

Requested by Senator JAMA

**PROPOSED AMENDMENTS TO
SENATE BILL 847**

- 1 On page 1 of the printed bill, line 2, after “94.550,” insert “100.015,”.
2 In line 3, delete “100.116, 100.600,”.
3 On page 11, delete lines 7 through 45 and delete pages 12 through 16.
4 On page 17, delete lines 1 through 26 and insert:

5
6 **“REGULATION OF CONDOMINIUMS**

7
8 **“SECTION 15.** ORS 100.015 is amended to read:

9 “100.015. The Real Estate Commissioner **has the exclusive right to**
10 **regulate the submission of property to the provisions of this chapter**
11 **and** may adopt such rules as are necessary for the administration of this
12 chapter.

13 **“SECTION 16.** ORS 100.022 is amended to read:

14 “100.022. [(1)] **Except as provided under ORS 100.015 or explicitly re-**
15 **quired or allowed under this chapter,** a zoning, subdivision, building code
16 or other [*real property law,*] **regulation by a public body, agency rule or**
17 **local ordinance or regulation may not [*prohibit*]:**

18 **“(1) Have the effect of prohibiting or restricting** the condominium
19 form of ownership; or

20 **“(2) Impose any restriction or requirement upon a structure, property**
21 or development **that is submitted or** proposed to be submitted to the con-

1 dominium form of ownership under this chapter that it would not impose
2 upon a structure or development under a different form of ownership[.], **in-**
3 **cluding:**

4 **“(a) Any charge, tax or fee;**

5 **“(b) A review or approval process by any person of a declaration,**
6 **bylaw, plat, articles of incorporation, regulation, resolution or any**
7 **other document relating to the condominium or the submission of the**
8 **property or development to the condominium form of ownership;**

9 **“(c) Any additional permitting requirements or conditions of ap-**
10 **proval of the property or development; or**

11 **“(d) Any other requirements.**

12 *“(2) Except as set forth in this section, no provision of this chapter inval-*
13 *idates or modifies any provision of any zoning, subdivision, building code or*
14 *other real property use law, ordinance or regulation.]*

15 *“(3) Subsection (1) of This section does not prohibit any governmental ap-*
16 *proval required under this chapter.]*

17 **“SECTION 17. ORS 100.110 is amended to read:**

18 **“100.110. (1)(a) Before a declaration, supplemental declaration or an**
19 **amendment thereto may be recorded, it must be approved as provided in this**
20 **section by the county assessor of the county in which the property is located**
21 **and the Real Estate Commissioner.**

22 **“(b) Before a declaration, supplemental declaration or, if required under**
23 **subsection (3) of this section, an amendment thereto may be recorded, it must**
24 **be approved by the tax collector of the county in which the property is lo-**
25 **cated.**

26 **“(c) A declaration, supplemental declaration or amendment thereto may**
27 **not be approved unless the requirements of subsections (2) to (7) of this**
28 **section are met. Approval must be evidenced by execution of the declaration**
29 **or amendment or by a written approval attached thereto.**

30 **“(d) If the requirements of subsections (2) to (7) of this section are met,**

1 the commissioner, county assessor and tax collector, if applicable,[:]

2 “[A)] shall approve the declaration, supplemental declaration or
3 amendment[; and]

4 “[B) *May not impose additional requirements not specified in subsections*
5 *(2) to (7) of this section*].

6 “(2) The county assessor of the county in which the property is located
7 shall approve a declaration, supplemental declaration or amendment thereto
8 if:

9 “(a) The name complies with ORS 100.105 (5) and (6); and

10 “(b) The plat complies with the requirements of ORS 100.115 or the plat
11 amendment complies with ORS 100.116.

12 “(3) The tax collector of the county in which the property is located shall
13 approve the declaration or supplemental declaration, or an amendment that
14 adds property to the condominium, changes the boundary of a unit or creates
15 an additional unit from all or parts of other units or from all or parts of
16 other units and common elements for which a plat amendment is required
17 under ORS 100.116, if:

18 “(a) All ad valorem taxes, special assessments, fees, or other charges re-
19 quired by law to be placed upon the tax roll for the affected units that have
20 or will become a lien upon the property during the tax year have been paid;

21 “(b) Advance payment of ad valorem taxes, special assessments, fees or
22 other charges for the affected units that are not on the tax roll and for
23 which payment is required under paragraph (a) of this subsection has been
24 made to the tax collector utilizing the procedures contained in ORS 92.095
25 and 311.370; and

26 “(c) The additional taxes, penalty, and any interest attributable thereto,
27 required because of disqualification of the affected units from any special
28 assessment have been paid.

29 “(4) Subject to subsection (6) of this section, the commissioner shall ap-
30 prove the declaration or amendment thereto if:

1 “(a) The declaration or the amendment thereto complies with the re-
2 quirements of ORS 100.105 and 100.135 and other provisions of this chapter;

3 “(b) The bylaws adopted under ORS 100.410 comply with the requirements
4 of ORS 100.410 and 100.415 and other provisions of this chapter;

5 “(c) The plat complies with the requirements of ORS 100.115 or the plat
6 amendment complies with ORS 100.116 and other provisions of this chapter;

7 “(d) The declaration is for a conversion condominium and the declarant
8 has submitted:

9 “(A) An affidavit that the notice of conversion was given in accordance
10 with ORS 100.305 and that the notice period has expired;

11 “(B) An affidavit that the notice of conversion was given in accordance
12 with ORS 100.305 and copies of the written consent of any tenants as pro-
13 vided in ORS 100.305 (6) or a signed statement that no tenants were entitled
14 to notice under ORS 100.305; or

15 “(C) Any applicable combination of the requirements of subparagraphs (A)
16 and (B) of this paragraph;

17 “(e) A copy of the plat executed by the declarant and prepared in con-
18 formance with ORS 100.115 or plat amendment prepared in conformance with
19 ORS 100.116 is submitted;

20 “(f) A certification of plat execution, on a form prescribed and furnished
21 by the commissioner, is:

22 “(A) Executed by the declarant, the professional land surveyor who signed
23 the surveyor’s certificate on the plat, the attorney for the declarant, a rep-
24 resentative of the title insurance company that issued the information re-
25 quired under ORS 100.640 (1)(e) or 100.668 (2)(d) or another person authorized
26 by the declarant in writing to execute the certification; and

27 “(B) Submitted stating that the copy is a true copy of the plat signed by
28 the declarant; and

29 “(g) A copy of a reserve study has been submitted, if a disclosure state-
30 ment was issued under ORS 100.655 and the reserve study was not included

1 pursuant to ORS 100.640 (1)(g).

2 “(5) The commissioner shall approve a supplemental declaration if:

3 “(a) The supplemental declaration complies with the requirements of ORS
4 100.120 and other provisions of this chapter;

5 “(b) The supplemental plat complies with the requirements of ORS
6 100.115;

7 “(c) The supplemental declaration is for a conversion condominium and
8 the declarant has complied with the requirements of subsection (4)(d) of this
9 section; and

10 “(d) A copy of the supplemental plat and a certification of plat execution
11 described in subsection (4)(e) and (f) of this section have been submitted.

12 “(6) Approval by the commissioner is not required for an amendment to
13 a declaration transferring the right of use of a limited common element
14 pursuant to ORS 100.515 (5).

15 “(7) Before the commissioner approves the declaration, supplemental dec-
16 laration or amendment thereto under this section:

17 “(a) The declarant or other person requesting approval shall pay to the
18 commissioner a fee determined by the commissioner under ORS 100.670; and

19 “(b) For an amendment or supplemental declaration, the Condominium
20 Information Report and the Annual Report described in ORS 100.260 must
21 be designated current by the Real Estate Agency as provided in ORS 100.255
22 and the fee required under ORS 100.670 must be paid.

23 “(8) If the declaration, supplemental declaration or amendment thereto
24 approved by the commissioner under subsection (4) or (5) of this section is
25 not recorded in accordance with ORS 100.115 within one year from the date
26 of approval by the commissioner, the approval automatically expires and the
27 declaration, supplemental declaration or amendment thereto must be resub-
28 mitted for approval in accordance with this section. The commissioner’s ap-
29 proval must set forth the date on which the approval expires.”.

30 On page 19, delete lines 39 through 45 and delete pages 20 through 22.

1 On page 23, delete lines 1 through 7 and insert:

2 **“SECTION 19.** ORS 100.105 is amended to read:

3 “100.105. (1) A declaration must contain:

4 “(a) A description of the property, including property on which a unit or
5 a limited common element is located, whether held in fee simple, leasehold,
6 easement or other interest or combination thereof, that is being submitted
7 to the condominium form of ownership and that conforms to the description
8 in the surveyor’s certificate provided under ORS 100.115 (1).

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

13 “(c) Subject to subsections (5) and (6) of this section, the name by which
14 the property is known and a general description of each unit and the build-
15 ing or buildings, including the number of stories and basements of each
16 building, the total number of units and the principal materials of which they
17 are constructed.

18 “(d) The unit designation, a statement that the location of each unit is
19 shown on the plat, a description of the boundaries and area in square feet
20 of each unit and any other data necessary for proper identification. The area
21 of a unit must be the same as shown for that unit on the plat described in
22 ORS 100.115 (1).

23 “(e) A notice in substantially the following form in at least 12-point type
24 in all capitals or boldface:

25 “ _____

26 NOTICE

27

28 THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION
29 AND THE PLAT ARE BASED ON THE BOUNDARIES OF THE UNITS AS
30 DESCRIBED IN THIS DECLARATION AND MAY VARY FROM THE

1 AREA OF UNITS CALCULATED FOR OTHER PURPOSES.

2 “

3 “(f) A description of the general common elements.

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

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

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

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

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

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

16 “(j) The voting rights allocated to each unit in accordance with ORS
17 100.525 or, in the case of condominium units committed as property in a
18 timeshare plan defined in ORS 94.803, the voting rights allocated in the
19 timeshare instrument.

20 “(k) A statement of the general nature of use, residential or otherwise,
21 for which the building or buildings and each of the units is intended.

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

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

29 “(n) A statement as to whether or not the association of unit owners
30 pursuant to ORS 100.405 (5) and (8) has authority to grant leases, easements,

1 rights of way, licenses and other similar interests affecting the general and
2 limited common elements of the condominium and consent to vacation of
3 roadways within and adjacent to the condominium.

4 “(o) If the condominium contains a floating structure described in ORS
5 100.020 (3), a statement regarding the authority of the board of directors of
6 the association, subject to ORS 100.410, to temporarily relocate the floating
7 structure without a majority vote of affected unit owners.

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

12 “(q) Any other details regarding the property that the person executing
13 the declaration considers desirable. However, if a provision required to be
14 in the bylaws under ORS 100.415 is included in the declaration, the voting
15 requirements for amending the bylaws also govern the amendment of the
16 provision in the declaration.

17 “(2) In the event the declarant proposes to annex additional property to
18 the condominium under ORS 100.125, the declaration also must contain a
19 general description of the plan of development, including:

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

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

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

28 “(d) A statement that the method used to establish the allocation of un-
29 divided interest in the common elements, the method used to determine li-
30 ability for common expenses and right to common profits and the method

1 used to allocate voting rights for each unit annexed is as stated in the dec-
2 laration in accordance with subsection (1)(g), (i) and (j) of this section.

3 “(e) Such other information as the Real Estate Commissioner requires in
4 order to carry out the purposes of this chapter.

5 “(3) Unless expressly prohibited by the declaration and subject to the re-
6 quirements of ORS 100.135 (2) and subsections (9) and (10) of this section:

7 “(a) Not later than two years following the termination date specified in
8 subsection (2)(b) of this section, the termination date may be extended for a
9 period not exceeding five years.

10 “(b) Before the termination date specified in the declaration or supple-
11 mental declaration under subsection (7)(d) of this section, the termination
12 date may be extended for a period not exceeding five years.

13 “(c) The general description under subsection (2)(c) of this section and the
14 information included in the declaration or supplemental declaration in ac-
15 cordance with subsection (7)(c), (g) and (h) of this section may be changed
16 by an amendment to the declaration or supplemental declaration and plat
17 or supplemental plat.

18 “(4) The information included in the declaration or supplemental decla-
19 ration in accordance with subsection (2)(a) and (d) of this section and sub-
20 section (7)(a), (b), (e), (f) and (k) of this section may not be changed unless
21 all owners agree to the change and an amendment to the declaration or
22 supplemental declaration and, if applicable, the plat or supplemental plat are
23 recorded in accordance with this chapter.

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

26 “(6) A condominium may not bear a name which is the same as or
27 deceptively similar to the name of any other, **different** condominium located
28 in the same county.

29 “(7) If the condominium is a flexible condominium containing variable
30 property, the declaration shall also contain a general description of the plan

1 of development, including:

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

4 “(b) A statement:

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

8 “(B) That there are no limitations on rights reserved under ORS 100.150
9 (1).

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

12 “(A) A designation of each tract as withdrawable variable property or
13 nonwithdrawable variable property;

14 “(B) Identification of each variable tract by a label in accordance with
15 ORS 100.115 [(1)(i)] **(1)(h)**;

16 “(C) A statement of the method of labeling each tract depicted on the plat
17 in accordance with ORS 100.115 [(1)(i)] **(1)(h)**; and

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

20 “(d) The termination date, which is the date after which any right re-
21 served under ORS 100.150 (1) will terminate, and a statement of the circum-
22 stances, if any, that will terminate any right on or before the date specified.
23 Subject to ORS 100.120, the termination date from the date of recording of
24 the conveyance of the first unit in the condominium to a person other than
25 the declarant may not exceed:

26 “(A) Twenty years, only if a condominium consists, or may consist if the
27 condominium is a flexible condominium, exclusively of units to be used for
28 nonresidential purposes; or

29 “(B) Seven years.

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

1 “(f) A statement that the method used to establish the allocations of un-
2 divided interest in the common elements, the method used to determine li-
3 ability for common expenses and right to common profits and the method
4 used to allocate voting rights as additional units are created is the same as
5 stated in the declaration in accordance with subsection (1)(g), (i) and (j) of
6 this section.

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

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

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

17 “(j) A statement that if by the termination date all or a portion of the
18 withdrawable variable property has not been withdrawn or reclassified, the
19 withdrawable variable property is automatically withdrawn from the condo-
20 minium as of the termination date.

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

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

25 “(A) A statement that the plat shows the location and dimensions of all
26 nonwithdrawable variable property that is labeled ‘NONWITHDRAWABLE
27 VARIABLE PROPERTY.’

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

30 “(C) A statement that, if by the termination date all or a portion of the

1 variable property designated as ‘nonwithdrawable variable property’ has not
2 been reclassified, the property is automatically reclassified as of the termi-
3 nation date as a general common element of the condominium and any in-
4 terest in the property held for security purposes is automatically
5 extinguished by the classification.

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

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

13 “(8) The plan of development for any variable property included in the
14 declaration or any supplemental declaration of any stage in accordance with
15 subsection (7) of this section is subject to any plan of development included
16 in the declaration in accordance with subsection (2) of this section, except
17 that the time limitation specified in subsection (7)(d) of this section governs
18 any right reserved under ORS 100.150 (1) with respect to any variable prop-
19 erty.

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

22 “(10)(a) Approval by the unit owners is not required for a declarant to
23 redesignate withdrawable variable property as ‘nonwithdrawable variable
24 property’ under ORS 100.150 (1) by supplemental declaration and supple-
25 mental plat, for any reason, including if the redesignation is required by the
26 local governing body to comply with any planning or zoning regulation or
27 ordinance.

28 “(b) If as a result of a redesignation under paragraph (a) of this sub-
29 section, the information required to be included in the supplemental decla-
30 ration under subsection (7)(L)(B) of this section is inconsistent with the

1 information included in the declaration or supplemental declaration in ac-
2 cordance with subsection (7)(g) of this section, an amendment to the decla-
3 ration or supplemental declaration and plat or supplemental plat approved
4 by at least 75 percent of owners is required.

5 “(11) The statement of an interest in property other than fee simple sub-
6 mitted to the condominium form of ownership and any easements, rights or
7 appurtenances belonging to property submitted to the condominium form of
8 ownership, whether leasehold or fee simple, must include:

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

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

15 “**NOTE:** Section 20 was deleted by amendment. Subsequent sections were
16 not renumbered.”.

17 On page 30, line 35, after “94.550,” insert “100.115” and delete “100.116,
18 100.600,”.

19
