient of a secondary notice that
27 requests to inspect the residence shall send a copy of the request to the
28 sender of the secondary notice.

29 “(4) A contractor, subcontractor or supplier that sends a secondary notice
30 and intends to hold the recipient of the secondary notice liable for a defect

1 described in a notice of defect shall coordinate the scheduling of any in-
2 spection with the owner and all recipients of a secondary notice from the
3 contractor, subcontractor or supplier. The contractor, subcontractor or sup-
4 plier shall deliver a copy of any written request to inspect the residence to
5 each recipient of the secondary notice in time to provide the recipient with
6 an opportunity to attend the requested inspection and to participate in any
7 remediation. The sender of a secondary notice shall give reasonable advance
8 notice to the owner or the owner's legal representative, if any, of the identity
9 of any contractor, subcontractor or supplier who will attend the inspection.
10 **If the sender of the notice of defect is a homeowners association or**
11 **an association of unit owners, the notice must also conform to section**
12 **11 of this 2019 Act.**

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

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

25 “(A) An acknowledgment of the existence, nature and extent of the defect
26 without regard to responsibility for the defect.

27 “(B) A statement describing the existence of a defect different in nature
28 or extent from the defect described in the notice of defect or secondary no-
29 tice, without regard to responsibility for the defect.

30 “(C) A denial of the existence of the defect.

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

2 “(c) One or more of the following:

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

5 “(B) An offer to pay a stated amount of monetary compensation to the
6 owner for some or all of the acknowledged defects and any incidental dam-
7 age. The offer must specify the date by which payment will be made.

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

10 **“SECTION 8.** ORS 701.575 is amended to read:

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

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

22 “(3) An inspection by a contractor, subcontractor or supplier may include
23 any reasonable measures, including testing, for determining the nature, cause
24 and extent of the defects described in the notice of defect or incidental
25 damage and the nature and extent of the necessary remediation. Unless the
26 contractor, subcontractor or supplier conducting the inspection and the
27 owner agree otherwise, the contractor, subcontractor or supplier conducting
28 the inspection shall repair any damage caused by the inspection. Any damage
29 caused by the inspection that is not repaired may be sought as incidental
30 damage in any subsequent arbitration or court action by an owner against

1 the contractor, subcontractor or supplier conducting the inspection.

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

8 **“SECTION 9.** ORS 701.585 is amended to read:

9 “701.585. (1) If an owner sends a contractor, subcontractor or supplier a
10 notice of defect within the time allowed for the owner to commence a court
11 action against that contractor, subcontractor or supplier for a claim de-
12 scribed in ORS 701.565, the time for the owner to commence the action shall
13 be extended, notwithstanding any statute of limitation or statute of ultimate
14 repose, until the later of:

15 “(a) One hundred and twenty days after the owner receives a written re-
16 sponse from the contractor, subcontractor or supplier that received the no-
17 tice of defect if the written response does not contain a written offer to
18 perform remediation or pay monetary compensation for one or more of the
19 defects or incidental damage described in the notice of defect;

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

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

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

1 “(3) Delivery of a secondary notice sent by a contractor, subcontractor
2 or supplier under ORS 701.570 does not act to toll the expiration of any right
3 of the owner to commence a court action against the recipient of the sec-
4 ondary notice. **However, the right of the sender of the secondary notice**
5 **to commence a court action against the recipient of the secondary**
6 **notice shall be extended, notwithstanding any statute of limitation or**
7 **statute of ultimate repose, until the date that the right of the owner**
8 **to commence a court action against the sender of the secondary notice**
9 **expires.**

10 “(4) Any remediation performed pursuant to an accepted offer made under
11 ORS 701.570 or **section 11 of this 2019 Act** does not constitute a new per-
12 formance and, for purposes of ORS 12.135, relates back to the earliest date
13 of substantial completion or abandonment of the construction, alteration or
14 repair of the improvement to real property.

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

17 **“SECTION 11. (1) If the owner sending a notice of defect under ORS**
18 **701.565 is a homeowners association or an association of unit owners:**

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

23 **“(b) A written request under ORS 701.570 (3) to inspect a residence**
24 **must be sent not later than 30 days after the requesting contractor,**
25 **subcontractor or supplier receives a notice of defect or secondary no-**
26 **tice.**

27 **“(c) The contractor, subcontractor or supplier may have a technical**
28 **or construction expert attend the inspection. However, the selection**
29 **of the expert must be mutually agreed to by the contractor, subcon-**
30 **tractor or supplier and the owner or owner’s representative. In addi-**

1 tion to the information described in ORS 701.570 (3), a request under
2 ORS 701.570 (3) must identify an expert acceptable to the contractor,
3 subcontractor or supplier. If the owner or owner’s representative dis-
4 approves of the expert, the association or association’s representative
5 shall give the contractor, subcontractor or supplier written notice of
6 the disapproval and of the identity of an expert acceptable to the
7 owner or owner’s representative. If the contractor, subcontractor or
8 supplier disapproves of the expert identified by the owner or owner’s
9 representative, the two identified and disapproved experts shall jointly
10 select a third expert to be the expert that attends the inspection. The
11 contractor, subcontractor or supplier shall include the identity of a
12 selected expert in any advance notice that the contractor, subcon-
13 tractor or supplier sends under ORS 701.570 (4).

14 “(d) The contractor, subcontractor or supplier shall send the owner
15 a written response to the notice of defect not later than:

16 “(A) Fourteen days after conducting an inspection of the residence
17 under ORS 701.575 (3); or

18 “(B) If no inspection of the residence is conducted under ORS
19 701.575 (3), 90 days after the contractor, subcontractor or supplier re-
20 ceives a notice of defect or secondary notice.

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

22 “(a) An offer to cure the defect;

23 “(b) An offer to pay an amount equal to the cost of curing the de-
24 fect;

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

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

29 “(3) If the contractor, subcontractor or supplier does not send a
30 timely response under subsection (1)(d) of this section, or if the re-

1 sponse does not conform to subsection (2) of this section, the owner
2 is excused from further compliance with this section.

3 “(4) An owner that is a homeowners association or association of
4 unit owners sending a notice under subsection (1) of this section may
5 accept an offer contained in a written response under subsection (2)
6 of this section by delivering a written acceptance to the offering con-
7 tractor, subcontractor or supplier within 30 days after receiving the
8 offer. If the owner fails to accept an offer within 30 days after receipt,
9 the offer is deemed rejected.

10 “(5) If a response under subsection (1)(d) of this section offers to
11 pay the owner sending the notice an amount equal to the cost of cur-
12 ing the defect, the contractor, subcontractor or supplier shall have 30
13 days after sending the response to determine the payment amount.
14 For purposes of subsection (4) of this section, the offer contained in
15 the response is not complete until the owner that sent the notice re-
16 ceives the written determination by the contractor, subcontractor or
17 supplier. If the owner wishes to accept an offer of payment, but dis-
18 puts the amount, the parties may select a mediator to attempt re-
19 solution. If the parties cannot agree on a mediator after 45 days, they
20 may request that the board administrator of the Construction Con-
21 tractors Board inform a professional mediation association or service
22 that the parties wish to have a mediator selected by the mediation
23 association or service.

24 “(6) If an owner that is a homeowners association or association
25 of unit owners accepts payment of an amount equal to the cost of
26 curing the defect for which notice was sent under subsection (1) of this
27 section, the owner must make a good faith effort to have a con-
28 struction contractor correct the defect.

29 “(7) If an owner that is a homeowners association or association
30 of unit owners accepts a contractor’s, subcontractor’s or supplier’s

1 offer to perform remediation or to pay monetary compensation, com-
2 pletion of the remediation or payment satisfies the owner’s claims for
3 the defects identified in the notice of defect and for which remediation
4 was performed or compensation paid, but not for any other defect.
5 Except as provided in subsection (8) of this section, if an owner is a
6 homeowners association or association of unit owners and accepts an
7 offer by a contractor, subcontractor or supplier that received a sec-
8 ondary notice, completion of the remediation or payment satisfies
9 claims for those defects identified in the secondary notice and for
10 which remediation was performed or compensation paid, including
11 claims by the owner and claims for contribution or indemnity against
12 the contractor, subcontractor or supplier by the sender of the sec-
13 ondary notice, but not for any other defect. Notwithstanding ORS
14 701.585 (4), the performance of remediation of a defect identified in a
15 notice of defect or a secondary notice as provided under this section
16 is a new performance for purposes of ORS 12.135 for purposes of the
17 defect that was remediated.

18 “(8) If an owner that is a homeowners association or association
19 of unit owners accepts an offer, by a contractor, subcontractor or
20 supplier that received a secondary notice, to perform remediation or
21 to pay monetary compensation and the contractor, subcontractor or
22 supplier fails to perform in accordance with the accepted offer, the
23 sender of the secondary notice may perform the remediation or pay
24 the monetary compensation offered by the nonperforming contractor,
25 subcontractor or supplier.

26 “(9) A response under subsection (1)(d) of this section that is re-
27 jected by an owner is not admissible to establish contractor, subcon-
28 tractor or supplier liability for a defect, or for damages arising out of
29 a defect, in a subsequent arbitration or court action.

30 “SECTION 12. (1) As used in this section:

1 “(a) ‘Building envelope penetrations’ means window and trim in-
2 stallations and other penetrations of the building envelope, flashings
3 and water resistant barriers.

4 “(b) ‘Condominium’ has the meaning given that term in ORS
5 100.005.

6 “(c) ‘Construction design professional’ has the meaning given that
7 term in ORS 30.785.

8 “(2) The Director of the Department of Consumer and Business
9 Services shall amend the state building code structural specialty code
10 by adopting inspection requirements and code specifications for use in
11 inspecting building envelope penetrations and other inspections to de-
12 tect construction defects in the exterior waterproofing system of:

13 “(a) Structures that are common property of a homeowners asso-
14 ciation;

15 “(b) Residential dwellings constructed on lots within the planned
16 community served by the homeowners association; and

17 “(c) Condominiums.

18 “(3) The director shall adopt the inspection requirements and code
19 specifications in a format that allows a construction design profes-
20 sional to identify and select the applicable inspection required to
21 qualify a particular structure to qualify for the statute of limitation
22 established in ORS 12.135 (4) with regard to any alleged construction
23 defect in the structure.

24 “(4) The director shall establish inspection requirements and code
25 specifications for building envelope penetration inspections under this
26 section by rule in the structural specialty code chapter dealing with
27 special inspections.

28 “SECTION 13. The Director of the Department of Consumer and
29 Business Services shall adopt rules under section 12 of this 2019 Act
30 to include the standards in the state building code structural specialty

1 code during the first regular rule adoption amending a state building
2 code specialty code that the director undertakes after the effective
3 date of this 2019 Act, but if no amendment of a specialty code occurs
4 by July 1, 2021, the director shall immediately undertake rulemaking
5 to adopt special inspection standards.

6 **“SECTION 14.** The Director of the Department of Consumer and
7 Business Services shall establish training and experience standards
8 under ORS 455.715 to 455.740 for certifying inspectors or specialized
9 building inspectors to conduct inspections of building envelope pene-
10 trations and other inspections to detect construction defects in the
11 exterior waterproofing system of structures described in section 12 of
12 this 2019 Act.

13 **“SECTION 15. (1)** As used in this section, ‘construction design pro-
14 fessional’ has the meaning given that term in ORS 30.785.

15 **“(2)** A construction design professional responsible for designing all
16 or part of an exterior waterproofing system for a structure described
17 in section 12 of this 2019 Act shall identify in the plans for the struc-
18 ture the inspections under the state building code structural specialty
19 code that the construction design professional is selecting as appro-
20 priate to ensure the proper performance of the exterior waterproofing
21 system of the structure.

22 **“(3)** The general contractor for a structure described in section 12
23 of this 2019 Act shall ensure that all inspections recommended by a
24 construction design professional designing all or part of the exterior
25 waterproofing system for the structure are performed. The inspections
26 must be performed by a building inspector or specialized building in-
27 spector certified by the Director of the Department of Consumer and
28 Business Services under section 14 of this 2019 Act. The general con-
29 tractor shall pay all costs for the inspections and shall ensure that the
30 results for all exterior waterproofing system inspections are sent to

1 the building official for the jurisdiction where the structure is located
2 or, if there is no building official, to the Department of Consumer and
3 Business Services. The building official or the department may not
4 issue a certificate of occupancy for the condominium or other struc-
5 ture unless the general contractor has submitted the results of any
6 exterior waterproofing system inspection required in the plans pre-
7 pared by the construction design professional and proof that any de-
8 fects identified during the inspection have been remedied.

9 “(4) The building official or the department shall, at the time of
10 issuing the certificate of occupancy for a structure inspected as pro-
11 vided in this section, provide the general contractor and the con-
12 struction design professional with documentation that the inspections
13 and remediation of any defects have occurred as required by this sec-
14 tion. Documentation issued under this subsection is prima facie evi-
15 dence that any construction defect claim brought by a homeowners
16 association or association of unit owners is subject to the statute of
17 limitation described in ORS 12.135 (4).

18 “(5) Subsections (1) to (4) of this section do not authorize a con-
19 struction design professional to perform any activities that are outside
20 the scope of the registration held by the construction design profes-
21 sional. Subsections (1) to (4) of this section do not apply to services
22 rendered under ORS 30.788.

23 “(6) An inspector may not perform an exterior waterproofing sys-
24 tem inspection under this section if the inspector or a person in a
25 business, family or household relationship with the inspector holds an
26 economic interest or provides design or contracting services for the
27 structure. The department may impose a civil penalty, not to exceed
28 \$_____, against an inspector who violates this subsection.

29 “SECTION 16. Section 17 of this 2019 Act is added to and made a
30 part of ORS 671.010 to 671.220.

1 **“SECTION 17.** The State Board of Architect Examiners shall adopt
2 rules to require that an architect registered with the board who en-
3 gages in designing structures described in section 12 of this 2019 Act
4 maintain in effect liability insurance that includes coverage in an
5 amount not less than \$_____ for improper identification and se-
6 lection by the architect of appropriate exterior waterproofing system
7 inspections under section 15 of this 2019 Act.

8 **“SECTION 18.** Section 19 of this 2019 Act is added to and made a
9 part of ORS 671.310 to 671.459.

10 **“SECTION 19.** The State Landscape Architect Board shall adopt
11 rules to require that if a landscape architect registered with the board
12 engages in designing structures described in section 12 of this 2019 Act,
13 the landscape architect shall maintain in effect liability insurance that
14 includes coverage in an amount determined by the board, but not less
15 than \$_____, for inspection identification and selection by the
16 landscape architect under section 15 of this 2019 Act.

17 **“SECTION 20.** Section 21 of this 2019 Act is added to and made a
18 part of ORS 672.002 to 672.325.

19 **“SECTION 21.** The State Board of Examiners for Engineering and
20 Land Surveying shall adopt rules to require that if a professional en-
21 gineer or professional land surveyor registered with the board engages
22 in designing exterior waterproofing systems for structures described
23 in section 12 of this 2019 Act, the engineer or land surveyor shall
24 maintain in effect liability insurance that includes coverage in an
25 amount determined by the board, but not less than \$_____, for
26 inspection identification and selection by the engineer or land sur-
27 veyor under section 15 of this 2019 Act.

28 **“SECTION 22.** The Director of the Department of Consumer and
29 Business Services shall report to an interim committee of the Legis-
30 lative Assembly relating to general government, in the manner pro-

1 vided under ORS 192.245, no later than September 15, 2020, regarding
2 progress in the development of inspection requirements, code specifi-
3 cations and inspector training and experience standards for carrying
4 out sections 12 to 15 of this 2019 Act. The report may include, but need
5 not be limited to, any recommendations by the director for legislation
6 to facilitate the implementation, administration or enforcement of
7 sections 12 to 15 of this 2019 Act.

8 **“SECTION 23. Section 13 of this 2019 Act is repealed on January 2,**
9 **2022.**

10 **“SECTION 24. The amendments to ORS 12.135 by section 1 of this**
11 **2019 Act apply to causes of action arising on or after the effective date**
12 **of this 2019 Act.**

13 **“SECTION 25. Section 11 of this 2019 Act and the amendments to**
14 **ORS 701.570 and 701.585 by sections 7 and 9 of this 2019 Act apply to**
15 **notices of construction defect sent by an owner on or after the effec-**
16 **tive date of this 2019 Act and to any resulting secondary notices.**

17 **“SECTION 26. The State Board of Architect Examiners shall make**
18 **the rules adopted by the board under section 17 of this 2019 Act effec-**
19 **tive July 1, 2021.**

20 **“SECTION 27. The State Landscape Architect Board shall make the**
21 **rules adopted by the board under section 19 of this 2019 Act effective**
22 **July 1, 2021.**

23 **“SECTION 28. The State Board of Examiners for Engineering and**
24 **Land Surveying shall make the rules adopted by the board under sec-**
25 **tion 21 of this 2019 Act effective July 1, 2021.”.**

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