

# DRAFT

## SUMMARY

Digest: For condos and homes in an HOA, this Act changes how construction defects and damages are handled. (Flesch Readability Score: 74.2).

Reduces the statute of limitations for construction defect actions for units in a planned community or condominium. Imposes notice, voting and approval requirements before homeowners or condominium association owners may bring or join a construction defect action. Requires the board of directors of a condominium association to conduct a semiannual moisture inspection.

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

## A BILL FOR AN ACT

1  
2 Relating to real property; creating new provisions; and amending ORS 12.135,  
3 94.630, 94.662, 100.115, 100.405, 100.417, 100.490, 100.680, 701.570, 701.575  
4 and 701.585.

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

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

7 12.135. (1) **As used in this section:**

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

10 (b) **“Homeowners association” has the meaning given that term in**  
11 **ORS 94.550.**

12 (c) **“Large commercial structure,” “residential structure” and**  
13 **“small commercial structure” have the meanings given those terms in**

1 **ORS 701.005.**

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

3 (e) **“Substantial completion” means the earliest of:**

4 (A) **The date when the contractee accepts in writing the con-**  
5 **struction, alteration or repair of the improvement to real property or**  
6 **any designated portion thereof as having reached that state of com-**  
7 **pletion when it may be used or occupied for its intended purpose or,**  
8 **if there is no such written acceptance, the date of acceptance of the**  
9 **completed construction, alteration or repair of such improvement by**  
10 **the contractee;**

11 (B) **The date when a public body issues a certificate of occupancy**  
12 **for the improvement; or**

13 (C) **The date when the owner occupies the improvement or uses it**  
14 **for its intended purpose.**

15 [(1)] (2) An action against a person by a plaintiff who is not a public  
16 body, whether in contract, tort or otherwise, arising from the person having  
17 performed the construction, alteration or repair of any improvement to real  
18 property or the supervision or inspection thereof, or from the person having  
19 furnished design, planning, surveying, architectural or engineering services  
20 for the improvement, must be commenced before the earliest of:

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

22 (b) Ten years after substantial completion or abandonment of the con-  
23 struction, alteration or repair of a small commercial structure[, *as defined*  
24 *in ORS 701.005, a*] **or** residential structure[, *as defined in ORS 701.005, or a*  
25 *large commercial structure, as defined in ORS 701.005, that is owned or*  
26 *maintained by a homeowners association, as defined in ORS 94.550, or that is*  
27 *owned or maintained by an association of unit owners, as defined in ORS*  
28 *100.005*]; or

29 (c) Six years after substantial completion or abandonment of the con-  
30 struction, alteration or repair of a large commercial structure[, *as defined*  
31 *in ORS 701.005, other than a large commercial structure described in para-*

1 *graph (b) of this subsection*].

2 [(2)] **(3)** An action against a person by a public body, whether in contract,  
3 tort or otherwise, arising from the person having performed the construction,  
4 alteration or repair of any improvement to real property or the supervision  
5 or inspection thereof, or from the person having furnished design, planning,  
6 surveying, architectural or engineering services for the improvement, must  
7 be commenced not more than 10 years after substantial completion or aban-  
8 donment of such construction, alteration or repair of the improvement to real  
9 property.

10 **(4) Notwithstanding subsection (2) of this section, the period of**  
11 **limitation for a tort action by a homeowners association or association**  
12 **of unit owners arising from the defective construction, alteration or**  
13 **repair of a structure or unit is:**

14 **(a) Six years after substantial completion or abandonment of the**  
15 **construction, alteration or repair of the structure; or**

16 **(b) If a construction defect described in this subsection is discov-**  
17 **ered more than five but less than six years after substantial com-**  
18 **pletion or abandonment, one year after discovery of the defect.**

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

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

30 (B) Ten years after substantial completion or abandonment of the con-  
31 struction, alteration or repair of a small commercial structure[, *as defined*

1 *in ORS 701.005, a] or residential structure[, as defined in ORS 701.005, or a*  
2 *large commercial structure, as defined in ORS 701.005, that is owned or*  
3 *maintained by a homeowners association, as defined in ORS 94.550, or that is*  
4 *owned or maintained by an association of unit owners, as defined in ORS*  
5 *100.005]; or*

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

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

12 [(4) *For purposes of this section:]*

13 [(a) *“Public body” has the meaning given that term in ORS 174.109; and]*

14 [(b) *“Substantial completion” means the earliest of:]*

15 [(A) *The date when the contractee accepts in writing the construction, al-*  
16 *teration or repair of the improvement to real property or any designated portion*  
17 *thereof as having reached that state of completion when it may be used or oc-*  
18 *cupied for its intended purpose or, if there is no such written acceptance, the*  
19 *date of acceptance of the completed construction, alteration or repair of such*  
20 *improvement by the contractee;]*

21 [(B) *The date when a public body issues a certificate of occupancy for the*  
22 *improvement; or]*

23 [(C) *The date when the owner uses or occupies the improvement for its in-*  
24 *tended purpose.]*

25 [(5)] (6) For purposes of this section, an improvement to real property is  
26 considered abandoned on the same date that the improvement is considered  
27 abandoned under ORS 87.045.

28 [(6)] (7) This section:

29 (a) Applies to an action against a manufacturer, distributor, seller or  
30 lessor of a manufactured dwelling, as defined in ORS 446.003, or of a pre-  
31 fabricated structure, as defined in ORS 455.010; and

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

4 **SECTION 2. The amendments to ORS 12.135 by section 1 of this 2025**  
5 **Act apply to causes of action arising on or after the effective date of**  
6 **this 2025 Act.**

7 **SECTION 3.** ORS 94.630 is amended to read:

8 94.630. (1) Subject to subsection (2) of this section and ORS 94.762, 94.763,  
9 94.776, 94.778 and 94.779, and except as otherwise provided in its declaration  
10 or bylaws, a homeowners association may:

11 (a) Adopt and amend bylaws, rules and regulations for the planned com-  
12 munity;

13 (b) Adopt and amend budgets for revenues, expenditures and reserves, and  
14 collect assessments from owners for common expenses and the reserve ac-  
15 count established under ORS 94.595;

16 (c) Hire and terminate managing agents and other employees, agents and  
17 independent contractors;

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

19 (e) Subject to [subsection (4)] **subsections (4) and (5)** of this section, in-  
20 itiate or intervene in litigation or administrative proceedings in its own  
21 name and without joining the individual owners in the following:

22 (A) Matters relating to the collection of assessments and the enforcement  
23 of governing documents;

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

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

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

30 (i) Individually owned real property, the expenses for which, including  
31 maintenance, repair or replacement, insurance or other expenses, the asso-

1 ciation is responsible; or

2 (ii) Common property;

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

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

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

11 (F) Any other matter to which the association has standing under law or  
12 pursuant to the declaration or bylaws;

13 (f) Make contracts and incur liabilities;

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

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

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

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

23 (k) Modify, close, remove, eliminate or discontinue the use of common  
24 property, including any improvement or landscaping, regardless of whether  
25 the common property is mentioned in the declaration, provided that:

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

29 (B) Modification, closure, removal, elimination or discontinuance other  
30 than on a temporary basis of any swimming pool, spa or recreation or com-  
31 munity building must be approved by at least a majority of owners voting

1 on the matter at a meeting or by written ballot held in accordance with the  
2 declaration, bylaws or ORS 94.647;

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

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

11 (n) Impose charges for late payment of assessments and attorney fees re-  
12 lated to the collection of assessments and, after giving written notice and  
13 an opportunity to be heard, levy reasonable fines for violations of the dec-  
14 laration, bylaws, rules and regulations of the association, provided that the  
15 charge imposed or the fine levied by the association is based:

16 (A) On a schedule contained in the declaration or bylaws, or an amend-  
17 ment to either that is delivered to each lot, mailed to the mailing address  
18 of each lot or mailed to the mailing addresses designated in writing by the  
19 owners; or

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

23 (o) Impose reasonable charges for the preparation and recordation of  
24 amendments to the declaration;

25 (p) Provide for the indemnification of its officers and the board of direc-  
26 tors and maintain liability insurance for directors and officers;

27 (q) Assign its right to future income, including the right to receive com-  
28 mon expense assessments; and

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

31 (2) A declaration may not impose any limitation on the ability of the as-

1 sociation to deal with a declarant that is more restrictive than the limita-  
2 tions imposed on the ability of the association to deal with any other person,  
3 except during the period of declarant control under ORS 94.600.

4 (3) A permit or authorization, or an amendment, modification, termination  
5 or other instrument affecting a permit or authorization, issued by the board  
6 of directors that is authorized by law, the declaration or bylaws may be re-  
7 corded in the deed records of the county in which the planned community  
8 is located. A permit or authorization, or an amendment, modification, ter-  
9 mination or other instrument affecting a permit or authorization, recorded  
10 under this subsection shall:

11 (a) Be executed by the president and secretary of the association and ac-  
12 knowledged in the manner provided for acknowledgment of instruments by  
13 the officers;

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

16 (c) Identify, by the designations stated or referenced in the declaration  
17 or applicable supplemental declaration, all affected lots and common prop-  
18 erty; and

19 (d) Include other information and signatures if required by law, the dec-  
20 laration, bylaws or the board of directors.

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

30 (b) If the party receiving the offer does not accept the offer within 10 days  
31 after receipt by written notice hand-delivered or mailed by certified mail,



1 return receipt requested, to the address, contained in the records of the as-  
2 sociation, for the other party, the initiating party may commence the liti-  
3 gation or the administrative proceeding. The notice of acceptance of the offer  
4 to participate in the program must contain the name, address and telephone  
5 number of the body administering the dispute resolution program.

6 (c) If a qualified dispute resolution program exists within the county in  
7 which the planned community is located and an offer to use the program is  
8 not made as required under paragraph (a) of this subsection, litigation or an  
9 administrative proceeding may be stayed for 30 days upon a motion of the  
10 noninitiating party. If the litigation or administrative action is stayed under  
11 this paragraph, both parties shall participate in the dispute resolution pro-  
12 cess.

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

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

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

25 **(5) Notwithstanding any contrary provision in a governing docu-**  
26 **ment, a homeowners association may not initiate or intervene in liti-**  
27 **gation or administrative proceedings regarding a matter that results**  
28 **from a defect in, or damage arising from a defect in, common property**  
29 **unless the owners representing a majority of the lots approve in writ-**  
30 **ing of the initiation or intervention within 60 days after the mailing**  
31 **date of the notice required under ORS 94.662.**

1        **SECTION 4.** ORS 94.662 is amended to read:

2        94.662. (1) At least 10 days prior to instituting any litigation or adminis-  
3 trative proceeding to recover damages under ORS 94.630 (1)(e)(E), the home-  
4 owners association shall provide written notice to each affected owner of the  
5 association's intent to seek damages on behalf of the owner. The notice shall,  
6 at a minimum:

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

9        (b) Inform each owner of the general nature of the litigation or proceed-  
10 ing;

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

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

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

19        (f) Inform the owner that exercising the owner's right not to have dam-  
20 ages sought on the owner's behalf:

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

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

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

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

29        (2) Within 10 days of **the** mailing **of** the notice described in this section,  
30 any owner may request in writing that the association not seek damages on  
31 the owner's behalf. If an owner makes such a request, the association

1 [shall] **may** not make or continue any claim or action for damages with re-  
2 gard to the objecting owner's lot and shall be relieved of any duty to reim-  
3 burse or indemnify the owner for damages under the litigation or proceeding.

4 **(3) If the action is for a claim described in ORS 94.630 (5):**

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

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

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

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

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

14 **(D) State that the association may not institute litigation or an**  
15 **administrative proceeding unless owners representing a majority of**  
16 **the lots approve in writing of the initiation or intervention within 60**  
17 **days after the mailing date of the notice.**

18 **(c) The association shall send a copy of the notice by certified mail**  
19 **to each person identified in the notice as a party the association con-**  
20 **siders responsible for the defect. The requirement for sending notice**  
21 **under this subsection is in addition to the notice of defect requirement**  
22 **in ORS 701.565 and does not initiate the procedure described in ORS**  
23 **701.560 to 701.595.**

24 **SECTION 5.** ORS 100.405 is amended to read:

25 100.405. (1)(a) An association of unit owners must be organized to serve  
26 as a means through which the unit owners may take action with regard to  
27 the administration, management and operation of the condominium.

28 (b) The association of a condominium created on or after September 27,  
29 2007, must be organized:

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

31 (B) If the condominium consists of four or fewer units, excluding units

1 used for parking, storage or other use ancillary to a unit, as an unincor-  
2 porated association, corporation for profit or a nonprofit corporation.

3 (c) If the association is incorporated:

4 (A) The name of the association must include the complete name of the  
5 condominium.

6 (B) The articles of incorporation must be consistent with the declaration  
7 and bylaws.

8 (d) For an association described in paragraph (b)(A) of this subsection,  
9 the association must be incorporated before conveyance of the first individ-  
10 ual unit unless all units in the condominium are conveyed or transferred to  
11 one person in one transaction.

12 (e) Notwithstanding a provision in the declaration or bylaws of a condo-  
13 minium created before September 27, 2007, that states that the association  
14 must be unincorporated or that requires approval of owners to incorporate  
15 as a nonprofit corporation under ORS chapter 65, an unincorporated associ-  
16 ation may be incorporated as a nonprofit corporation under ORS chapter 65  
17 if the board of directors adopts a resolution that states the association will  
18 be incorporated.

19 (f) A separate association is not created when an unincorporated associ-  
20 ation formed under this section is incorporated, reinstated after administra-  
21 tive dissolution under ORS 60.654 or 65.654 or again incorporated following  
22 dissolution. The association automatically continues and, without any fur-  
23 ther action by incorporators, directors or officers that may otherwise be re-  
24 quired under Oregon corporation laws:

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

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

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

1 (g) If an incorporated association is at any time dissolved, whether inad-  
2 vertently or deliberately:

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

5 (B) The unincorporated association has all of the property, powers and  
6 obligations of the incorporated association existing immediately prior to  
7 dissolution.

8 (C) The unincorporated association is governed by the bylaws, and to the  
9 extent applicable, the articles of incorporation of the incorporated associ-  
10 ation.

11 (D) The board of directors and the officers serving immediately prior to  
12 the dissolution continue to serve as the directors and officers of the unin-  
13 corporated association.

14 (2) Membership in the association of unit owners is limited to unit own-  
15 ers.

16 (3) The affairs of the association are governed by a board of directors as  
17 provided for in the bylaws adopted under ORS 100.410.

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

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

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

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

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

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

29 (A) Matters relating to the collection of assessments and the enforcement  
30 of declarations and bylaws;

31 (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 unit owners, including but  
3 not limited to the abatement of nuisance;

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

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

10 (i) Resulting from a nuisance or a defect in or damage to a common ele-  
11 ment; or

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

13 (F) Any other matter to which the association has standing under law or  
14 pursuant to the declaration, bylaws or any articles of incorporation;

15 (f) Make contracts and incur liabilities;

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

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

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

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

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

30 (A) On a schedule contained in the declaration or bylaws, or an amend-  
31 ment to either that is delivered to each unit, mailed to the mailing address

1 of each unit or mailed to the mailing addresses designated in writing by the  
2 owners; or

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

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

12 (m) Impose reasonable charges for the preparation and recordation of  
13 amendments to the declaration or statements of assessments;

14 (n) Assign its right to future income, including the right to receive com-  
15 mon expense assessments;

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

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

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

22 (r) Exercise any other powers determined by the association to be neces-  
23 sary and proper for the governance and operation of the association.

24 (5) Subject to subsection (6) of this section, unless expressly limited or  
25 prohibited by the declaration, the association has the authority to grant,  
26 execute, acknowledge and deliver on behalf of the unit owners leases, ease-  
27 ments, rights of way, licenses and other similar interests affecting the gen-  
28 eral common elements and consent to vacation of roadways within and  
29 adjacent to the condominium.

30 (6)(a)(A) Except as provided in subparagraph (B) of this paragraph, the  
31 granting of a lease, easement, right of way, license or other similar interest

1 pursuant to subsection (5) of this section must first be approved by at least  
2 75 percent of owners present at a meeting of the association or with the  
3 consent of at least 75 percent of all owners solicited by any means the board  
4 of directors determines is reasonable. If a meeting is held to conduct the  
5 vote, the meeting notice must include a statement that the approval of the  
6 grant will be an item of business on the agenda of the meeting.

7 (B) Unless the declaration otherwise provides:

8 (i) The granting of a lease, easement, right of way, license or other simi-  
9 lar interest affecting the general common elements for a term of two years  
10 or less shall require the approval of a majority of the board of directors.

11 (ii) The granting of a lease, easement, right of way, license or other sim-  
12 ilar interest affecting the general common elements for a term of more than  
13 two years to a public body, as defined in ORS 174.109, to a utility, to a  
14 communications company or to any other person for installation and main-  
15 tenance of power, gas, electric, water or other utility and communication  
16 lines and services requires the approval of a majority of the board of direc-  
17 tors.

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

30 (b) Unless the declaration otherwise provides, the consent to vacation of  
31 roadways within and adjacent to the condominium must be approved first



1 by at least a majority of unit owners present and voting at a meeting of the  
2 association or with consent of at least a majority of all owners solicited by  
3 any means the board of directors determines is reasonable. If a meeting is  
4 held to conduct the vote, the meeting notice must include a statement that  
5 the roadway vacation will be an item of business on the agenda of the  
6 meeting.

7 (7) The instrument granting an interest or consent pursuant to subsection  
8 (5) of this section must be executed by the association and acknowledged and  
9 shall state that such grant or consent was approved, if appropriate, by at  
10 least the percent of owners required under subsection (6) of this section.

11 (8)(a) Unless expressly prohibited by the declaration, any action permitted  
12 under subsections (5) and (6) of this section regarding a general common  
13 element may be taken with respect to any limited common element as pro-  
14 vided in this subsection.

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

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

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

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

29 (A) Be executed by the association and acknowledged.

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

31 (C) Include a certification executed by the association stating that the

1 action was approved by the owners in accordance with this subsection.

2 (9) Except as otherwise provided in the association's declaration or by-  
3 laws, the board of directors of the association may modify, close, remove,  
4 eliminate or discontinue the use of a general common element facility or  
5 improvement or portion of the common element landscaping, regardless of  
6 whether such facility, improvement or landscaping is mentioned in the dec-  
7 laration or shown on the plat provided that:

8 (a) This subsection does not limit the authority of the board of directors,  
9 in its discretion, to seek approval of such modification, closure, removal,  
10 elimination or discontinuance by the unit 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) A permit or authorization issued by the board of directors pursuant  
17 to authority granted to the board under law, the declaration or the bylaws,  
18 may be recorded in the deed records of the county where the condominium  
19 is located. An instrument recorded under this subsection must:

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 by  
25 law, under the declaration or bylaws or as the board of directors may desire;  
26 and

27 (D) Be executed by the association and acknowledged.

28 (b) The board of directors may record an amendment, modification, ter-  
29 mination or other instrument relating to the permit or authorization de-  
30 scribed in this subsection. Any such instrument shall include a reference to  
31 the location of the recorded instrument and be executed by the association

1 and acknowledged.

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

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

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

25 (d) Unless a stay has been granted under paragraph (c) of this subsection,  
26 if the dispute resolution process is not completed within 30 days after receipt  
27 of the initial offer, the initiating party may commence litigation or an ad-  
28 ministrative proceeding without regard to whether the dispute resolution is  
29 completed.

30 (e) Once made, the decision of the court or administrative body arising  
31 from litigation or an administrative proceeding may not be set aside on the

1 grounds that an offer to use a dispute resolution program was not made.

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

6 **(12) Notwithstanding any contrary provision in a governing docu-**  
7 **ment, an association may not initiate or intervene in litigation or ad-**  
8 **ministrative proceedings regarding a matter that results from a defect**  
9 **in, or damage arising from a defect in, common elements of the con-**  
10 **dominium unless owners representing a majority of the units approve**  
11 **in writing of the initiation or intervention within 60 days after the**  
12 **mailing date of the notice required under ORS 100.490. This subsection**  
13 **does not apply to a breach of warranty claim against a declarant under**  
14 **ORS 100.185**

15 **SECTION 6.** ORS 100.490 is amended to read:

16 100.490. (1) At least 10 days prior to instituting any litigation or admin-  
17 istrative proceeding to recover damages under ORS 100.405 (4)(e)(E), the as-  
18 sociation of unit owners shall provide written notice to each affected owner  
19 of the association's intent to seek damages on behalf of the owner. The no-  
20 tice shall, at a minimum:

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

23 (b) Inform each owner of the general nature of the litigation or proceed-  
24 ing;

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

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

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

1 right; and

2 (f) Inform the owner that exercising the owner's right not to have dam-  
3 ages sought on the owner's behalf:

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

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

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

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

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

19 **(3) If the action is for a claim described in ORS 105.405 (12):**

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

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

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

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

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

29 **(D) State that the association may not institute litigation or an**  
30 **administrative proceeding unless owners representing a majority of**  
31 **the units approve in writing of the initiation or intervention within**

1 **60 days after the mailing date of the notice.**

2 **(c) The association shall send a copy of the notice by certified mail**  
3 **to each person identified in the notice as a party the association con-**  
4 **siders responsible for the defect. The requirement for sending notice**  
5 **under this subsection is in addition to the notice of defect requirement**  
6 **in ORS 701.565 and does not initiate the procedure described in ORS**  
7 **701.560 to 701.595.**

8 **SECTION 7.** ORS 100.115 is amended to read:

9 100.115. (1) A plat of the land described in the declaration or a supple-  
10 mental plat described in a supplemental declaration, complying with ORS  
11 92.050, 92.060 (1) and (2), 92.080 and 92.120, shall be recorded simultaneously  
12 with the declaration or supplemental declaration. The plat or supplemental  
13 plat shall be titled in accordance with subsection (3) of this section and  
14 shall:

15 (a) Show the location of:

16 (A) All buildings and public roads. The location shall be referenced to a  
17 point on the boundary of the property; and

18 (B) For a condominium containing units described in ORS 100.020 (3)(b)(C)  
19 or (D), the moorage space or floating structure. The location shall be ref-  
20 erenced to a point on the boundary of the upland property regardless of a  
21 change in the location resulting from a fluctuation in the water level or  
22 flow.

23 (b) Show the designation, location, dimensions and area in square feet of  
24 each unit including:

25 (A) For units in a building described in ORS 100.020 (3)(b)(A), the hori-  
26 zontal and vertical boundaries of each unit and the common elements to  
27 which each unit has access. The vertical boundaries shall be referenced to  
28 a known benchmark elevation or other reference point as approved by the  
29 city or county surveyor;

30 (B) For a space described in ORS 100.020 (3)(b)(B), the horizontal bound-  
31 aries of each unit and the common elements to which each unit has access.

1 If the space is located within a structure, the vertical boundaries also shall  
2 be shown and referenced to a known benchmark elevation or other reference  
3 point as approved by the city or county surveyor;

4 (C) For a moorage space described in ORS 100.020 (3)(b)(C), the horizontal  
5 boundaries of each unit and the common elements to which each unit has  
6 access; and

7 (D) For a floating structure described in ORS 100.020 (3)(b)(D), the hori-  
8 zontal and vertical boundaries of each unit and the common elements to  
9 which each unit has access. The vertical boundaries shall be referenced to  
10 an assumed elevation of an identified point on the floating structure even  
11 though the assumed elevation may change with the fluctuation of the water  
12 level where the floating structure is moored.

13 (c) Identify and show, to the extent feasible, the location [*and*  
14 *dimensions*] of all limited common elements described in the declaration. The  
15 plat may not include any statement indicating to which unit the use of any  
16 noncontiguous limited common element is reserved.

17 (d) Include a statement, including signature and official seal, of a regis-  
18 tered architect, registered professional land surveyor or registered profes-  
19 sional engineer certifying that the plat fully and accurately depicts the  
20 boundaries of the units of the building and that construction of the units and  
21 buildings as depicted on the plat has been completed, except that the pro-  
22 fessional land surveyor who prepared the plat need not affix a seal to the  
23 statement.

24 (e) Include a surveyor's certificate, complying with ORS 92.070, that in-  
25 cludes information in the declaration in accordance with ORS 100.105 (1)(a)  
26 and a metes and bounds description or other description approved by the city  
27 or county surveyor.

28 (f) Include a statement by the declarant that the property and improve-  
29 ments described and depicted on the plat are subject to the provisions of ORS  
30 100.005 to 100.627.

31 (g) Include any other information or data not inconsistent with the dec-

1 laration that the declarant desires to include.

2 (h) If the condominium is a flexible condominium, show the location and  
3 dimensions of all variable property identified in the declaration and label the  
4 variable property as “WITHDRAWABLE VARIABLE PROPERTY” or  
5 “NONWITHDRAWABLE VARIABLE PROPERTY,” with a letter different  
6 from those designating a unit, building or other tract of variable property.  
7 If there is more than one tract, each tract shall be labeled in the same  
8 manner.

9 (2) The supplemental plat required under ORS 100.150 (1) shall be re-  
10 corded simultaneously with the supplemental declaration. The supplemental  
11 plat shall be titled in accordance with subsection (3) of this section and  
12 shall:

13 (a) Comply with ORS 92.050, 92.060 (1), (2) and (4), 92.080, 92.120 and  
14 subsection (3) of this section.

15 (b) If any property is withdrawn:

16 (A) Show the resulting perimeter boundaries of the condominium after the  
17 withdrawal; and

18 (B) Show the information required under subsection (1)(h) of this section  
19 as it relates to any remaining variable property.

20 (c) If any property is reclassified, show the information required under  
21 subsection (1)(a) to (d) of this section.

22 (d) Include a “Declarant’s Statement” that the property described on the  
23 supplemental plat is reclassified or withdrawn from the condominium and  
24 that the condominium exists as described and depicted on the plat.

25 (e) Include a surveyor’s certificate complying with ORS 92.070.

26 (3) The title of each supplemental plat described in ORS 100.120 shall in-  
27 clude the complete name of the condominium, followed by the additional  
28 language specified in this subsection and the appropriate reference to the  
29 stage being annexed or tract of variable property being reclassified. Each  
30 supplemental plat for a condominium recorded on or after January 1, 2002,  
31 shall be numbered sequentially and shall:



1 (a) If property is annexed under ORS 100.125, include the words “Supple-  
2 mental Plat No. \_\_\_\_\_: Annexation of Stage \_\_\_\_\_”; or

3 (b) If property is reclassified under ORS 100.150, include the words “Sup-  
4 plemental Plat No. \_\_\_\_\_: Reclassification of Variable Property, Tract  
5 \_\_\_\_\_.”

6 (4) Upon request of the county surveyor or assessor, the person offering  
7 a plat or supplemental plat for recording shall also file an exact copy, cer-  
8 tified by the surveyor who made the plat to be an exact copy of the plat,  
9 with the county assessor and the county surveyor. The exact copy shall be  
10 made on suitable drafting material having the characteristics of strength,  
11 stability and transparency required by the county surveyor.

12 (5) Before a plat or a supplemental plat may be recorded, it must be ap-  
13 proved by the city or county surveyor as provided in ORS 92.100. Before ap-  
14 proving the plat as required by this section, the city or county surveyor  
15 shall:

16 (a) Check the boundaries of the plat and units and take measurements and  
17 make computations necessary to determine that the plat complies with this  
18 section.

19 (b) Determine that the name complies with ORS 100.105 (5) and (6).

20 (c) Determine that the following are consistent:

21 (A) The designation and area in square feet of each unit shown on the  
22 plat and the unit designations and areas contained in the declaration in ac-  
23 cordance with ORS 100.105 (1)(d);

24 (B) Limited common elements identified on the plat and the information  
25 contained in the declaration in accordance with ORS 100.105 (1)(h);

26 (C) The description of the property in the surveyor’s certificate included  
27 on the plat and the description contained in the declaration in accordance  
28 with ORS 100.105 (1)(a); and

29 (D) For a flexible condominium, the variable property depicted on the plat  
30 and the identification of the property contained in the declaration in ac-  
31 cordance with ORS 100.105 (7)(c).

1 (6) The person offering the plat or supplemental plat for approval shall:

2 (a) Submit a copy of the proposed declaration and bylaws or applicable  
3 supplemental declaration at the time the plat is submitted; and

4 (b) Submit the original or a copy of the executed declaration and bylaws  
5 or the applicable supplemental declaration approved by the commissioner if  
6 required by law prior to approval.

7 (7) For performing the services described in subsection (5)(a) to (c) of this  
8 section, the city surveyor or county surveyor shall collect from the person  
9 offering the plat for approval a fee of \$150 plus \$25 per building. The gov-  
10 erning body of a city or county may establish a higher fee by resolution or  
11 order.

12 **SECTION 8.** ORS 100.680 is amended to read:

13 100.680. (1) Unless the developer of a condominium has complied with  
14 subsection (2) of this section, the developer and a purchaser may not enter  
15 into a unit sales agreement before the recording of the declaration or sup-  
16 plemental declaration and plat under ORS 100.115 or, if the condominium is  
17 located outside of this state, before the condominium has been created under  
18 the laws of the jurisdiction within which the condominium is located.

19 (2) Any purchaser's funds, the unit sales agreement, any notes or security  
20 documents and any loan commitments must be placed in an escrow located  
21 within this state with a person or firm authorized under ORS 696.505 to  
22 696.582. [*The escrow instructions may not allow distribution of the purchaser's*  
23 *funds until the declaration or any applicable supplemental declaration is re-*  
24 *corded and the legal title or other interest bargained for has been transferred*  
25 *to the purchaser as provided in the unit sales agreement.*] If any funds of the  
26 purchaser are invested, the funds must be invested in federally insured ac-  
27 counts or other investments approved by the Real Estate Commissioner. If  
28 the developer defaults under the unit sales agreement, the purchaser's funds  
29 held in escrow and all income earned from investment of the funds held in  
30 escrow must be returned.

31 (3) In lieu of the requirements of subsection (2) of this section, the com-

1 commissioner may approve any alternative requirement or method that the  
2 commissioner finds will ensure the same protection to the purchaser as the  
3 protection provided by the escrow.

4 **SECTION 9.** ORS 100.417 is amended to read:

5 100.417. (1) The board of directors of an association of unit owners may  
6 act on behalf of the association except as limited by the declaration or by-  
7 laws. In the performance of their duties, officers and members of the board  
8 of directors shall be governed by this section and the applicable provisions  
9 of ORS 65.357, 65.361, 65.367, 65.369 and 65.377 whether or not the association  
10 is incorporated under ORS chapter 65.

11 (2) Subject to subsection [(8)] **(9)** of this section, unless otherwise pro-  
12 vided in the bylaws, the board of directors of an association may fill vacan-  
13 cies in its membership for the unexpired portion of any term.

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

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

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

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

22 (7) The board of directors shall cause to be maintained and kept current  
23 the information required to enable the association to comply with ORS  
24 100.480 (11).

25 **(8) The board of directors shall semiannually procure inspections**  
26 **of the condominium for moisture intrusion.**

27 [(8)(a)] **(9)(a)** Unless otherwise provided in the declaration or bylaws, at  
28 a meeting of the unit owners at which a quorum is present, the unit owners  
29 may remove a director from the board of directors, other than directors ap-  
30 pointed by the declarant or individuals who are ex officio directors, with or  
31 without cause, by a majority vote of unit owners who are present and enti-

1 tled to vote.

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

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

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

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

10 (c) A director who is removed by the unit owners remains a director until  
11 a successor is elected by the unit owners or the vacancy is filled as provided  
12 in subsection [(9)] (10) of this section.

13 [(9)] (10) Unless the declaration or bylaws specifically prescribe a differ-  
14 ent procedure for filling a vacancy created by the removal of a director by  
15 unit owners, the unit owners shall fill a vacancy created by the removal of  
16 a director by the unit owners at a meeting of unit owners. The notice of the  
17 meeting must state that filling a vacancy is an item on the agenda.

18 **SECTION 10.** ORS 701.570 is amended to read:

19 701.570. (1) A contractor, subcontractor or supplier that receives a notice  
20 of defect sent under ORS 701.565 shall, not later than 14 days after receiving  
21 the notice of defect, send a secondary notice to any other known contractor,  
22 subcontractor or supplier that may be responsible for some or all of the de-  
23 fects described in the notice of defect. The contractor, subcontractor or  
24 supplier must send the secondary notice by registered or certified mail, re-  
25 turn receipt requested, to an address described in ORS 701.565 (2). The sec-  
26 ondary notice must be accompanied by a statement describing the basis for  
27 contending that the other contractor, subcontractor or supplier may be re-  
28 sponsible for some or all of the defects.

29 (2) A contractor, subcontractor or supplier that receives a notice of defect  
30 or secondary notice may send the owner a written request to conduct a vis-  
31 ual examination of the residence. **Except as provided in section 14 of this**

1 **2025 Act**, the written request must be sent not later than 14 days after the  
2 requesting contractor, subcontractor or supplier receives a notice of defect  
3 or secondary notice. The written request to conduct a visual examination of  
4 the residence must state the estimated time required for the visual exam-  
5 ination.

6 (3) A contractor, subcontractor or supplier that receives a notice of defect  
7 or secondary notice may send the owner a written request to inspect the  
8 residence. **Except as provided in section 14 of this 2025 Act**, the written  
9 request must be sent not later than 14 days after the requesting contractor,  
10 subcontractor or supplier conducted a visual examination of the residence.  
11 The written request to inspect the residence must state the nature and scope  
12 of the inspection, whether any testing is to be performed and the estimated  
13 time required for the inspection. The recipient of a secondary notice that  
14 requests to inspect the residence shall send a copy of the request to the  
15 sender of the secondary notice.

16 (4) A contractor, subcontractor or supplier that sends a secondary notice  
17 and intends to hold the recipient of the secondary notice liable for a defect  
18 described in a notice of defect shall coordinate the scheduling of any in-  
19 spection with the owner and all recipients of a secondary notice from the  
20 contractor, subcontractor or supplier. The contractor, subcontractor or sup-  
21 plier shall deliver a copy of any written request to inspect the residence to  
22 each recipient of the secondary notice in time to provide the recipient with  
23 an opportunity to attend the requested inspection and to participate in any  
24 remediation. The sender of a secondary notice shall give reasonable advance  
25 notice to the owner or the owner's legal representative, if any, of the identity  
26 of any contractor, subcontractor or supplier who will attend the inspection.  
27 **If the sender of the notice of defect is a homeowners association or**  
28 **an association of unit owners, the notice must also conform to section**  
29 **14 of this 2025 Act.**

30 (5) **Except as provided in section 14 of this 2025 Act**, unless otherwise  
31 agreed to by the owner, a contractor, subcontractor or supplier that receives

1 a notice of defect or secondary notice shall send a written response to the  
2 owner not later than 90 days after the contractor, subcontractor or supplier  
3 receives a notice of defect or secondary notice. A contractor, subcontractor  
4 or supplier that receives a secondary notice also shall send a copy of the  
5 written response to the sender of the secondary notice. The written response  
6 must be sent by registered or certified mail, return receipt requested. The  
7 written response must include:

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

11 (A) An acknowledgment of the existence, nature and extent of the defect  
12 without regard to responsibility for the defect.

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

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

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

18 (c) One or more of the following:

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

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

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

26 **SECTION 11.** ORS 701.575 is amended to read:

27 701.575. (1) An owner sending a notice of defect under ORS 701.565 shall  
28 make the residence available for visual examination pursuant to any written  
29 request sent under ORS 701.570 **or section 14 of this 2025 Act**. The owner  
30 shall make the residence available for visual examination, during normal  
31 business hours or as otherwise agreed, not later than 20 days after receiving

1 the written request for visual examination.

2 (2) An owner sending a notice of defect under ORS 701.565 shall make the  
3 residence available for an inspection pursuant to any written request sent  
4 under ORS 701.570 **or section 14 of this 2025 Act**. The owner shall make the  
5 residence available for inspection during normal business hours or at a time  
6 that is mutually agreeable to the owner and the requester.

7 (3) An inspection by a contractor, subcontractor or supplier may include  
8 any reasonable measures, including testing, for determining the nature, cause  
9 and extent of the defects described in the notice of defect or incidental  
10 damage and the nature and extent of the necessary remediation. Unless the  
11 contractor, subcontractor or supplier conducting the inspection and the  
12 owner agree otherwise, the contractor, subcontractor or supplier conducting  
13 the inspection shall repair any damage caused by the inspection. Any damage  
14 caused by the inspection that is not repaired may be sought as incidental  
15 damage in any subsequent arbitration or court action by an owner against  
16 the contractor, subcontractor or supplier conducting the inspection.

17 (4) A contractor, subcontractor or supplier that requests to inspect a  
18 residence must include as part of the written response of the contractor,  
19 subcontractor or supplier under ORS 701.570[,] **or section 14 of this 2025**  
20 **Act** a written report or other document evidencing the result of the in-  
21 spection and the existence or nonexistence of the defects described in the  
22 notice of defect or discovered during the inspection.

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

24 701.585. (1) If an owner sends a contractor, subcontractor or supplier a  
25 notice of defect within the time allowed for the owner to commence a court  
26 action against that contractor, subcontractor or supplier for a claim de-  
27 scribed in ORS 701.565, the time for the owner to commence the action shall  
28 be extended, notwithstanding any statute of limitation or statute of ultimate  
29 repose, until the later of:

30 (a) One hundred and twenty days after the owner receives a written re-  
31 sponse from the contractor, subcontractor or supplier that received the no-

1 tice of defect if the written response does not contain a written offer to  
2 perform remediation or pay monetary compensation for one or more of the  
3 defects or incidental damage described in the notice of defect;

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

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

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

15 (3) Delivery of a secondary notice sent by a contractor, subcontractor or  
16 supplier under ORS 701.570 **or section 14 of this 2025 Act** does not act to  
17 toll the expiration of any right of the owner to commence a court action  
18 against the recipient of the secondary notice. **However, the right of the**  
19 **sender of the secondary notice to commence a court action against the**  
20 **recipient of the secondary notice shall be extended, notwithstanding**  
21 **any statute of limitation or statute of ultimate repose, until the date**  
22 **that the right of the owner to commence a court action against the**  
23 **sender of the secondary notice expires.**

24 (4) Any remediation performed pursuant to an accepted offer made under  
25 ORS 701.570 **or section 14 of this 2025 Act** does not constitute a new per-  
26 formance and, for purposes of ORS 12.135, relates back to the earliest date  
27 of substantial completion or abandonment of the construction, alteration or  
28 repair of the improvement to real property.

29 **SECTION 13. Section 14 of this 2025 Act is added to and made a part**  
30 **of ORS 701.560 to 701.595.**

31 **SECTION 14. If the owner sending a notice of defect under ORS**



1 **701.565 is a homeowners association or an association of unit owners:**

2 (1) The period in which a contractor, subcontractor or supplier may  
3 send a request to conduct a visual examination or request to inspect  
4 the residence under ORS 701.570 (2) or (3) is extended to 30 days after  
5 receiving a notice of defect or secondary notice.

6 (2)(a) The contractor, subcontractor or supplier may have a tech-  
7 nical or construction expert attend an inspection requested under ORS  
8 701.570 (3), provided that:

9 (A) The written request identifies one or more acceptable experts;  
10 and

11 (B) The owner consents to the expert.

12 (b) If the owner disapproves of the proposed expert, the owner shall  
13 provide written notice of the disapproval and of the identity of an ex-  
14 pert acceptable to the owner.

15 (c) If the contractor, subcontractor or supplier disapproves of the  
16 expert identified by the owner, the two identified and disapproved ex-  
17 perts shall jointly select a third expert to be the expert that attends  
18 the inspection.

19 (d) The contractor, subcontractor or supplier shall include the  
20 identity of a selected expert in any advance notice that the contractor,  
21 subcontractor or supplier sends under ORS 701.570 (4).

22 (3) The contractor, subcontractor or supplier shall send the owner  
23 a response to the notice of defect not later than:

24 (a) Fourteen days after conducting an inspection of the residence  
25 under ORS 701.575 (3); or

26 (b) If no inspection is conducted, 90 days after the receiving a notice  
27 of defect or secondary notice.

28 (4) A response under subsection (3) of this section must contain:

29 (a) An offer to cure the defect;

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

31 (c) An offer allowing the owner a choice between cure of the defect

1 or an amount equal to the cost of curing the defect; or

2 (d) A statement that the contractor, subcontractor or supplier de-  
3 clines to make any offer in lieu of litigation.

4 (5) If the contractor, subcontractor or supplier does not send a re-  
5 sponse that is timely under subsection (3) of this section or that con-  
6 forms to the requirements in subsection (4) of this section, the owner  
7 is excused from further compliance with this section.

8 (6) An owner may accept an offer under subsection (4) of this sec-  
9 tion by delivering a written acceptance to the offering contractor,  
10 subcontractor or supplier within 30 days after receiving the offer. If  
11 an owner fails to accept an offer within 30 days after receipt, the offer  
12 is deemed rejected.

13 (7) If an offer under subsection (4) of this section is to pay an  
14 amount equal to the cost of curing the defect, the contractor, sub-  
15 contractor or supplier has 30 days after sending the response to offer  
16 a firm payment amount. The offer is not complete until the owner  
17 receives the firm amount. If the owner wishes to accept an offer of  
18 payment, but disputes the amount, the parties may select a mediator  
19 to attempt resolution. If the parties cannot agree on a mediator after  
20 45 days, they may request that the administrator of the Construction  
21 Contractors Board inform a professional mediation association or ser-  
22 vice that the parties wish to have a mediator selected by the associ-  
23 ation or service.

24 (8) If an owner accepts payment of an amount equal to the cost of  
25 curing the defect, the owner shall make a good faith effort to have a  
26 construction contractor correct the defect.

27 (9) If the owner accepts an offer to perform remediation or to pay  
28 monetary compensation, completion of the remediation or payment  
29 satisfies the claims by the owner for those defects included in the offer  
30 for which remediation was performed or compensation paid, but not  
31 for any other defect. Except as provided in subsection (10) of this sec-

1 tion, if the owner accepts an offer by a contractor, subcontractor or  
2 supplier that received a secondary notice, completion of the remedi-  
3 ation or payment satisfies claims for those defects included in the of-  
4 fer for which remediation was performed or compensation paid,  
5 including claims by the owner and claims for contribution or indem-  
6 nity against the contractor, subcontractor or supplier by the sender  
7 of the secondary notice, but not for any other defect.

8 (10) If the owner accepts an offer by a contractor, subcontractor  
9 or supplier that received a secondary notice to perform remediation  
10 or to pay monetary compensation and the contractor, subcontractor  
11 or supplier fails to perform in accordance with the accepted offer, the  
12 sender of the secondary notice may perform the remediation or pay  
13 the monetary compensation offered by the nonperforming contractor,  
14 subcontractor or supplier.

15 (11) A response under subsection (3) of this section is not admissible  
16 to establish a defect, liability for a defect, or the damages arising out  
17 of a defect, in an arbitration or court action.

18 SECTION 15. Section 14 of this 2025 Act and the amendments to  
19 ORS 701.570 and 701.585 by sections 10 and 12 of this 2025 Act apply to  
20 notices of construction defect sent by an owner on or after the effec-  
21 tive date of this 2025 Act and to any resulting secondary notices.

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