

A-Engrossed
House Bill 2409

Ordered by the House March 29
Including House Amendments dated March 29

Sponsored by Representatives NERON, HUDSON; Representatives GRAYBER, WILDE, Senators GELSER, RILEY
(Presession filed.)

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.

Prohibits homeowners associations from requiring application of pesticide on owner's property **except as necessary for ecological or public health**. Requires association to notify owners, **upon the owner's request**, prior to pesticide application on owners' property.

A BILL FOR AN ACT

1
2 Relating to pesticide application within planned communities; creating new provisions; and amending
3 ORS 94.630.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 94.550 to 94.783.**

6 **SECTION 2. (1) As used in this section, "pesticide" has the meaning given that term in**
7 **ORS 634.006.**

8 **(2) A homeowners association must provide, upon an owner's request, notice to the**
9 **owner of:**

10 **(a) The dates and times that the association plans to apply a pesticide to the owner's**
11 **property; and**

12 **(b) The means by which the owner may exclude the owner's property from the application**
13 **of the pesticide under subsection (3) of this section.**

14 **(3) An association may not require an owner to apply a pesticide and shall allow any**
15 **owner to exclude the owner's property from the landscaping activities of the association that**
16 **include application of a pesticide, except to the extent a pesticide or other pest management**
17 **practice is necessary to manage or prevent a pest issue that could harm ecological or public**
18 **health.**

19 **(4) An owner's exclusion from the application of a pesticide under subsection (3) of this**
20 **section is an assumption of the landscaping responsibility by the owner, and the association**
21 **may enforce against the responsible owner reasonable standards for landscaping that allow**
22 **for consistent appearances within the community.**

23 **(5) A provision in a governing document inconsistent with this section is against the**
24 **policy of this state to support public health, safety and welfare and is void and unenforceable.**

25 **SECTION 3. Section 2 of this 2021 Act applies to governing documents executed before,**
26 **on or after the effective date of this 2021 Act.**

27 **SECTION 4. ORS 94.630 is amended to read:**

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 94.630. (1) Subject to subsection (2) of this section and ORS [94.779] **94.762, 94.776, 94.778 and**
2 **94.779 and section 2 of this 2021 Act**, and except as otherwise provided in its declaration or by-
3 laws, a homeowners association may:

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

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

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

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

10 (e) Subject to subsection (4) of this section, initiate or intervene in litigation or administrative
11 proceedings in its own name and without joining the individual owners in the following:

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

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

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

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

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

21 (ii) Common property;

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

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

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

28 (F) Any other matter to which the association has standing under law or pursuant to the decla-
29 ration or bylaws;

30 (f) Make contracts and incur liabilities;

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

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

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

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

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

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

43 (B) Modification, closure, removal, elimination or discontinuance other than on a temporary
44 basis of any swimming pool, spa or recreation or community building must be approved by at least
45 a majority of owners voting on the matter at a meeting or by written ballot held in accordance with

1 the declaration, bylaws or ORS 94.647;

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

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

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

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

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

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

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

23 (q) Assign its right to future income, including the right to receive common expense assess-
24 ments; and

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

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

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

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

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

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

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

43 (4)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an administrative
44 proceeding in which the association and an owner have an adversarial relationship, the party that
45 intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution

1 program available within the county in which the planned community is located that is in substan-
2 tial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must
3 be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in
4 the records of the association, for the other party.

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

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

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

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

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

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